



San Juan County CAO Citizen Review Committee

Critical Areas Ordinance Citizen Review Committee Meeting

December 2, 2008

Islanders Bank Annex, 225 Blair Avenue, Friday Harbor

DRAFT MEETING MINUTES

Committee Members in Attendance: Ryan Drum, John Evans, Patty Miller, Stephanie Buffum-Field, Todd Goldsmith, Barbara Thomas, Jim Slocomb

County Staff in Attendance: Shireene Hale (Senior Planner), Maya Borhani (Dept. Assistant II)

Public in Attendance: Tim Hyatt (Skagit Systems Coop-Ecologist), Denise Ireland (Star Surveying), Barbara Rosenkotter (MRC), Jeff Hanson

Facilitator: Tom Cowan

Topic	Key Discussion Points and Agreements	Actions and Next Steps
Call To Order	The meeting was called to order at 8:30 a.m.	
Review of Project and Agenda	Tom Cowan reviewed the committee's process for the day, including WHERE committee left off with ordinance work at 11/20/08 meeting.	1) SKIP Review Section today; 2) MOVE on to Section 18-80, RE Flow of Permit Section moved into Sec. 18-80; review.
Approval of Agenda 8:35 a.m.		Agenda approved.
Introductions/ Citizen Input 8:40 a.m.	Introduction of Tim Hyatt (Skagit Systems Coop) and others	
Approval of Meeting Notes 8:45 a.m.	November 20, 2008 CAO Meeting notes	Minutes approved, with corrections (add Bob Fritzen in attendance; add notes RE: bulk of meeting spent working on ordinance language)
Review of Ordinance, Section 2. SJCC Section 18.30.110, Section I-3 and 4 (pg. 15-16, Oct. 2008 Working Draft) – Financial Guarantees	<p>I. Financial guarantee for mitigation/restoration and monitoring, and CASP</p> <p>Shireene suggested adding language RE: if County offers a mitigation plan option, how does property owner's plan pay into mitigation bank?</p> <p>Discussion: John Evans reiterated his written comments on this section, that these requirements are "way over the top." Patty Miller: Fear of penalizing folks with an up-front financial burden.</p>	

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	<p>Barbara Thomas: Standard operating procedure to require a financial elements; otherwise, unreasonable weight (cost burden) falls on county.</p> <p>Jim Slocomb pointed out that the town of Friday Harbor used both approaches: civil misdemeanor (fines) and a required offset contribution. This “keeps enforcement costs off the backs of taxpayers.”</p> <p>John Evans felt the ordinance should make mitigation far more accessible than this version would seem to say.</p> <p>Shireene noted that that purpose of financial guarantees is to make sure the work gets done. Experience has been that contractor’s didn’t always follow through, and that the County then had no other means to make it happen.</p> <p>Tom called for a VOTE as to whether to delete the language or leave as is.</p> <p>Continued Discussion:</p> <p>Shireene asked Jim about the use of bonds in Friday Harbor, commenting that in her experience they are difficult to enforce for natural resources.</p> <p>Jim cited a personal example involving trees planted in a buffer in town. The financial requirement forced him to follow through at a time when he wasn’t financially “flush,” yet he had to do it. The tree died, and he had to replant even, but the financial guaranteed worked to insure the care of the site.</p> <p>Barbara expressed concern that bonds will be difficult to get (yet featuring an advantage of a smaller out-of-pocket expense)</p> <p>Jim Slocomb agreed that in the interest of affordability, bonds are the most affordable.</p> <p>VOTE to have bonds added to language in I-3-c, and escrow language to I-3-b.</p> <p>Question of moving I-4 to I-2, per S. O’Day’s comments?</p> <p>Jim Slocomb disagreed.</p> <p>Tom Cowan decided to move on, leaving language as is for now.</p> <p>Discussion of I-5: add “per the plan” (Jim S., Shireene, and Barbara T. all agreed).</p> <p>Discussion RE: John Evan’s note about monitoring requirement recorded on deed or title:</p> <p>Stephanie B-F suggested adding a number I-6, or add sentence RE: deed restriction to end of I-1, saying this is done with Friends of the San Juans, and it comes off the deed when it’s done.</p> <p>Patty Miller – not sure it belongs on title? Don’t regulations already require one to manage the land appropriately? (Debate as to whether or not this does happen, in reality.)</p> <p>Todd Goldsmith pointed out that, No, if the land sells and the requirement is not on the title, then the job could remain undone (or not legally enforceable). If it’s on the title, it protects the new property owner greatly.</p> <p>Tom Cowan – we still need to craft new language.</p> <p>Shireene: Will ask Jon Cain (Stephanie B-F suggested the assessor?) to help craft language.</p> <p>Barbara T.: both mitigation and monitoring requirement needs to go on title.</p> <p>Ryan Drum asked if there was a cap on the “administrative</p>	<p>VOTE: 3, 3, 1 (3 for, 3 against; 1 voted to rework the language later) – motion FAILED. Language remained as written.</p> <p>Motion PASSED – add language “performance bonds” to I-3-c and “in escrow account” to I-3-b.</p> <p>I-5: Financial guarantees shall not be released until the actions included in the mitigation or restoration plan have been completed and demonstrated to function, <i>per the plan</i>.</p>

