



San Juan County CAO Citizens Review Committee

Critical Areas Ordinance Citizens Review Committee Meeting  
 January 6, 2009  
 Lopez Library Meeting Room, Lopez Island  
**DRAFT MEETING MINUTES**

Committee Members in Attendance: Stephanie Buffum-Field, Todd Goldsmith, Amy Windrope, Patty Miller, Teri Williams, Barbara Thomas, John Evans, Jim Slocomb.

County Staff in Attendance: Shireene Hale, Senior Planner; Maya Borhani (Volunteer notetaker)

Public in Attendance: Barbara Rosenkotter (San Juan Lead Entity), Denise Ireland (Star Surveying), Jim Smith (Lopez), Councilmember Bob Myhr.

Facilitator: Tom Cowan

Topic	Key Discussion Points and Agreements	Actions and Next Steps
Call To Order	The meeting was called to order at 10:08 a.m.	
Review of CAO process	Introductions, facilitated by Tom Cowan, who then reviewed the GMA mandate to create a Critical Areas Ordinance, and the committee's progress to date.	
Agreement on Agenda 10:12 a.m.	AGREEMENT on agenda for today's meeting, as stands.	
Approval of Minutes from 12/2/08 CAO meeting 10:15 a.m.	-Clarification from p. 2, RE: "language remains as written." Request to note the ordinance section number in text of minutes. -Question if Tim Hyatt receives notice of these meetings?	Yes, Tim receives notice via email.  MINUTES APPROVED, with corrections noted.
Review of Fish and Wildlife section of draft Critical Areas Ordinance (Section 7. SJCC 18.30.160 – Fish and Wildlife Habitat Conservation Areas) 10:20 a.m.	Beginning on p. 41 of draft document: -Discussion of Patty M.'s comment in draft RE: 18.30.160A – why this section is included in ordinance. -Amy's suggestion to change "land" to "development" - Shireene: Concern that it's not just "development" we're addressing here. -Barbara: Let's check definition of "development" and see if it will suffice? DISCUSSION – agreement that "development" would suffice.	          ACTION: Change language in 18.30.160A from "land" to "development."

Topic	Key Discussion Points and Agreements	Actions and Next Steps
	<p>-John Evans raised the question of the definition of “no net loss,” reminding that the committee has not yet defined the term for its purposes (yet continues to use it )</p> <p>-Stephanie B.F. noted that it is a broad, introductory statement that’s being addressed here, and thus advised against getting lost in the “weeds.”</p>	
Section 2. SJCC Section 18.30.160B-2	<p>Tom redirected discussion to p. 42, Patty’s comment RE: the word “if” (B-2)</p> <p>-Discussion, and agreement to change wording</p>	ACTION: Change language in 18.30.160B-2 to “...IF identified by the County Council...”.
Section 2.SJCC Section 18.30.160B-4	p. 42: Jim S. suggested dropping the word “seagrass,” citing it as inappropriate in this context; Stephanie B.F. agreed.	ACTION: 18.30.160B-4 – “seagrass” dropped from draft language, to read: “Kelp and eelgrass beds.”
Section 2. SJCC Section 18.30.160B-6, 7, 8	<p>p. 43 – DISCUSSION (ponds, farm ponds, state Waters):</p> <p>-Isn’t B-6 a duplication of B-7?</p> <p>-Suggestion to remove # 6 (re-number accordingly)</p> <p>-Todd: We still need an ag exemption!</p> <p>-Barbara: Farm ponds are “waters of the state,” but are not defined as wetlands because they were constructed.</p> <p>-Todd: This is an urgent, not a minor, issue for farmers – explicit language is needed to exempt farm ponds.</p> <p>Barabara: There are 2 categories of ponds: 1) naturally occurring ponds, and 2) farm ponds. Farm ponds are not Fish and Wildlife areas, but they are waters of the state.</p> <p>-Teri W.: Do we need to add definitions for 1) naturally occurring ponds, and 2) farm ponds?</p> <p>-John E. suggested “farm ponds and other man-made ponds”</p> <p>-Jim S.: “other” is too broad.</p> <p>-Tom: Can we have Shireene craft language that addresses the distinction of “farm” pond?</p> <p>-Teri: Is it just “farm” ponds, or man-made?</p> <p>-John E., Jim S.: If land is no longer being farmed, is it still a “farm pond”?</p> <p>-Todd: The difference between a “wildlife enhancement pond” and actual “farm ponds” is?</p> <p>-Shireene: Will work with Barbara T. (on specific sections of WAC) to craft language for this section of ordinance.</p> <p>-AGREEMENT to remove B-6 and B-8 (covered in B-7).</p>	<p>ACTION: Add DEFINITIONS for “naturally occurring ponds” and “farm ponds”</p> <p>ACTION: REMOVE items B-6 and B-8 (Section 2.SJCC 18-30-160B). ACTION: Correct typo in B-9: no “and” (“State natural area preserves and natural resources conservation areas.”)</p>
Con’t DISCUSSION Section 2. SJCC 18.30.160B	<p>-Tom: RE: S. Moody (DNR)’s comments about rare plant species identified by the Washington Natural Heritage program.</p> <p>-Amy: The State has no way to protect state-identified species; only individual counties can do so.</p> <p>-Patty: Did they give us a specific list of plants to add?</p> <p>-Shireene: Yes, and that list was so extensive (for our county) that we elected not to use is. We could, however, add language that gives us the ability to pick specific plants.</p> <p>-Suggestion to add “plant and animal (species)”, p. 42.</p>	ACTION: Section 2. SJCC 18.30.160B-2, add language to read:

