



San Juan County CAO Citizens Review Committee

Critical Areas Ordinance Citizens Review Committee Meeting  
 September 16, 2008  
 Lopez Library Meeting Room

**DRAFT MEETING MINUTES**

**Committee Members in Attendance:** Ryan Drum, Todd Goldsmith, Teri Williams, John Evans, Stephanie Buffum Field, Stephanie O’Day, Amy Windrope, Mary Masters (for Jim Slocomb), Lovel Pratt (for Barbara Thomas)

**County Staff in Attendance:** Shireene Hale, Jeff Hanson

**Public in Attendance:** Barbara Rosenkotter, Denise Ireland

**Facilitator:** Tom Cowan

Topic	Key Discussion Points and Agreements	Actions and Next Steps
Call To Order Additions to Agenda  Approval of Minutes	The meeting was called to order at 10:50 AM. Shireene added an agenda item to discuss two items deleted from the CARA ordinance. Shireene and Amy did a brief introduction to the public outreach proposal. Minor Changes were discussed.	The agenda item was added at the end of the agenda. It was decided that discussion on outreach would be held for the afternoon (per the agenda). With the minor changes incorporated, the minutes from August 5 and August 19, 2008 were approved by the committee.
Note Taking and Minutes	The committee held a brief discussion on the notes from past meetings, noting that there was often a lack of clarity in the notes, sometimes making it difficult to be clear on the actions taken by the committee. Tom Cowan suggested a change of format for the minutes. He suggested that the format recently adopted by the Land Bank Commission be considered. He passed around an example. Discussion included: Ryan: Noting “who says what” can sometimes be important Stephanie Buffum: a complete and clear agenda helps organize the discussion and the minutes Tom: the Land Bank has much discussion, but it is just summarized in the minutes Todd: for these minutes to work, the moderator must summarize each discussion and action after each topic	The committee agreed to try this new minutes format.

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<p>Topic: General Sections of April 2008 Draft Ordinance</p> <p>Starting at C: General Exemptions 18:30:110:C:1 Emergencies</p>	<p>Shireene explained that this section will define emergency situations that would allow exemptions from this section of code, or exemptions from a portion of it, and the requirements of the property owner during and after the emergency. She noted that the proposed language was patterned for the most part after the state model code and that the exemptions are a little broader than what is in the current code.</p> <p><b>Discussion Areas:</b></p> <p><b>Critical Area Report, “qualified professional”</b> John noted that a complete Critical Area Report may not be needed (after the emergency) and the code might specify a “mitigation or restoration plan” instead. Shireene and Teri noted that a Critical Area Report or a mitigation and/or restoration plan – or a portion of it - may require the use a qualified professional Todd noted that we should not <i>require</i> the use of a qualified professional, that at least in many situations, the report could be completed by the property owner The group agreed that there may not need to be a requirement for the use of a “qualified professional” but certain plans probably will require one, and that ultimately the County must determine if the plan is adequate. There was some concern about the County’s capacity to do this.</p> <p><b>Definition of emergency</b> The group noted that there are different levels of emergencies and how the county might determine which ones qualify for the exemption. Stephanie B. noted that some emergencies may be caused by a property owner’s previous (perhaps illegal or ill-advised) actions John asked if these should be treated any differently at the time of the emergency? Shireene noted that the code has some definitions of emergencies There was some discussion regarding simple notification of the County vs. receiving some sort of approval for taking emergency action. Concrete suggestions were: John: the language should read that the property owner or owner’s agent shall notify the Director of the action being taken. Stephanie Buffum noted that we should discuss this with the County Dept. of Emergency Management before finalizing Ryan noted that there needs to be an exemption from the notification should there be a technical failure (ie. phones don’t work).</p> <p><b>Catastrophic Events</b> Further discussion reflected concern that after certain catastrophic emergencies a critical area could not be restored and this should not be required. There was discussion on how to define “catastrophic event”. Barbara Rosenkotter, during public input time, suggested that there are some good definitions for this , such as those used by FEMA.</p>	<p>Shireene will gain advice from Brendan Cowan at the Department of Emergency Management on some issues.</p> <p>Suggested code language changes were made (changes in italics)</p> <p>1. Emergencies. Those activities necessary to prevent an imminent threat to public health, safety, or the environment, or to public or private property, and that require remedial or preventive action in a time frame too short to allow for compliance with the requirements of this chapter. <i>Prior to taking action the property owner or owner’s agent shall notify the Director of the emergency and action being taken.</i> Within seven days of the emergency, the person or agency undertaking the action shall report the <i>extent of the action taken</i> and any impacts to Critical Areas to the Director. The Director may require the <i>property owner or owners agent to submit a mitigation and/or restoration plan</i> to guide restoration or mitigation of these impacts <i>except in instances of a catastrophic, natural event.</i> Final approval of the <i>plan</i> , and any required restoration or mitigation, shall be in accordance with provisions of this chapter.</p>
Lunch		12:00-12:30 pm

