

San Juan County CAO Minority Report.  
Submitted by John B. Evans, Committee member

June 4, 2009

The CAO Committee is to be congratulated for the effort that has been put forward. Committee members were prepared for each meeting, had reviewed the materials supplied by the SJC Planning Department and made sincere efforts to reach a consensus. Unfortunately, the final draft of the Committee's work contains recommendations that do not support a reasonable approach to a CAO appropriate for San Juan County.

**1. Throughout the process the Committee has failed to balance environmental protections and the basic rights of property owners.**

Under GMA, common sense and good planning would require balancing the 13 GMA planning goals while providing a reasonable and responsible level of protection for critical areas. The staff and Committee drafted the proposed CAO for San Juan County with no discussion or consideration of how the CAO rules would impact the other goals of GMA.

At no time during our committee process were the other GMA goals discussed, considered or "balanced" against the proposed CAO regulations that were presented to the Committee by the San Juan County Community Development and Planning Department. We were specifically instructed that we are required to draft the CAO without considering the rest of GMA. If the CAO would affect the other Growth Management Act requirements, resulting problems would be addressed later.

**2. The misapplication of "best available science."**

Under GMA guidelines the County is required to "**consider**" the "best available science" when adopting CAO regulations. The word "**consider**" is important and instructive as to how we should have proceeded. "Best available science" only provides analysis of environmental factors affecting the species or habitats under study. Simply implementing the science through CAO regulations does not "balance" the scientific results with other GMA goals as GMA requires. Had this been the direction from the State, words such as "adopt" or "implement" would have been used, not "**consider.**"

**3. Species science.** Most of the science that is part of the CAO report is species specific. The science topics were selected, commissioned and paid for by government

agencies, academic institutions or special interest groups. The science invariably reports that the studied species is negatively impacted by human activities.

The Committee conclusion has been that the scientific results mean that every effort should be made to isolate the selected species from human contact. The Committee failed to recognize that healthy species populations can be maintained, even when the species has to adjust to some human presence.

4. **Habitat science.** Most of the scientific studies introduced for the CAO effort were not conducted in San Juan County. The Committee was told that the County would not devote the resources or time to gather data specific to conditions in San Juan County. The final Committee report includes documents collected from a general library of studies and applies the conclusions to San Juan county. Relying on studies conducted elsewhere and ignoring unique conditions that exist in San Juan County is a major shortcoming of the draft CAO ordinance.

The Committee did not **balance** and **consider** San Juan County's existing rural development pattern, the lack of polluting industry, the limited amount of commercial agriculture, the seasonal population, the strong island culture of environmental awareness and protection, the lack of basic resource exploitation such as commercial timber harvesting and mining, the absence of large-scale residential developments, the minimum 5 acre rural density under the County Comprehensive Plan, the continuing preservation activities of the Land Bank and the Preservation Trust, the pattern of set-asides under the opens space and forest programs.

Local San Juan County factors mitigate the environmental impacts that are of major cause of negative findings found in off-island science reports. **Local facts should have moderated the CAO Committee recommendations.** The San Juan County mitigating factors were not seriously considered.

5. **Other science-based approaches.** Other approaches to environmental science were not seriously considered by the Committee. One example is "resilience," a recognized field of science that identifies natural and human-caused stresses on species or habitats and the ability to maintain healthy species populations despite natural and human-caused environmental impacts. The Friday Harbor Labs has hosted scientific symposiums on "resilience" as an approach to understanding species population dynamics.

The Committee majority ignored "resilience science" and chose, instead, to use land use regulations to simply isolate species and environments from human affects to the largest extent possible. A more GMA compliant and balanced approach would have been to allow some level of stress by factoring the resilience of the species with the needs of the human population. The Committee did not explore this option that will maintain species populations at a sustainable level with less disruption to property owners and to the County's overall GMA plan.

**6. Other species.** The Committee did not discuss or consider the benefits that many native and locally important species derive from human activity. Under natural conditions, open expanses of land was created by wildfires or, in pre-European times, by fires intentionally set by native Americans.

Today, the open expanses and forest edges needed by many bird species, mammals, or the ponds used by amphibians and birds, are creations of human activity. The Committee's emphasis toward allowing the "natural" forest cover to return without the fire element will diminish the populations of a wide variety of native island species that are successfully co-existing with human beings. A failure to consider a comprehensive approach to the overall habitat and species environment in the islands is a failure of the CAO process and will lead to declines of species not now threatened.

### **Specific language or outcomes in the CAO Report that some members can not support:**

#### **7. Reasonable use:**

The current code allows for a "20% reasonable use exception" for the owner of a Critical Area regulated parcel of land with 80% of the parcel set aside as natural; "protected" from development. The CAO Committee majority has recommended that property owners with 2 acres or less be limited to using 10% of the parcel including a driveway. The limit is 5% or less if the parcel is over 2 acres. In addition to the 90% to 95% loss of use, the owner must meet a long list of County requirements that are expensive, with science reports and studies, management plans, mitigation and long term monitoring if the total development exceeds a 2,500 square foot level.