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	<p>and legal fees” the County could draw (per I-4)? Shireene: Yes: County can’t take more than agreed; if costs go over that amount, the County eats the difference. Tom Cowan called for a VOTE to include Title language (when it’s crafted, will decide where to put it).</p> <p>Todd G. asked, RE: I-1: So private property owners don’t have to pay twice, can owner withdraw funds from completed parts of plan (over 5-year course of plan), to pay for next phase of project? Shireene said it was possible to do that in stages. Decided that the language in I-1 already addressed this, as is.</p>	<p>Motion PASSED, 4-3, to include specific language about mitigation plans on property titles.</p>
<p>Section K. General Buffer Requirements</p>		<p>Decision to move this lanaguage to Fish and Wildlife and Wetlands sections as well, with provisional request to bring suggested language changes for Fish and Wildlife back to committee before finalizing.</p>
<p>Section L. Alternative Protection Standards – Critical Area Stewardship Plans (CASPs)</p>	<p>L-2-d: strike “or greater” L-2-a: Todd Goldsmith asked to keep open the possibility for farmers to do a site-specific CASP if need be Barbara T. – concern RE; people will think they must do a CASP to farm in this county. Todd cited custom farm plans as how this committee first began. Jim S. questioned if “agriculture trashes critical areas?” Barbara T. disagreed with that definition, citing corporate farming, yes, but not the “boutique farms” in this county. Shireene reminded everyone that Todd’s suggestion was only for ag users to have an option available to them. DECISION, RE: ag exemptions DECISION, RE: L-2</p> <p>Stephanie B-F wants to close loop RE: w ho is reviewing CASP, and who is paying for it? (Question about where it’s stated that applicant is responsible for paying for the plan review.) Patty M. noted that under “mitigation,” it is stated as “at applicant’s expense.” Question about applicability (p. 7) – property vs. project area? (p. 19) Suggestion to change “property” to “project area” DECISION to change L-4-a and L-4-b to “project area” DECISION to add “project area” to definitions. Barbara proposed additional language for 4-b (“or their buffers,” referring to wetlands) Todd G. – RE: L-4-g: strike “farm” – agreed.</p> <p>L-5-d: Discussion of Stephanie O’Day’s suggestion to delete parts i and ii.</p> <p>L-6: Add “property owner”</p>	<p>Agreed- language struck.</p> <p>DECISION: L-1 (p.18). “...as an alternative to the prescriptive requirements for Wetlands and Fish and Wildlife Habitat Conservation reas... <i>Agricultural activities are exempt from any CASP requirements.</i></p> <p>DECISIONS: 1. Re-write L-2-a: “CASPs may be utilized on all land use types, with the following exceptions:...” 2. Delete L-2-e 3. RE: L-2-d: strike “or greater” and “of buffers.”</p> <p>DECISIONS: 1. Change L-4-a, L-4-b to “<i>project area</i>” (from “property,” and “parcel”) 2. Add “Project Area” to definitions 3. L-4-b: Add “<i>or their buffers</i>” after “When wetlands <i>or their buffers</i> are present...” 4. L-4-g: strike word “farm” from “farm ponds”</p> <p>DECISION: L-5-d, parts i and ii STAY in ordinance language.</p>

