

**CAO REVIEW COMMITTEE
MEETING NOTES – AUGUST 5, 2008**

Attendees:

Committee Members: Todd Goldsmith, Barbara Thomas, Amy Windrope, Patty Miller, John Evans, Teri Williams, Stephanie Buffum Field, Stephanie O’Day, and Mary Masters (alternate for Jim Slocomb, MRC).

Public: Jack Cory (Island Guardian), Barbara Rosenklotter (San Juan Lead Entity), Ed Hale (Public Works), Don Iverson, David Simonson, Greg Casey, Larry and Kathryn Enselman, Gary Vannest, JoAnn Gustafson, Pauli Gavora, Denise Ireland, Cathy Cavanagh, Carol Farrow, Sam Buck, Richard and Kathy Babbitt, James Webert, Michael O’Donnell.

Staff and Consultant Present:

Bob Fritzen, Washington State Department of Ecology.
Randy Gaylord, San Juan County Prosecuting Attorney (arrived at approximately 9:00 a.m.)
Tom Cowan, Facilitator.
Shireene Hale, Senior Planner, Community Development and Planning Dept.
Maya Borhani, Staff Assistant, Community Development and Planning Dept.

Time and Location:

8:30 a.m. – 4:15 p.m., Islanders Bank Annex, 225, Blair St., Friday Harbor.

Next Meeting:

Tuesday, August 19, 2008
8:30 a.m. – 4:30 p.m., Islanders Bank Annex, 225 Blair St., Friday Harbor.

Meeting:

- Introductions
- Agreement on agenda change: Citizen Input first
 - Richard Babbitt asked about proposed shoreline setback changes, sharing a postcard about CAO meetings and proposed regulatory changes.
- Shireene Hale: Summary of City of Anacortes Supreme Court decision, while waiting for Randy Gaylord, San Juan Co. Prosecuting Attorney, to review this issue.
 - a. Background info regarding GMA mandate for Critical Areas;

- b. Supreme Court decision states that all shoreline habitats shall be managed under Shoreline Management Act (SMA), not GMA;
 - c. So, CAO will NOT be looking at shoreline buffers and other shoreline specific issues at this time.
- Bob Fritzen, Department of Ecology - Thoughts on Court decision
 - a. No official DOE opinion as of yet; unclear which direction Ecology may go;
 - b. Supreme Court decision reinstates Growth Management Board decision;
 - c. But DOE disagrees about which holds jurisdiction - SMA or CAO;
 - d. Many SMPs don't have adequate protection for critical areas;
 - e. Growth Board said *any* amendment to SMP had to go to DOE for approval, though DOE didn't agree, and questioned that changes had to be part of a total rewrite of the SMP;
 - f. Supreme Court decision means that whatever critical area requirements were in place remain in effect. To make changes to pre-2003 rules, must go through DOE for approval;
 - g. DOE is allowing some counties to *phase in* protection of critical areas to protect shorelines, to then follow-up with a total rewrite of their SMPs.
- Randy Gaylord, San Juan Co. Prosecuting Attorney – RE: Supreme Court decision
 - a. Supreme Court ruling is about procedure and authority;
 - b. Couched in terms of GMA and SMA - as local governments, we have to make sure we follow both – but which do we follow?
 - c. CAO Review Committee has been following GMA for protecting critical areas as relates to shorelines;
 - d. Even though we've been looking at BAS in terms of GMA requirements, this case says they do not apply to shoreline CAs, and we should use SMA procedures for those areas;
 - e. All our shorelines are shorelines of statewide “significance”;
 - f. Also, under SMA's reach, “shoreline” includes 200 feet of upland, as well as areas waterward of the shoreline;

- g. So which procedures do we follow to create regulations for critical areas in shoreline areas?
- h. His reading at this time: follow SMA procedures. For critical areas outside shoreline boundaries, use GMA procedures. For now, for efficiency of CAO committee work, refocus on areas inland of SMA areas, and wait for court decision to settle out (via legislators, analyses, etc;) as regards protection of shoreline CAs.