Topic	Key Discussion Points and Agreements	Actions and Next Steps
(con't) DISCUSSION Section 2. SJCC 18.30.160B	<p>-DISCUSSION</p> <p>-John E. cautioned against risks of too cumbersome a list</p> <p>-Patty: put written caution into ordinance language, so the council doesn't adopt a large list inadvertently, at some point down the line (without knowing our concern about identifying the whole county as "protected").</p> <p>-Amy: As if S. Moody at DNR has a more specific list to suggest?</p> <p>-Tom: Provision to ask County later to add the list to this section.</p> <p>-Amy: But let's ask to be added NOW – a top 5-list, for example.</p> <p>-Shireene: Okay. Previously, however, I had difficulty getting a straight answer from the State when I asked if plants that are protected or Endangered Species have to be protected under a CAO.</p> <p>-Tom/Shireene: Per S. Moody's remarks, do we want to include "plant" in our language?</p> <p>-Stephanie: Put under "species" definition that plants are included</p> <p>-Stephanie: Federal agencies <i>will</i> require us to protect (federally endangered species).</p> <p>-Patty: We don't want to include a blanket list.</p> <p>-Tom: Are we agreed on finding a top 5 list? or to use language that allows that county to <i>add</i> species, as necessary?</p> <p>-Barbara: It's reasonable to do both: leave language in place that allows the county to add species later, <i>and</i> add our short list of a few species for now.</p> <p>-Patty: Let's go back to B-1: separate federal from state protected species (federal includes plants; state – no plants). RE: B-1 and B-2: this doesn't preclude us from asking the state for suggestion on how to protect listed species – and it leaves us the local option to protect as we see fit.</p> <p>-Shireene: There's a distinction between a "habitat" list, or "sensitive, endangered, threatened" status for individual plants.</p> <p>-Agreement to PARKING LOT this discussion while Shireene obtains the state's list of rare plants.</p>	<p>"Habitats and <i>plant and animal</i> species of local importance..."</p> <p>PARKING LOT: 18.30.160B-1,2,9 RE: State's list of rare plants</p>
OTHER Parking Lot Items	per this discussion (18.30.160B-9) – Amy W.	<p>"coastal lagoons" "geomorphic types that create habitat"</p>
18.30.160B Animal Lists	<p>p. 43-45, RE: Table of Endangered, Threatened, and Sensitive ANIMALS:</p> <p>-Patty: Can we identify where one finds (the source of) this list (WAC, etc.)?</p> <p>-Shireene: Yes, will do.</p> <p>-Stephanie B.F.: Do we organize by species (taxa)?</p> <p>-Todd: Question about Western Pond Turtle: why is it on the list?</p> <p>-Barbara: We haven't described <u>habitat</u>: if we haven't, then isn't our list lacking?</p> <p>-John: And what about permitting (RE: habitat factors)?</p> <p>-Shireene: If we have the animals on the list, we're obligated to protect them already.</p> <p>-John made a request to know how the county will follow through.</p> <p>-Tom: That's a question about how the protection offered by</p>	<p>Shireene will identify where these animals are listed (state, federally endangered or protected lists).</p>