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	<p>Discussion: Todd G. asked about CASP vs. mitigation: different things (as regards farm plans)? Utilizing a critical area is different than jeopardizing or destroying it. Shireene: This is a valid concern. CASP is a mechanism to follow. Question of no financial guarantee on CASPs? Do we add a separate section on farming? Patty M.: Isn't a CASP a combination of mitigation and enhancement? Shireene: CASP is a site-specific plan. Barbara T.: There's no problem with financial guarantees for CASP in areas where owner's choice implicates a critical area; but not okay for farms (i.e. haying for 100 years, and now it's decided that affects a C.A.). Stephanie B-F: question about CASP duplicating mitigation and financial guarantees? Patty M. : Will CASP provide <i>greater</i> protection (on pre-existing sites)? Ryan Drum pointed out that if there's a problem with these decisions, the County Council can change it (up to 3x/year).</p> <p>Shireene will work on language for Section 7.</p> <p>Shireene will insert language for L-10, RE: financial guarantee requirements/non-compliance</p> <p>Todd asked that Conservation Farm Plans be tabled (in a parking lot) for later consideration Discussion as to where in ordinance CFPs belong Shireene noted that a sentence has already been added (with Ag exemption) under Applicability (p. 14, 11/20 General sections draft) Stephanie B-F asked about references in Appendix? Or Intro?</p>	<p>DECISION: L-6: "Prior to final approval the <i>property owner or professional (s)</i> must provide written verification that the approved plan has been completed."</p> <p>DECISION: Section J now is SECTION I. Also, add "CASP" at end of Section title (<i>I. Financial Guarantee for mitigation/restoration and monitoring, and CASP.</i>)</p> <p>DECISION: L-1: delete "buffers adjacent to" DECISION: L-7: add "five years" ("at least <i>five</i> years.."); add "including" at end of paragraph ("...determine compliance with the plan, <i>including</i>:); change L-7-a to "status" ("<i>status</i> of the goals..."); strike "animals, plants, and" from L-7-b.</p>
	<p>!!! FIVE-MINUTE BREAK !!!</p>	
<p>Section 18.20.020. "B" Definitions. (11.20. 08 version of General Sections draft)</p>	<ol style="list-style-type: none"> 1. BAS – discussion. 2. BOG – use definition in WAC 227.16. 3. Buffer – discussion per John Evans' written comments <p>Patty M. – Question about opportunity to review definitions again as committee addresses specific sections of ordinance (such as Fish and Wildlife, and Wetlands)? Also, P.M. would like to see "Fish and Wildlife Conservation Areas" added to general definitions, as well as "geologically hazardous." <ol style="list-style-type: none"> 4. CRITICAL AREAS – change wording of definition. 5. CRITICAL AREA REPORT <p>Barbara T. comments RE: "qualified professional" Todd G. requested that individuals be allowed to do so; not restricted to a "qualified professional" Question about purpose of a Critical Areas Report Barbara T. – it's just like a Wetlands delineation report, or a geotech report.</p> </p>	<p>DECISION: Committee will review Definitions now, but remains open to amending Definitions later if necessary.</p> <p>DECISION: Definition of "buffer" left as is</p> <p>DECISION: Definition of "critical areas" - Delete "in this chapter."</p> <p>DECISION: "Critical Area Report" – remove last sentence of this definition ("Critical Area Reports include geotechnical reports and habitat management plans.")</p>

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	<p>6. DEVELOPMENT –</p> <p>Stephanie B-F: request to wait till after lunch to look at this definition, as this definition is different from what was put out in the biological opinion that came with the FEMA report.</p> <p>Ryan D. – is gardening a form of “agriculture”?</p> <p>BT- could be...</p> <p>JE – no...</p> <p>Shireene: not supposed to include <i>standards</i> in the definition section</p> <p>Ryan D. would like to see John Evan’s written notes included somewhere</p> <p>Patty M. had a question about the phrase “any extension of the use of land...”</p> <p>Discussion TABLED until after lunch</p> <p>7. FUNCTIONS AND VALUES –</p> <p>Barbara T.: generally speaking, or for the purposes of this ordinance? RE: are we protecting species, or habitat?</p> <p>Discussion.....</p> <p>Todd G. says ALL species in critical areas are to be protected.</p> <p>Stephanie B-F: Is there a section where we need to be global? What about humans?</p>	
Citizen Input (11:50 a.m.)	<p>Barbara Rosenkotter:</p> <ol style="list-style-type: none"> 1. Where a term is used in code, may want to provide the definition <i>in that section</i> (rather than in the general section). 2. Definitions section: Several terms that have been mentioned in previous meetings, which are still missing in the general section definitions: <ol style="list-style-type: none"> a) anadromous fish b) no net loss c) catastrophic event <p>Tim Hyatt: Suggested definitions (not on list):</p> <ol style="list-style-type: none"> 1. Administrator (referenced frequently) 2. BAS – this definition doesn’t mention “peer review journals” (and WAC’s definition does) 3. existing structure (this term gets “bent” a lot – worthy of a definition, therefore) 4. protected habitat 5. “repair” (vs. “build anew” – again, a term that Tim has seen “bent” a lot) <p>ALSO from Tim Hyatt:</p> <ol style="list-style-type: none"> 1 In Section K, RE: buffer averaging: there’s nothing here that distinguishes between <i>quality</i> of buffer types. Committee probably should get back to buffer averaging, and add some specifics. 2 RE: CASP: It’s not always <i>where</i> they are, but <i>HOW</i> they are reviewed. If plans are only seen by a director, then it could be a highly subjective review. Tim offered to have his group, Skagit Systems Cooperative comment on and review CASPs in San Juan County (to help enforce codes). 3 Tim also expressed concern that sometimes “highly paid consultants” try to bend the rules on behalf of landowners; again, Skagit Systems Coop can help 	