- Discussion issues:

- Is there a choice as to which way we could go for CAs in shoreline?
- Gaylord: there's a choice as to which procedures to follow, but can't make amendments to SMA without going to DOE;
- We're told to pay particular and special attention to salmon – but how can we do that while not changing SMPs?
- Gaylord agreed this question has been raised: how do we reconcile need to protect endangered species while still working with required procedures?
- Gaylord explained about the uncertainty this decision may raise for the legislature, given it was a “plurality,” not a “majority” decision (4 -1-4, majority-concurrence-dissent);
- Gaylord: Nothing currently designated a CA changes as a result of this decision; it's more about process.
- Example given of buffers currently set at 50 feet – that won't change unless we change them through SMA?
- Gaylord: Correct.
- John Evans suggested we continue to provide support info to help property owners protect their shorelines, through voluntary, educational efforts. Gaylord agreed this was absolutely a good idea;
- Gaylord suggested that when the CAO committee comes back to looking at shorelines, we keep note of current issues and revisit them;
- Stephanie O'Day raised the question that there are sections in our CAO that are not covered in the SMA (eelgrass, forage fish).
- Question to Bob Fritzen about options for San Juan County phasing CAO changes into SMP now, and how long will that take?
- Bob Fritzen, DOE: RE court decision, not yet clear how much flex DOE will have, or if they will change their policies? He emphasized that “anything done here (CAO Committee) will not be wasted.
- CAO committee considering process based on regulations, or a site-specific basis, RE habitats, protection options, proposals, etc;.

- Public Input:

Dick Babbitt: Shouldn't issues being discussed be published in papers prior to discussion?

Shireene: Yes; notice posted in papers 10 days prior to meeting.

R. Gaylord: If CAO committee proposes changes to section on non-conforming (grandfathered) rights, this will be publicized in advance.

Dick Babbitt: Question of 150 foot setbacks; if passed, will existing houses be non-conforming?

Gaylord: Possible, but premature to know.

Sam Buck: -“No growth” holding hostage the rights of property owners
 -Most people don’t know what forage fish are, so why should we protect them?
 -BAS only that;
 -Besides education, to make a difference in # of forage fish protected, invest in technology for shoreline armoring.

Jack Cory, Island Guardian: Clarifications:

Shireene: RE changing SMA: requires money for study and research; need to review all science, come up with restoration plan; lots of hoops!

Bob (DOE): But don’t need to identify new sites, and state is kicking money to counties to hire consultants for this.

Jack Cory: RE nonconformity: continue to use structure till it decays – but did not say if we can improve on them?

R. Gaylord: Only spoke about general policy: will take site by site assessments of whether or not existing regulations will apply. DOE will not allow piece-meal amendments to be added to SMPs;

- Discussion:
 - Planning philosophy, allowing a non-conforming structure to “continue”
 - Setback changes (shoreline, side yards); rebuilding; fire
 - Shireene passed out code sections pertaining to non-conforming uses
 - Non-conformity not just about shoreline
 - Question of getting calendars for amendments to synch up: SMP, Comp Plan, UDC only amended 1x/annually
 - RE court decision: when we eventually update SMP, can we update pieces that still exist over in UDC?
 - Other counties in our position (several)? Other counties using phased in amendments to SMP?

- Court decision won't impact CARA ordinance request to Planning Commission; decision doesn't say we can't keep what we already have, and generally, these rules apply to whole county.
- Bob (DOE) advised to "keep going" on shoreline; Shireene asked, what about "correct process?" R. Gaylord agreed this is a "big concern."
- Properties that share both upland and shoreline designation; important that shoreline and upland properties "stick together"
- "Conflicting Use" regs, and "most sensitive" designations
- What about going to Feds for Endangered Species protection, when court decision about SMA may trump CAO, and SJ Co. has Federally recognized endangered species?
- Government involvement in your property, right to come unannounced?

5-minute break

- Notes of June 17, 2008 – Changed to include Todd Goldsmith in attendance; moved by Todd, seconded by John, to approve the notes as written. Motion passed unanimously.
- Agenda for August 5, 2008 (today) modified, and approved.
- Discussion:
 - Legally compliant CAO of great importance to County Council
 - Members may submit different recommendation than majority – but *both* documents should be compliant (2 perspectives)
- Tom Cowan, Facilitator – Working toward Developing Solutions and Building Consensus
 - Handout on 5 Conflict Handling Modes
 - How do we function and/or proceed?
 - work for consensus, or
 - cast votes, let chips fall
- Discussion:
 - "Subject-strong" facilitators (know topic) make for consensus oriented committee.
 - Suggestion to structure facilitation to get all angles of a topic covered
 - Need to ask question, Can we reach consensus?
 - What is CAO committee goal (100% protection, or partial?)
 - Trust citizens, or rule under govt. thumb? Use other tools than regs, such as education
 - Time to go back and consider creation of Guiding Principles.
 - What about "non-conformity"? Make sure all are heard, concerns aired, go into details of the issue

