

## 1 MEETING MINUTES

### SAN JUAN COUNTY (SJC), WASHINGTON COUNTY COUNCIL

September 28 and September 29, 2009

Monday, September 28, 2009 - Council Hearing Room, Legislative Building, Friday Harbor

#### 10:01 AM CALL TO ORDER – REGULAR STAFF MEETING AND WORK SESSION

Council Chair Peterson called the staff meeting to order at 10:02 a.m. Council members Howard (Howie) Rosenfeld, Rich Peterson, Bob Myhr, Lovel Pratt, and Richard Fralick; County Administrator, Pete Rose; Clerk to the Council, Ingrid Gabriel; Deputy Clerk Maureen See; and interested members of the public were present.

Mr. Knapp excused for medical reasons. **Moved by Myhr, seconded by Rosenfeld. Motion carried unanimously.**

#### 10:01 AM CLERK UPDATE & ADMINISTRATIVE MATTERS; Ingrid Gabriel, Clerk to the Council; Maureen See, Deputy Clerk

**Committees:** Ms. See reported there were no committee applications this week.

**Minutes and Agenda:** Ms. Pratt sent corrections in this morning. Mr. Myhr questioned why the Minutes were in verbatim form, not action minutes. Mr. Peterson said he would prefer action minutes. Because of the changes, the Council asked that the corrections be done during recess and the review of minutes would continue to the afternoon.

Discussion followed on the functioning of the AV Capture All program.

**Agendas:** Mr. Peterson asked that the Visitor's Bureau 2010 Marketing Plan be added to the October 5 or 6 agenda. Mr. Rosenfeld asked that the Legislative Priorities discussion scheduled for 11:00 am be moved up earlier to accommodate public discussion.

Mr. Myhr requested time on the October 19 agenda, the meeting to be held on Lopez, for the Lopez Planning Review Committee progress report. Mr. Rose suggested that a senior planner be present for that discussion.

The October 6 Meeting now includes a presentation on Salmon Recovery by Terry Williams and Kit Rawson. Discussion followed on the broader aspects of salmon recovery, the nine tribes, treaty rights and legal implications. The Council suggested that the Prosecuting Attorney's presence would be helpful at this meeting.

**Consent Agenda:** The Council agreed that thank you letters were appropriate to Alice Hurd and Louisa Nishitani for their contribution of trail easements. David Dehlendorf, Trails Committee, generously offered to draft the thank you letters.

**Council calendar items:** Ms. Pratt reported that she will be absent for the November Board of Health Meeting and asked the Council for coverage for her on November 18. Since other Council indicated conflicts in their schedules on that day, the item was tentatively left open pending Mr. Knapp's schedule.

It was noted that November 9 is a county holiday, and the Council will hold regular session on Tuesday, November 10.

Discussion followed regarding the various Committee meeting changes that will be needed over the next few months. There is an ongoing conflict with meeting times for Board of Health and the Lodging Tax Advisory Committee. Mr. Peterson will ask the Lodging Tax Advisory Committee if they would consider changing to another day, perhaps Thursday instead of Wednesday.

#### 10:24 AM COUNCIL MEMBER UPDATES AND DISCUSSION ITEMS:

**Ferries/FAC/Intermodal:** Mr. Rosenfeld reported that the increase to the interisland ferry fare was mandated by the legislature, not the transportation commission. He also reported that Melissa Johnson has indicated she will now participate in the Ferry Advisory Committee meetings, either in person or teleconference. Mr. Rosenfeld

explained the current issue regarding the earlier ferry return to the island in the evening. The reason involved touring watches and the 8 hr. layover requirement. The committee continues to work on this issue.

Mr. Myhr reported on his meeting with the Salmon Recovery Council last week and the inroads being made in restoration and protection. He explained that Whatcom County decided to integrate their upland and shoreline plans in the CAO as one eco-related system.

Discussion continued on CAO process, the need to separate the items, policy decisions and enforcement of current regulations. Mr. Rose explained that the recommended motion is in process, and any change would require a reintroduction of a policy decision.