Topic	Key Discussion Points and Agreements	Actions and Next Steps
	<p>this list is administered? (Yes.)</p> <p>-Patty: Suggestion to provide links to websites that describe the habitats of these animals, i.e. what about turtle – we provide a link to a description of ponds as habitat.</p> <p>-Todd: What about including a page with building permit applications, with check boxes for animals sited on the property (e.g. eagle check box)</p> <p>-Stephanie: The Federal government does not publish the exact location of these endangered species, for obvious reasons. But the County has the obligation to keep refining its list of species and endangered habitats.</p> <p>AGREEMENT to return to this question with more information at a later date.</p>	
<p>Review of 18.30.160C. MAPS.</p>	<p>p. 45 – RE: Maps:</p> <p>-Shireene: There’s a general GMA requirement to have language that states maps are just a guide, and we have to follow conditions in the field.</p> <p>-Barbara: After “conditions in the field take precedence,” add a paranthetical statement RE: other than water stream typing systems, per WAC 222.16.030.</p>	<p>ACTION: modify language (per Stephanie Buffum-Field’s suggestion) as follows: Strike through “It is the actual presence...on a map.” ADD: “San Juan County shall create and periodically update maps of Fish and Wildlife Habitat Conservation Areas in the County’s official maps.”</p> <p>ACTION: add language as follows: “...conditions in the field take precedence (other than for water typing systems, per WAC 222.16.030). San Juan County shall..”</p>
<p>Review of 18.30.160D-1. Protection Standards</p>	<p>p. 45 - Discussion of date in opening sentence (D-1):</p> <p>-Patty/Barbara: The decision of the State legislature is still pending, defining how to address agriculture within a context of Critical Areas ordinances. So the County is on hold until the state figures it out.</p> <p>-Shireene: We need to reorganize that sentence and keep the date in (the date we were supposed to have the ordinance adopted by).</p> <p>-John: Suggestion to leave the December 1, 2006 date in.</p> <p>-Discussion.</p> <p>RE: D-1: “...Actions that negatively effect these areas are only allowed in conjunction with an approved reasonable use or public agency/utiity exception and then all but negligible impacts (e.g. less than 2,500 s.f. of disturbance) must be offset with restoration of degraded habitat.”</p> <p>DISCUSSION of 2,500 s.f.</p> <p>-Agreed at last meeting: no mitigation if under 2500 s.f. (“reasonable use”)?</p> <p>OVER 2500, must mitigate (if it’s “reasonable use,” it’s already in a critical area, thus must meet “no net loss”).</p> <p>-Patty: Why is this even in Protection Standards?</p> <p>-Shireene: Reasonable Use is covered in the General Section. Agreement on modifying language of D-1.</p>	<p>ACTION: REMOVE language and date “existing on December 1, 2006 (the date San Juan County was required to meet State requirements for protecting Critical Areas),.....” .</p> <p>REPLACE with: “(from the adoption date of this ordinance), land use must...”.</p> <p>ACTION: p. 46, 18.30.160D-1: “...public agency/utility exception.” (DELETE: “..and then all but negligible impacts (e.g. less than 2,500 s.f. of disturbance) must be offset with restoration of degraded habitat.”)</p>