- OPTIONS for improving protection of marine habitats, in light of Supreme Court decision? (Include audience – public input)
 - # of options? Jumpstart SMP regs?
 - Identify critical areas now
 - Mitigate effects of urban development – standards already speak to that – what development standards are already in place?
 - Urban and rural very distinct and different – GMA encourages interior density in UGA, and no rural clustering – so should have different levels of protection
 - No difference for 2 types, because we have susceptible areas adjacent to and in UGAs – shouldn't reduce regs.
 - Instead of lowering standards, just have to get more creative, flexible
 - Mitigation bank idea
 - “Flex” options still = “no net loss”
 - Results, not methods, should be the same
 - Consensus: RESULTS for UGA same as for rural areas

- Tom Cowan, Facilitator
 - a. Still haven't decided what prescriptive approach is
 - b. County's technical ability?
 - c. John Evans: should do a pamphlet or county-wide mailing, RE: rules tied to UDC, “living “easy on the land””; have auditor's office distribute to new land owners automatically; update when rules change
 - d. Tom/Shireene: Budget? (Some CAO monies spent via outreach in paper)
 - e. Amy: potential outreach goals – people come to meetings; general outreach plan. Set benchmarks: # public meetings/when/where.

- Public Input:
 - Kathy Babbitt: Put meeting info on county website; to be more inclusive to workers (who can't make meetings in the day), and shore owners (many pt-time/weekenders), hold weekend/evening meetings.

- OPTIONS RE: Court decision (continued)
 - Resources to implement MRC recommendations for low-impact development?

- Soft armoring alternatives?
- Educate property owners RE docks
- Coordinate w/ State and Federal officials
- Analysis of shoreline issues – explore ways (early) to implement CAO before 2012 SMPs
- Science and/or monitoring in SJCounty (volunteer? Condition on permit for dock?)
- Extremely cautious in crossing line of what court said we shouldn't do –
- We'll receive guidance on how SMA and GMA will overlap (legislation)
- Idea of educational program for shoreline projects (through CAO)
- Educational requirement for shoreline permitted owners (before permit) on proper stewardship
- GMA requires update of CAOs, but not just in terms of regulation
- Improving compliance for all the protections we create (goal statement?):
 - property owners clearly understand necessary steps;
 - clear inspections to insure compliance (monitor/implement)
- Conduct assessment of federal regs under ESA listed salmonids, and associated prey, habitat
- assess what would take to conduct a phased SMP update (biological, what it takes, staff, \$\$, studies)
- Consider recent decisions – King Co., Swinomish, Supreme Court – look at individual properties
- Protect wildlife, or remove citizen's rights? (What is our goal?)
- Use best (environmental) practices everywhere, w/ an eye to these will also apply to shoreline – so rules are good for whole of county- just don't worry about shoreline, specifically, right now
- Can't use GMA to change our SMP – have to use SMA guidelines
- Apply general CAO rules to all properties/improvements to all properties
- What do we currently have in place – how are these regs working? Are they being adopted and used?
- Monitoring: are we implementing the regs correctly?
- Appalling lack of post-construction monitoring; high % of violators of shoreline permitted activity
- Get uplands done really well, w/ sidenotes for shoreline, so that when we get to shorelines, foundation is laid

- Public Input:

Barbara Rosenkotter, SJ Lead Entity:

- a. Salmon are not included in SMP, and they are a cultural, economic, and keystone species in our county.
- b. Regional, not just local, issue

- c. Consider prey, migration of returning salmon, nearshore habitats – more than just freshwater
- d. Concern of pressure from other forces (Federal, State, regional) to make sure we address salmon
- e. Inconsistency in ruling for SJ County specifically, because of salmon in nearshore area and mandate in GMA to protect salmon

Richard Babbitt:

- a. Education on salmon streams – special ruling for estuaries?
- b. Clean-up septic dumping from Victoria, BC?
- c. Setbacks RE: global seas rising = 100 feet in 20 years may become non-conforming; instead, prevent “acts of god through shoreline armoring

- Discussion:

- Overlays for all properties – streams, nearshore, upland - , i.e. leave native vegetation (no vegetation off bank)
- Ask Fisheries to regulate seine fishing
- Leave Native forest = trees that were there
- To Public: Ideas of how to pay for research, education, outreach?
- Educate county staff, property owners, agents
- Brochures RE: salmon migration
- Educate Re: streams
- Get to SMP update early

- Tom Cowan, Facilitator:

Are there other options?

- a. Bob Fritzen, DOE: Continue on for now with shorelines; that work not going to be wasted.
- b. Randy Gaylord:
 - Stay the course; work on changing guidelines;
 - Sequence tasks to get the CAO done.
 - Disagrees with Bob – he suggests we leave shorelines alone for now, and focus on upland areas.
 - There may be a way to “get around” the SMA, because the functions and species needs may fit under GMA.