**Budget Subcommittee:** Mr. Fralick stated that the Committee will meet tomorrow to continue discussion.

**Legislative Priorities & Lobbying Efforts:** Moved to following week

**General Government Subcommittee:** Report postponed until Mr. Knapp returns.

**Additional Updates & Discussion Items:** Mr. Fralick asked to return to the discussion of AV Capture All and his frustration with the problems, and lack of plan for corrections. He asked staff to identify the problems and develop protocols. He furthered that he wants to see plans for reaching a solution, or abandoning the system if a solution cannot be found.

Mr. Rose explained his understanding of the current issues and his agreement with Mr. Fralick's concerns. He will work with Information Services to provide evaluation of the problems, training and management of the contract.

**10:45 AM            BREAK**

**11:07 AM            PRESENTATION:**

**1. San Juan County Fair Property Re-designation:** Creation of a new San Juan Fairground Overlay District - Julie Thompson, Associate Planner, Community Development & Planning; Rev Shannon, Fair and Events Manager

Ms. Thompson presented a request to create new San Juan County Fairground Overlay District and then apply it to the fairgrounds. Currently, the fairgrounds are designated on the official Comprehensive Plan map as Rural Residential. For unknown reasons, some of the land inventory was not transferred into the body of the Comp Plan. The Comp Plan and Unified Development Code would need to be amended to allow an overlay district to be created for the fairgrounds.

Discussion continued regarding the public process, allowable uses, present capacity, and the accommodation of future uses consistent with its continued management for public-service purposes. Particular discussion focused on RV systems current, and the future of RV hookups on the fairgrounds property. Mr. Rose will ascertain the Planning Department's recommendations on this issue.

**2. Amending Table 3.2 in SJCC 18.30:** Add a swimming pool as an allowable Recreational Use in the rural farm forest land use district - Julie Thompson, Associate Planner, Community Development & Planning

Ms. Thompson introduced this proposal which would add the use of an "indoor swimming pool" as allowable by a conditional use permit in the rural farm forest land use district. This is in response to a request from a community service organization, the Friends of the Lopez Island Pool. The piece of land chosen would require approval of a conditional use permit. The Council was asked to approve an amendment to the Unified Development Code Table 3.2 to add Indoor Swimming Pool to the Recreational Uses, as allowable by a conditional use permit in the rural farm forest land use district.

The Council will continue the discussion.

**11:34 AM COUNTY ADMINISTRATOR ITEMS:**

1. Introduction of Ordinance on Swine Flu - Karen Vedder, Deputy Prosecuting Attorney; John Manning, Director, Health & Community Services

Ms. Vedder produced a draft Ordinance to Adopt Personnel Rules for County Employees during a Pandemic or Threatened Pandemic. Ms. Vedder reported that the Board Health adopted Resolution 35-2009 directing the Health Officer to exercise his statutory powers and duties in response to the H1N1 Pandemic in San Juan County, namely, Dr. Frank James. This Ordinance was reviewed and recommended for adoption by the San Juan County Board of Health and the San Juan County Health Officer as a means of authorizing the County Administrator to respond to a pandemic declared by the World Health Organization and protecting the health of County employees.

Ms. Vedder made one recommendation for a change on page 3, the definition of "Threatened pandemic event" to include "with active cases occurring in North America, United States, Canada and Mexico."

Discussion followed regarding the relationship between the Center for Disease Control and the World Health Organization, the tiers of authority, and the process for reporting.

Ms. Pratt asked that draft changes include making the Ordinance gender neutral.

**Moved by Myhr to send the draft Ordinance Adopting Personnel Rules for County Employees During a Pandemic or Threatened Pandemic to public hearing with the recommended changes by Ms. Vedder and Ms. Pratt. Pratt seconded. Carried unanimously**

Mr. Manning reported that there is widespread infection as follows: sporadic, localized, and generalized. WA State is considered generalized for H1N1, and San Juan County has implemented plans for absentees and in school situations, as well as helping parents.