Topic	Key Discussion Points and Agreements	Actions and Next Steps
Review of 18.30.160D-1, a-h (p. 46)	Discussion of recommendations a-h, and comments submitted. -Suggestion to put these recommendations somewhere else?	ACTION: REMOVE recommendations a-g (D-1) from this section; ACTION: PARKING LOT 18.30.160D-1, a-g, for later reinsertion elsewhere in ordinance; ACTION: D-1, h: MOVE from this section, and find a place for it in actual regulation language.
Citizen Input 11:45 a.m.	<p>Barbara Rosenkotter:</p> <ol style="list-style-type: none"> <li>1. RE: Farm ponds: the INTENT of its use (used for agriculture) needs to be stated – suggestion to cite specific use in definition.</li> <li>2. RE: mapping salmon streams, as an example: the County is required to do it, but doesn't have the money to do it. So, the County used Salmon Recovery money to do the mapping. Similarly, CAO may have to figure out how to get some of these things mapped – if not with county funds, then somehow.</li> <li>3. RE: Impervious surfaces: Science shows that this causes impact – so keep this in mind. (Referring to D-1, b, and committee comments thereon.)</li> </ol> <p>Jim Smith: -Citing an adage that “he who uses many words...(is like a) ...cuttlefish in its own ink,” Jim felt that asking property owners to look at County, State and Federal regulations was too much. He felt that the onus should fall on the County, not the homeowner. Create a database (maps, satellite) so homeowners can find out specific requirements for their parcel.</p> <p>Bob Myhr: -Commendations, and thanks, for the Committee's work.</p>	
11:55 a.m. LUNCH	***** LUNCH *****	
12:30 p.m. (Continued) Review of Section 2.SJCC 18.30.160D-2: <b>Protection Standards for Fish and Wildlife Habitat Conservation Areas associated with freshwater streams and ponds under 20 acres.</b>	<p>p. 48, 2.a. -Resolve Todd's questions (comments on text) RE: farm pond exemptions. Specifically list this exemption in previous sections. -Discussion of Table 3; usefulness placed as reference, or in text at 2.a.i. -2.a.ii: Discrepancy between National Marine Fisheries Biological Opinion (150' buffer for Type F streams) and ordinance language of “at least 100 feet...”, RE: Barbara Rosenkotter's written comments on draft. -Note of typo in 18.30.160D-2.a.iii: capitalize “P” in Plan, and put acronym (CASP) after word “Plan”.</p>	<p>ACTION: Insert Table 3 (from p. 51) right after 18.30.160D-2.a.i.</p> <p>ACTION: For 18.30.160D-2.a.ii: End sentence (insert period) after “...SJCC 18.30.110.” (Remove “providing that a water quality buffer of at least 100 feet is retained.”)</p> <p>ACTION: 18.30.160.D-2.a.iii: End sentence (insert period) after “...SJCC 18.30.110.”</p>
Review of Section 2.SJCC 18.30.160D-2.a.iv and v.	<p>-Jim S.: Question about “mitigation bank” – we keep using this language, but we have no bank, per se; a chicken-egg dilemma -Discussion of item 2.a.iv. -Jim: “Impact fees” are allowable under GMA -</p>	ACTION: 18.30.160D-2.a.iv: Delete “Except in cases where the loss of habitat is negligible (e.g. less than 2,500 square feet), mitigation to offset impacts or payment in lieu of mitigation will be required.”

Topic	Key Discussion Points and Agreements	Actions and Next Steps
		ACTION: 18.30.160.d-2.a.v: Delete “Except in cases where the loss of habitat is negligible (e.g. less than 2,500 square feet), mitigation to offset impacts, or payment in lieu of mitigation will be required.”
(con’t) Review, 18.30.160D-2.b.	<p>-Shireene: Re-cap: we have four routes by which we can approach the protection of critical areas:</p> <ol style="list-style-type: none"> <li>1) Prevent impacts</li> <li>2) Reasonable Use Exception</li> <li>3) If something was done wrong, go back and fix it</li> <li>4) CASP – site-specific; at least as protective as general regulations.</li> </ol> <p>However, even though the language is in the ordinance, we have no mechanism to enforce it (no mitigation bank)</p> <p>-Teri W.: We have no plan for island-specific, water-shed specific areas.</p> <p>-John E.: Suggestion to add language “mitigation approved by director.”</p> <p>-Stephanie B-F: Conflict of interest implied.</p> <p>-John: Mitigation for cases where an existing house now becomes a problem?</p> <p>-Shireene: Process for mitigation is already laid out (reference p. 19) – we already have a reasonable use exception, and a public utilities exception.</p> <p>-Jim S.: Concern about mitigation not being applicable to shoreline.</p> <p>-Shireene: We will add language to the General Section (p.19) when talking about general mitigation relative to houses already in existence</p> <p>-Patty: Quote language on p. 22 (“Specific requirements related to mitigation are found in subsequent sections of these Critical Area regulations (specifically SJCC 18.30.120,130,150 and 160);...”)</p> <p>-Shireene: For pre-existing homes within buffers, we’ll add language RE: 10% expansion allowable.</p> <p>-Continued discussion RE: mitigation</p> <p>-AGREEMENT to revisit, define, and clarify these terms and their implications:</p> <ol style="list-style-type: none"> <li>1) mitigation</li> <li>2) non-conforming</li> <li>3) no net loss</li> </ol> <p>-Patty: Leave as a placeholder: “...for properties that become non-conforming as a result of this change.”</p> <p>-Discussion RE: 2a. and b. – re-number and rework language?</p> <p>-Define: pond/farm pond/wetland (and/or cross-reference). Suggested language: “in some cases, wetlands will include ponds, etc;”</p> <p>-Shireene will work the language (for 1/22/09 meeting)</p>	ACTION: p. 49, Add language introducing 18.30.160D2.b: “This section outlines the standard requirement where development will impact streams and ponds.”; ADD the number “3” after word “table.” (“...listed in Table 3.”)
Continued Review of Section 2.SJCC 18.30.160D-2.b. and c.	<p>DISCUSSION re: new roads in buffers</p> <p>-Barbara: Why should an old road negate a buffer?</p> <p>-Patty: Distinction between roads, and driveways?</p> <p>-Tom: Definition of “road” in our definitions?</p> <p>-Access to two or more properties is a “road”</p> <p>-DISCUSSION re: Staff comments on measurement of stream buffers</p>	ACTION: p.50: Number “i” (2.b.i.) for the paragraph reading “Stream and pond buffers shall be measured landward...” etc; REMOVE the 2 <sup>nd</sup> paragraph (“Buffers are not required to extend across paved roads....etc;”)