- Discussion Issues:

- Get compliant with uplands (for now)
- In working draft of CAO, highlight areas we will NOT work on at this time
- Clarify “armoring”
- “Shoreline” = whole system – extends beyond shoreline/indiv. properties
- Every property – its shore – is affected by what is around it (hard structures on shore change the whole shore, not just that property)
- Not all citizens are here because of setbacks
- Concern about pesticide use
- Use schools as educational resource/more community involvement
- What about utilizing UW labs for locally generated science?
- Study UW work on False Bay/SJ Valley
- Shireene: these are my “marching orders” – proceed w/ uplands for now!

**** LUNCH ****

- Shireene: Questions about requirements for habitat management and protection plans
- Barabara Rosenkotter, San Juan Lead Entity: Wild Fish Conservancy (private non-profit) is picking up where Dept. of Fish and Wildlife hasn’t been able to get to, i.e. geographically isolated areas like the San Juans
- Shireene:
 - a. *At next (8/19/08) meeting:* Clarify GOALS / PRIORITIZE options;
 - b. Review general sections of 4/08 draft that apply to all 5 Critical Areas;
 - c. *At 9/2/08 meeting:* James Glasgow (WFC)
 - d. Review 2 State-supplied guidance documents (Chris Mays; Knudson & Haef)
 - e. *By 9/16/08 meeting:* final review of draft amendments, F & W – followed by public meetings in October?
 - d. EPA grant – potential funding for education/outreach/technical options
- Discussion:
 - Post documents on county website (Lynda)?, and/or provide CAO binders at all libraries

- When Supreme Court clarity comes through, have experts from DOE and CTED come to address questions (w/ Randy Gaylord or John Cain present)
 - Salmon issue will have to be resolved somehow/somewhere
 - Shireene: Clarification – “marching orders” doesn’t preclude exploring other avenues (options) for nearshore management, as per our mandate
 - Keep running list of nearshore issues as they are set aside, to come back to later w/out repeating what we’ve already done
- Additional recommendations on the draft groundwater protection regulations (scheduled for Planning Commission Hearing, 8/8/08)
 - a. Patty Miller: Process Concern - that members were not given enough time to review changes before draft (fisheries?) ordinance submitted to PC
 - b. Concern about intended consequences that arise
 - c. Shireene combined 2 sections of code and proposed “fixes” to unintended consequences of countywide CARA designation
 - d. Disagreement on how committee interpreted/voted on Water Resources Committee recommendations
 - e. Concern that staff report accurately reflect committee discussion, so dissenting opinions can be heard
- Decision: Tell Planning Commission what MRC *specifically* recommended, what the committee voted, and clarify language to reflect dissenting opinions (reword language of one sentence, pg. 2 of staff report)
 - a. Suggestion to list contrasting opinions in front of document going to PC; bullet points about differences of opinion
- Tom Cowan, Facilitator: Submit minority reports.
 - a. Shireene: With minority reports, still have choices:
 - broad groundwater protection strategy;
 - designate whole county as CARA
 - b. Staff reports must follow County format AND communicate recommendations of committee
 - Request that committee see minority reports before presented to Planning Commission
 - Todd: attach minority reports to staff reports?
 - Add sentence to staff report to reflect committee vote to designate county-wide CARA

- c. Shireene: - Will find out exactly what Water Resources Committee meant in recommendations;
- Will modify Staff Report if necessary w/ language suggested
 - d. To make Staff Report more accurate, list main areas of contention as clear bullet points (not on 2nd page)
 - e. AGENDA ITEM (for 8/19/08): Have process discussion RE: minority reports back to committee before going to Planning Commission
 - f. AGENDA ITEM (8/19/08): Discussion of committee process
- More DISCUSSION of Process:
 - Review final versions of draft ordinances for clear language
 - Process request: final review of draft ordinances by committee
 - Shireene: We can add that step (return ordinance to committee for final review before sending to Planning Commission)
 - Patty requested a calendar from Shireene, RE: a timeline for steps leading up to submission to Planning Commission
 - Shireene: OK!
 - Amy Windrope – RE: Findings of the San Juan Initiative
 - a. Three partners: San Juan County, Puget Sound Partnership, and Surfrider
 - b. Genesis from San Juan County Salmon Recovery Plan
 - c. Is current level of protection adequate to address future loads?
-To answer this, 2 questions: What’s working, and what’s not?
-How effective are our protection programs?
 - d. Focus on nearshore, 4 case study areas
 - e. Discovered the greatest potential for impact comes from *physical changes* to shoreline
 - f. So, San Juan Initiative’s question became, How good are our protections in terms of physical changes?
 - g. Looked at three groups:
 - Management: -Programmatic
-Permit (how did something forbidden by programs yet get permitted?)
-Voluntary
-Education