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Recent Court Decision re: the clearing limits provision of the King County CAO A report by Jon Cain, San Juan County Prosecutor's Office	<p>Jon Cain reviewed the July 7 ruling by the Washington State Court of Appeals that struck down a portion of the King County CAO. As part of the King County CAO, property owners were required to limit clearing (tree cutting) of their property to 35% to 50%. depending on the size of the property.</p> <p>Jon noted that, in the CAO, there needs to be a nexus between the impacts and the regulations. In King County it was not clear why the 35% or 50% clearing limit would be right for every property.</p> <p>Jon noted that the implication for our CAO is that the regulations need to be based on science and based more on the specific impacts that would occur from location to location.</p> <p>There was some discussion about example for our code. Jon made it clear that the code doesn't need to be site specific (different rules for each property), but there should be some clear scientific basis for the rules. For instance, there are different types of wetlands, and a different buffer could be established for each type.</p>	This was an informational session so no action was taken.
C: General Exemptions 18:30:110:C:2 Operation, Maintenance and Repair...	<p>Ryan noted that the second sentence in this is superfluous and should be removed.</p> <p>Group agreed.</p> <p>Stephanie B. noted that for some activities there should be a record (digital photos) of the activities (before, during, after)</p> <p>There was some discussion that this may be difficult or too much regulation, but with acknowledgement that sometimes people do "take liberties" with exemptions like this.</p>	<p>The committee agreed to eliminate the second sentence in the proposed code. In the first sentence, "fences" were added to the list of exempt structures.</p> <p>The recommended code: 2. Operation, maintenance, repair or remodel of existing structures, facilities, infrastructure, utilities, sewage disposal systems, water systems, public or private roads, driveways, improved areas, <i>fences</i>, vegetation, dikes, levees, or drainage systems, if the activity does not further alter or increase the impact to, or encroach further within a Critical Area or buffer, and there is no increased risk to life or property.</p>
C: General Exemptions 18:30:110:C:3 Forest Practices		The committee recommended leaving this section as written
C: General Exemptions 18:30:110:C:4 Installation of navigation aids and boundary markers	There were clarifications that navigational aids can be upland (air traffic markers, road markers, etc.) and that boundary markers are not fences.	The committee recommended leaving this section as written
C: General Exemptions 18:30:110:C:5: Site Investigative Work		The committee recommended leaving this section as written