Topic	Key Discussion Points and Agreements	Actions and Next Steps
	<p>-Shireene: per Patty’s comments (bottom of p. 50), Shireene will check language on stream flows into (and out of) ponds/wetlands</p> <p>-Stream Typing (p. 51)</p> <p>-better definitions of stream types?</p> <p>-Shireene: if a stream is untyped, we need to type it.</p> <p>Barbara Rosenkotter: Clarification: ALL streams on Orcas and San Juan Islands have been typed; outer islands, Lopez, and Shaw still need to be done.</p> <p>-Patty: Suggestion to change Type-N-seasonal streams to 50’ (from 100’)</p> <p>-Stephanie: Should we remove Untyped streams, or wait until we deal with Frequently Flooded Areas?</p> <p>-Shireene: Again: there will be times when more than one Critical Area will overlap on a property. We’ll always go for what is more stringent/restrictive.</p> <p>-Tom: To RECAP: 3 proposals RE: Type-N-S (seasonal): 25, 50, or 100 feet buffers?</p> <p>-Jim S.: Can’t support less than the biological opinion (100’)</p> <p>-John: On record as opposed to leaving the buffer requirements as is.</p> <p>-Todd: Agrees with supporting what BAS says.</p> <p>-Shireene: Can ask Jamie Glasgow if we have any Channel Migration zones; if not, can we delete that category from the Water Typing table?</p> <p>-Patty: Request for better (colored), enlarged maps.</p> <p>-Shireene: Will tweak these for better visibility.</p> <p>-Stephanie: Perhaps viewing quadrant by quadrant would help?</p> <p>-Barbara Rosenkotter: Jamie Glasgow’s data will be available after his 1/27/09 presentation (and will then be released to the County); then we will have better guidance as to these questions. Also, Wild Fish Conservancy has interactive maps on their website.</p> <p>-Patty: Question about times when a buffer will be decreased?</p> <p>-Shireene: No (can not happen – buffer remains a buffer).</p> <p>-DISCUSSION of 18.30.160D-2.c.i-iii.</p> <p>-DISCUSSION of 2.a-d: This has been about defining standards. 2.e-f is about allowable uses in buffers.</p> <p>-Discussion of Patty’s comments (p. 54) RE: reworking language of D-2.e (a-g) into one item (“2.e”)</p> <p>-RE: Ryan’s comments concerning use of word “perpendicular,” and accommodating access to shoreline by the disabled.</p> <p>-John: Suggestion RE: p. 54 2.e (a): “Stairways and trails are not to exceed 3 feet in width.”</p> <p>Also, add “h” (from p. 56, item “i”)</p>	<p>ACTION: Re: Table 3: DELETE “untyped streams” row.</p> <p>ACTION: RE: 18.30.160D2.c.i-iii: DELETE c.iii (“iii.When the buffer is in an area of high blowdown potential...”)</p> <p>ACTION: Following changes to Table 3: Change “mapped floodways” to “100 Year Flood Plain”;</p> <p>ACTION: Delete c.i (designated in Table 3 instead)</p> <p>ACTION: Re-number 2.e.a-g, per Patty’s suggestions (including adding item “h”, from “i” on p. 56)</p> <p>ACTION: p. 18: 18.30.110C-8: “Within regulated wetlands, <i>Fish and Wildlife</i> habitat areas, ...” (add “fish and wildlife”)</p>
Citizen Input 2:45 p.m.	<p>Barbara Rosenkotter: 1) RE: on and off-site mitigation? No clear answer achieved, and needs to be.</p> <p>2) FEMA’s advised “10%” exception – a one time allowance? or can it be used multiplied times, under multiple scenario?</p>	
Adjourn 3:00 p.m.	Review of upcoming meetings: Thursday January 22, 2009, Orcas Hotel (Parlor).	