Community: -Shoreline property owners
-General Public
-Trade Groups

h. FINDINGS:

- 1/3 to 1/4 of shoreline properties armored but no structure (unexpected finding)
- better at protection (via permit language); technical assistance or education is lacking
- 50% of docks didn't match permits
- existing regs/mechanisms either duplicative or too vague
- shoreline forest cover: about 88% retained, with enormous variability between 5% and 99%
- variations in measurement of setback
- connections between setback and armoring structures, vegetation and setbacks

i. San Juan Initiative in the next 6 months:

- Improving overall system of protection
- Shoreline vegetation and beaches (beach processes and eelgrass)
- How can we create technical assistance that helps property owners, managers, trade groups
- RE: regulations: work towards compliance and enforcement
- Incentives

• Public Input:

Dick Babbitt: Suggestions that this committee take soil into account when permitting armoring

Citizen: Question about regulatory compliance and enforcement

Stephanie O'Day: Need to mesh many processes and state/regional regs and permits

***** 5-minute break *****

- Discussion: What, if anything, do we do to protect habitat for species that are candidates for, but not yet listed as, Endangered, Threatened, or Sensitive?
 - What's the difference?
 - State and Federal lists

- Stephanie Buffum Field: RE: changes to Endangered Species Act 5 years ago – given the poor job protecting those already on list, don't muddy waters trying to protect those not on the list
 - John: Suggests taking a broader swathe, in interest of ecological preservation, and use education to help with protection
 - Barbara Thomas: There's a place for this (issue) in education – could we have a list of habitats?
 - Tom: Can we summarize candidate species?
 - Patty: As with nearshore issues, can we keep a “set aside” list of candidate species we would like to see receive attention?
 - Stephanie B.F.: How, in our timeframe, will we accomplish that?
 - Teri: How will we get to the ones that are listed?
 - Amy: Likes John's idea; all property owners add to the health of the islands
 - Broad ideas, bigger ecosystem goals, rather than individual species – “landscape view”
 - Stephanie O'Day: Regulatory requirements first
 - Tom: Timing? Address this after regulatory needs are met?
 - Barbara: If there are candidate species whose habitats are so unique that, if we lose them before the species is endangered, could we have protected the species by protecting their habitats?
 - Stephanie B.F.: Obligation to map territory of federally endangered species (even though they exist on a 200 foot buffer of court ruling SMA); must harmonize state and federal with local CAO
 - Stephanie O'Day: Though we can no longer discuss docks and shoreline setbacks, yet there are overlays, such as vegetation
 - Todd: How can we “overlay” for all properties?
 - Shireene: Science is out there on things like vegetation: once 5-10% of native vegetation is removed, we start losing animal life as well
- Discussion: Should Critical Areas be reduced in Urban Growth Areas (UGAs)? If yes, how do we offset those impacts for “no net loss”?
 - Barbara: Not fair to have urban and rural defined by different standards
 - Amy: Why not? Urban is already urban, not rural
 - Barbara: As a county, we have to maintain “no net loss” – so if we have net loss in UGAs, we must get net gain in rural
 - Todd: idea of “mitigation bank”
 - Offsite mitigation?
 - Discussion: Option A or Option B approach to stream buffers? (prescriptive, or plan proposal?)

- Stephanie O'Day: Proposal approach should include a list of things one cannot do within the buffer; or else, stay out of the buffer
 - Barbara: Either way, the result should be the same
 - Performance standards
 - John: Prescriptive is more affordable; plan approach requires money (raise fees)
 - Todd: Stormwater regs apply to Option B still
 - Todd: Offer these options to more than just streams (wetlands, etc;)
 - Amy: There may be some sites that *require* Option A, or Option B, because of special geographic issues?
 - Tom: Figure out costs involved with both options
 - John, S.O'Day: 2nd Barbara's idea: Performance standards, regardless.
- Public Input:
 - Citizen: Put notices in more obvious place in paper?
 - Dick Babbitt: Look to Thousand Oaks, CA. - established "trade credits" when a tree is cut (plant a new one); apply same principle here (bundled in permit fees)
 - Amy: Bundle decisions, then take to community (public meetings)
 - Patty: Put public notices in Calendar section of papers?
 - Teri: Utilize large, active group of builders/architects/engineers/contractors/etc; who are also affected by this – ask them to communicate with their clients about important issues
 - Citizen: County website have an option to inform people of these issues?
 - Teri: Mobility of CAO meetings to other islands?
 - Meeting Adjourned, 4:15 p.m.