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<p>C: General Exemptions 18:30:110:C: Current Code sections considered for additions</p>	<p>Shireene noted that she was recommending removing the 6 current General Exemptions. She requested the committee to review the “lined-out” current code and make their recommendations.</p> <p><b>Discussion re: #3, an exemption for installation, construction, replacement or modification of various utilities.</b> Stephanie O. recommended that these be exempt for residential systems</p> <p>Todd noted that utilities throughout the state were required to follow environmental laws, using the example of extensive avoidance, mitigation and restoration done when I-5 was widened in certain areas.</p> <p>The group agreed to NOT add #3 to the recommended exemptions list.</p> <p><b>Discussion re: #4: an exemption for the establishment, maintenance and repair of lawns, landscaping, gardens, orchards and fences accessory to a single family residence...</b></p> <p>John noted that this should be in, as we need the right to have lawns and landscaping</p> <p>Teri noted that, if the entire County is a critical area (a “critical aquifer recharge area”, then if this was not an exemption, then no lawns or landscaping would be permitted. Shireene noted that the CARA section does not specify that lawns are not permitted.</p> <p>There was some discussion on how to really specify allowed activities and it was generally agreed that disallowed uses must be specified, not allowed uses.</p> <p>Stephanie B. noted that all of these activities were certainly allowed if not within critical areas or their buffers.</p> <p>Todd noted that if this exemption is included, then we should remove “accessory to single family residential use” so that it could apply also to farms.</p> <p>The committee agreed to keep #4 as an exemption but without lawns and with the addition of “native” before landscaping.</p> <p><b>Discussion re: #5: an exemption for the removal of hazardous...trees and vegetation...etc.</b></p> <p>After a short discussion, the committee recommended that this be included in the code.</p> <p><b>Discussion re: #6: an exemption for land divisions exempt from land division requirements as specified in SJCC 18.70.101(c)</b></p> <p>After short discussion the group agreed that this exemption should be included provided any land division results in buildable lots according to all County regulations, including the CAO.</p>	<p>The committee recommended adding the following exemptions back in (note, these are re-numbered after being added after the new recommended code provisions):</p> <p>6. Establishment of native landscaping, gardens, orchards, and fences; provided, that where a regulated wetland or buffer is present the provisions of SJCC 18.30.150, Wetlands, or Fish and Wildlife section . . . shall apply.</p> <p>7. Removal of hazardous, diseased, or dead trees and vegetation and, when necessary, measures to control a fire or halt the spread of disease or damaging insects.</p> <p>8. Land divisions exempt from the land division requirements as specified in SJCC 18.70.010(C), providing each lot includes a building site meeting the requirements . . . (note: this will be completed by Shireene)</p>

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D.Reasonable Use Exception	<p>Re: first paragraph regarding application of this section:            After a short discussion, the group noted that if the new codes were applied properly then in fact any parcels created after the CAO was codified would have a building envelope that conforms with Critical Area protection requirements, and therefore the second sentence was unnecessary.</p>	<p>The committee recommended that the first portion of the second sentence in this section be removed. The section would now read:            D. Reasonable Use Exception. The provisions of this section apply only to lots legally created prior to              ___ (the effective date of this ordinance). Lots created after the effective date of this ordinance are not eligible for a reasonable use exception.              For pre-existing lots, legally created lots, if the application of Critical Area regulations would deny all reasonable economic use of the property, the owner may apply for a “Reasonable Use” exception pursuant to this section.</p>
D: Reasonable Use Exception sections 1, 2 ,3	<p>The committee did not directly address these sections, but rather moved to a discussion to determine their recommendation for the excepted uses and the maximum size for the disturbed area for those uses</p>	
E. Reasonable Use Exception	<p>John started the conversation noting that he felt that the exception be for any single family residential use, and that there be no size limit.            Stephanie B noted that the recommendation from Tim Gates of CTED is to set a limit of 2500 sq. ft. of impervious surface. This is what was adopted by Whatcom County.            Stephanie O recommended that a maximum of some size be set, but allow for a larger size if site specific studies show that this can be done within acceptable impacts.            Shireene noted that the requirement is No Net Loss, so we must show that can be done, either by using individual mitigation plans or other methods ranging to some sort of countywide “community” method.            Todd noted that Tim Gates said there must be an “escape valve” for single family residential use, but this gives no relief for small commercial uses.            John noted the exception in the current code (section E. crossed out in the document) is 80% of the parcel or 21,780 sq. ft. for the total improved area. He indicated that he thinks this should be what is permitted.            Amy and Stephanie O both noted that on large parcels there would most likely be an area this size that could be utilized, so therefore we’re “really talking about smaller properties here.”            Tom noted that this is crossed out because the code needs more clarification and that this size is significantly larger than</p>	<p>Committee agreed that there be more research into the possibility of multiple mitigation strategies and to work with the old language (with the max. improved area size of 21,780 sq. ft. or 80% of the parcel size) while exploring ways to address the impacts of development.</p>