These restrictions and regulations rises to a "taking" of private property. The recent King County court decision limiting "natural designation set asides" should be evaluated by the Council specific to the proposed reasonable use restrictions.

County staff told the Committee that according to their initial analysis, the CAO will only totally encumber a few parcels. Although the number of parcels and the number of citizens affected should not be the issue, the number will grow dramatically as more and more land is taken by critical area and buffer designations, expanding shoreline designations, CARA designations, and other CAO overlays.

## **8. Requirements associated with mitigation, restoration and enhancement activities.**

The rules in this section are so onerous as to be impractical for the land owner and overly burdensome for the County to administer. The section should be re-written to achieve a more realistic and practical outcome. A dry run of these rules should be conducted to see how the process would actually unfold from the County perspective and for the property owner.

## **9. CASP**

As with the section above, it is unlikely that anyone would participate in this process. Read through the CASP contents...habitat proposal rules, monitoring, as built certification, waiver, notice to title and envision how this would work for a property owner or be administered by the County. A dry run and honest evaluation should be done to see how the process would actually unfold.

## **10. 18.30.120 Geologically Hazardous Areas**

The Committee spent almost no time on this. We have no idea what this will mean to property owners in the rocky hills of Orcas and San Juan.

## **11. 18.30.130 Frequently flooded areas**

**11a)** The Committee spent little time in this section. We have no idea where the areas are or what the implications of the rules are to property owners.

**11b) A. Classification** This section should be deleted. The reference to Federal Insurance Administration Flood Insurance Maps (FIRMS), Numbers 530149 0001-0008, dated June 7, 1977, and any revisions thereto...puts maps that are known to be very inaccurate into our code.

**11c) B. Protection Standards.** #2 should be deleted. The development standard is impossible to meet. #6 should be deleted. This references the September 22, 2008 Biological Opinion that should not be part of our local ordinance. Any other references to the September 22, 2008 Biological Opinion anywhere in the CAO draft document should be deleted. In the Monday, May 18th meeting between the Council and the CAO Committee, the Council said no references to the Biological Opinion should appear in the CAO document.

## 12. 18.30.150 Wetlands

**12a)** B.... *"however State and Federal requirements may still apply and property owners are also obligated to follow those wetland protection requirements."* This statement leaves the property owner vulnerable with no real answers as to what may or may not be required. The statement should be deleted.

**12b)** The required minimum buffer width from the outer boundary of wetlands is excessive. Considering the development pattern and land use pattern in San Juan County, (see underlined section in #4,) it is not necessary to have such large buffers to protect wetlands. **The implications of these buffers to the many property owners is significant.** The buffer widths should be reduced. Bob Fritzen, DOE representative, has offered, in a conversation, that DOE does not have specific buffer requirements. According to Mr. Fritzen, a County can set buffers based on local conditions.

## 13. 18.30.160 Fish and Wildlife Habitat Conservation Areas

**13a)** The habitat protections, functions and values should be limited to the habitats used by the identified species.

**13b)** The "no net loss" provision should be measured including all of San Juan County. The "no net loss" definition should include a reference to the ongoing conservation of habitat, functions and values **gains** that come from the Land Bank, the Preservation Trust and the Open Space programs.

**13c)** Rare plants should be deleted. There is no practical way for the County to regulate this section. With nearly half the County in some form of protected status through parks, the Land Bank, the Preservation Trust and County Open Space programs this does not need to be put on the landowner to know if they have Twayblade? or White Meconella? on their property. An educational and public information program about rare plants is an appropriate approach.

**13d)** Under E. Protection requirements 1. ...a sentence **c.** should be added to read... *"No San Juan County listed species principle habitat is located in association with a type N stream."*

**13e)** *Type F - fish bearing streams should have a 100 foot buffer....(average island tree height).*

**13f)** *Type N streams should have a 25 foot buffer ....(bank stability).*

**13g)** *Item d. is an impossible standard.*

## **Stream and pond buffer activities**

**13h)** The shaded area...expansions exceeding 10% should be deleted.

**13i)** The shaded area...reference to National Marine September 22, 2008 Opinion should be deleted. The County is not obligated to enforce Federal rules unless those rules are adopted by the State.

## **14. CAO RULES SHOULD NOT BE APPLIED TO THE SHORELINES.**

The Washington State Supreme Court directed that Shoreline environmental protections exist and are formulated under the State Shoreline rules, not GMA/CAO. If the County proceeds in the face of the Anacortes decision of the State Supreme Court it is knowingly doing something that is not legal. It is not relevant as to whether or not DOE or Fish and Wildlife think the GMA/CAO should apply to the shoreline or that the County is getting a grant. The Court said that the State law on Shoreline amendments should be followed unless the legislature changes the law.

**15. GMA required the County to review its critical area regulations. It did not require the total re-write that we have gone through.** At the County public meeting on Wednesday, May 20, 2009, at the Orcas Island firehall, there appeared to be agreement among County personnel that the County would present the current UDC Sensitive Areas rules next to the proposed new CAO rewrite draft when the June public meetings are conducted by CD&PD.

Respectfully,

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