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	<p>counter this.</p> <p>4 RE: DOE/SEPA checklist: Lummi Tribe is checked off, but there are several other tribes who have treaty rights in the San Juan's who should be on that list (and are not).</p> <p>5 Concern about using term "field conditions prevailing" as means for determining Critical Areas. Feels this could be "slippery slope." CAOs are for protecting habitat, not particular species; therefore, should be focused on habitats, because individual species may and will vary at different times/seasons. Lot of streams are not checked; same is true of shorelines. So: defaulting to "field conditions" could miss important habitats.</p>	Stephanie B-F has asked Lynda G. to change this. Follow up???
12:00 p.m.	LUNCH	
Jon Cain – legal counsel, On Reasonable Use exceptions (12:50 p.m.)	<p>Review of concept of "takings" – "Private property shall not be taken without 'just compensation.'" The law requires that if regulations deny all reasonable use, it probably equals a "taking."</p> <p>Courts say it depends on the facts (no a list of criteria). Therefore, Jon suggested deleting (p. 16, 11/20 document) the following: " i.e. denial of a primary use identified in the Comp Plan goals and policies for the land use district."</p> <p>Suggests not trying to define all "reasonable uses" or "reasonable economic use."</p> <p>Recognizes this doesn't provide certainty and clarity that might be desired, but does fit with what is commonly done by courts under the law</p> <p>Barbara T. suggested "baselines" to be developed nonetheless (other than an arbitrary number?)</p> <p>Jon's response: One problem with trying to get more specific is that regulations might preclude one economic use, but not all economic uses. Also, problem with blanket regulations. Each property is different. Suggest to clarify what numbers mean (10 k, or 80%, e.g.).</p> <p>John E. – Does Critical Area prevent agricultural/forest designation usage?</p> <p>Jon Cain – NO.</p> <p>John Evans – Then why would they preclude another use, such as a home?</p> <p>Jon Cain – A home is a reasonable use of residential property – but he doesn't think a definition belongs in the code.</p> <p>Patty M. – Suggestion RE: language "for purposes of..." (delete?)</p>	<p>DECISION: Delete sentence per Jon Cain's suggestion ("i.e. denial....district.") INSERT after "development may be allowed in conformance with this section. <i>If one qualifies for Reasonable Use exception, this use shall include improved areas....etc.;</i> "</p>
REVIEW of Barbara OPTION 1 and OPTION 2 for determining Reasonable Use Exceptions.	<p>Discussion of Stephanie O'Day's proposed OPTION 1, and Barbara Thomas' OPTION 2.</p> <p>Barbara Thomas' chart of (staggered) Reasonable Use Exception categories was handed out.</p>	