	<p>other jurisdictions have permitted.</p> <p>John noted that we are unique here because we are setting aside large tracts of land (through the Land Bank, for instance) that they are set aside as pristine areas or areas to develop back into pristine conditions.</p> <p>Stephanie B commented that this is a community value, not a mitigation method.</p> <p>Amy noted that we should look at each parcel individually.</p> <p>John reiterated that we are doing “a lot of saving”, so lets recognize that property owners be able to use ¼ or ½ acre</p> <p>Shireene noted that these acquisitions cannot be used as offsets for new impacts to meet the No Net Loss standard</p> <p>These comments led into a discussion about this idea of community-wide methods to mitigate and meet the No Net Loss standard. The Land Bank and the Council would need to at a minimum help inform the discussion and a decision on this.</p> <p>The Committee agreed that there be more research into the possibility of multiple mitigation strategies.</p> <p>Ryan brought the discussion back to the maximum impact size to be allowed, saying “what’s wrong with the ½ acre?”</p> <p>Shireene summarized the group’s thoughts by noting that some would like to keep the ½ acre/80% language and explore methods to meet the No Net Loss standard.</p> <p>Tom summarized the day’s discussion this way: the committee worked through the exemptions and started the discussion on the Reasonable Use Exception, agreeing to work with the old language while exploring ways to address the impacts of development.</p>	
<p>CAO Public Relations</p>	<p>Amy introduced the work done by the CAO Public Relations Subcommittee (committee members Amy Windrope and Patty Miller and staff Jeff Hanson). The desired outcomes for the outreach are to develop public support for the process and the protections that will be put in place AND that substantive public input was incorporated into the end result.</p> <p>The three methods to help reach these outcomes are to use press releases, e-mails and informational sections at the meetings to inform the public of the work being done, and to gain feedback at the regular meetings and through the planned public meetings.</p> <p>Amy also introduced a common explanation to be used by committee members to explain the purpose of the CAO. The suggested explanation:</p> <ol style="list-style-type: none"> <li>1. The County’s current regulations are not based on current information and were not designed with protecting the environment as the primary focus.</li> <li>2. We are using the best available science to develop both regulatory and non-regulatory methods to improve protections for the environment and public safety, health and welfare for today and for the future.</li> <li>3. The updated CAO will provide clarity to what’s expected of property owners.</li> <li>4. A completed CAO Update is required under the state Growth Management Act. The San Juan County Update is past due, and as a result the County is losing out on potential state funding.</li> </ol>	<p>The group generally liked the overall approach, wanted to have time to “digest” the memo and agreed that the explanations (for doing CAO) be made shorter and more concise.</p>

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San Juan County Application for Water Rights for Rainwater	Todd presented a report on this application. Though the discussion touched on other issues, the main point was that if there was a significant increase in rainwater catchment, with more of this water being diverted to other uses and ultimately being discharged underground, then this may reduce water destined for streams and salmon habitat and could damage that habitat	
Possible Additions to Draft CARA Ordinance	Shireene noted to the committee that in <b>Section E.1. Activities Requiring Inspection</b> that two types of facilities that “shall be subject to inspection” were removed. The two types were “ <b>Pharmacies</b> ” and “ <b>Other facilities determined by the Director to be a risk to groundwater</b> ”	The group voted to add the two activities back to the list in the draft ordinance.
Adjournment		The meeting was adjourned at 3:05 pm.