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Parking Lot	Discussion on difference between CARA and other Critical Areas.	
Continued DISCUSSION of DEFINITION	<p>John Evans moved, Patty Miller seconded, to remove “hazardous trees” from Definitions.</p> <p>7. IN-KIND COMPENSATION – Stephanie B-F moved to change language to “replicate” (instead of “replace”); Jim S. seconded; motion failed. Ryan D. brought up the point, referring to “native vegetation,” of WHEN it became native (arrival of first immigrants? Arrival of first Nations? Before that?)</p> <p>8 PRIMARY STRUCTURE – will come back to this if the term is used in ordinance.</p> <p>9 PROJECT AREA – add John Evans’ suggested language; delete “50 ft.”</p> <p>10 QUALIFIED PROFESSIONAL – Add John E.’s suggestion RE: licensing. CORRECTION to WAC number: WAC 365-195-900-PM.</p> <p>11 REASONABLE USE – discussion of Jon Cain’s recommendations.</p> <p>12 RIPARIAN HABITAT – RE: use of word “stream.” Barbara T. suggested looking at water typing systems.</p> <p>Shireene: A way for property owners to figure out what is on their land.</p> <p>13. WATERS OF THE STATE – Shireene: there are several versions; this is the best she’s found (most inclusive).</p> <p>14. WETLANDS – Shireene: Change to semi-colons (from commas) in the “do not” list; add “ponds” after “wastewater treatment facilities.”</p> <p>15. WETLAND ALTERATION - add “with exception of agricultural activities,”</p> <p>Suggestion to expand “wetland mitigation bank” and “wetland mitigation fund” to include Fish and Wildlife mitigation banks and funds – (come back to these with changes)</p>	<p>DECISION: Motion PASSED.</p> <p>DECISION: Add John Evans’ language, delete words “50 feet.” (<i>“Project Area means the area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel.”</i>)</p> <p>DECISION: add John Evans’ language: “...A qualified professional must be licensed and state certified where such licensing and certification are required or, when not required, have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and have at least five years of related work experience.”</p> <p>DECISION: RE: Reasonable Use: DELETE from DEFINITIONS section, and leave under Reasonable Use section.</p> <p>DECISION: RE: Wetlands;</p> <p>DECISION: RE: Wetland alteration: “...existing condition of a wetland or its buffer, with the exception of agricultural activities;”</p> <p>DECISION: RE: Wetland Functions and Values – DELETE.</p> <p>DECISION: RE: Wetland, In-Kind Compensation – DELETE.</p>
REVIEW of Section 2. SJCC 18-80. (after definitions)	<p>Question about pre-application fees (per Teri Williams). Is it fair to charge property owners for this, and then for permit fees?</p> <p>Tom C. – Should we “parking lot” this question, and return to it later?</p> <p>Shireene is looking into the fee schedule. Yes, there is a charge for on-site consultations.</p>	

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	<p>18.80.10 Project Permit Applications – General A-2: Shireene will work on language for next time. B. Change “administrator” to “director” (Notes Shireene: This will have to be done globally throughout the document.) C-10: RE: critical areas: Jim S.: RE: D-5: Fix language – very cumbersome! All agreed.) C-11: add “or surveyor” p. 12, 8.80.070. B-2: under YES uses, Shireene will work on more “binding” language ADD Driveways section (#2) p. 12, C. Critical Areas – add “for permit applications”</p>	
Review of Day	<p>Tom Cowan queried how best to plan for the next meeting? Shireene: will bring definitions from UDC Tom – Committee members submit written comments by 12/10 (Wednesday) on Fish and Wildlife section Patty M.: Clarify – submit actual language changes? Tom: YES. Stephanie B-F: makes for exponentially faster progress! Tom: If you’re not sure of language, ask Shireene to craft based on your thoughts.</p>	
Citizen Input (3:30 p.m.)	<p>Barbara Rosenkotter:</p> <ol style="list-style-type: none"> 1. “Project Area” under definitions – not sure if it matches up with what committee did in CASP today? 2. Strongly disagree with driveway exemption for parcels over 5 acres. 3. Parking Lot: Site visit/fee structures – agree that it’s an important step (pre-application conferences); but caution that this would not be funded because it’s optional. Need to find another funding source (because the time/effort it saves to discuss plans before beginning them is invaluable.) <p>Tim Hyatt:</p> <ol style="list-style-type: none"> 1. Very helpful to do pre-application conferences. Fees make sense because the idea is that development should pay for development (not county paying for development, or individuals, through their taxes). 2. Noted lack of other input into this CAO process: other agencies, tribes, etc;. 3. No process for even County employees to ask for alternatives – to give county employee the authority to ask for an examination of alternatives, then can at least get project proponents thinking about things that are win-win. Would help to build in the authority for county employees to be able to do this. 4. “Binding” site visit – need a review process before urgent mistakes are made or committed to. 5. Suggestion of Joint Application Review Process (Shireene – just shorelines? Tim: NO.) Can process almost all permits off ONE application. 	
ADJOURN	Meeting Adjourned, 3:45 p.m.	

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