**11:53 pm Executive Session:** Continuation of Acquisition of Real Property Pursuant to RCW 42.30.110 (carried over from September 21, 2009)

**12:00 PM RECESS FOR LUNCH**

**1:33 PM DISCUSSION: Law and Justice Budget Review**

1) **Superior Court** - John Linde, Superior Court Judge; 1) Clerk - Joan White, San Juan County Clerk; 3) Juvenile Court - Tom Kearney, Juvenile Court Administrator

**2:15 PM Law & Justice: District Court** - Stewart Andrew, District Court Judge; Marion Melville, District Court Administrator

**2:49 PM Law & Justice: Prosecutor, Coroner, Law Library, Crime Victims Fund** - Randall Gaylord, Prosecuting Attorney

**3:25 PM Law & Justice:** Sheriff, Jail, Emergency Management, Enhanced 911 Communications - Bill Cumming, San Juan County Sheriff

**3:44 PM ADJOURN**

**Tuesday, September 29, 2009 - Legislative Hearing Room, 55 Second Street, Friday Harbor, WA**

**10:00 AM      CALL TO ORDER**

Council Chair Peterson called the meeting to order at 10:02 a.m. and the flag salute was conducted. Council Members Howard (Howie) Rosenfeld, Bob Myhr, Lovel Pratt and Richard Fralick; County Administrator, Pete Rose; Clerk to the Council, Ingrid Gabriel; Deputy Clerk Maureen See; and interested members of the public were present.

**CITIZENS' ACCESS TIME**

Bill Wright addressed the Council regarding Department of Ecology (DOE) Grant.

Sharon Kivisto addressed the Council regarding Prosecuting Attorney's remodeling of the courthouse and release of the Risk in Solid Waste Report to the public.

**COUNCIL ADMINISTRATIVE MATTERS**

**Minutes:**

**Moved by Fralick to approve the Minutes of September 21 and 22, 2009 as corrected. Myhr seconded. Motion carried unanimously.**

**Consent Agenda:**

**Moved by Myhr to approve the Consent Agenda of September 29, 2009, as follows:**

- A. Resolutions/Ordinances:** (No items)
- B. Contracts/Agreements:** (No items)
- C. Budget Items:**

Approve 2009 Warrants signed by Auditor and County Administrator:

- Warrants #68648-68660 in the amount of \$4,016.93 for Medical Claims
- Warrants #68661-68759 in the amount of \$56,535.83 for County Claims
- Warrants #68760-68804 in the amount of \$40,822.09 for Public Works
- EFT #09162009 in the amount of \$6,135.91 for Public Works Excise
- Warrant #68917-69019 in the amount of \$444,148.52 for County Claims
- Warrants #69020-69067 in the amount of \$586,341.90 for Public Works

**D. Personnel:**

Approval of reorganization of MOU for Solid Waste Reorganization – Pam Morais, Human Resources Manager

**E. Appointments:**

**F. Correspondence:**

**G. Miscellaneous:**

1. Acceptance of Trail Easement Deed Donation on San Juan Island, Nishitani Property – Lincoln Bormann, Director Land Bank
2. Acceptance of Trail Easement Deed Donation on San Juan Island, Hurd Property – Lincoln Bormann, Director Land Bank.

**Knapp seconded. Motion carried unanimously.**

**COUNCIL MEMBER UPDATES**

Mr. Myhr asked about Oct 7th Agenda and if items could be accomplished on a different day. Mr. Peterson suggested that we may need that day for continued deliberation of the budget. Mr. Myhr noted that the Charter called for the Council to meet at least twice a month instead of three times per week. Mr. Fralick concurs.

**Ferries/FAC/Intermodal:** Mr. Rosenfeld reported that the Ferry Advisory Committee (FAC) has begun working with Washington State Ferries (WSF) on getting a late boat to Friday Harbor. The FAC is looking at the possibility of an express boat coming to Friday Harbor and are in discussion to try to solve the problem.

Mr. Myhr discussed the proposal to use an existing teleconferencing node on Orcas to connect to the hearing room so people could attend electronically. Mr. Walt Corbin on Orcas offered to pay half of \$2500.

Barbara Rosenkatter is unable to attend the October 6<sup>th</sup> Council meeting at 10:20 on discussion regarding Local Integrating Organization for the Implementation of the Puget Sound Partnership (PSP).

**Budget Subcommittee:** Milene Henley, Auditor, reported on cash update (-\$335,000) including payroll at end of month, but said that proceeds from sales tax or property tax have not been included.

**10:20 AM PUBLIC MEETING:** Formulate a response to the National Oceanographic and Atmospheric Association (NOAA) regarding the proposal for Whale Protection Rules (No Go Zone)

County Administrator Rose informed Council that NOAA has a meeting in Friday Harbor next on October 5th and suggested Council may want to attend. Council considered meeting with Town of FH Council prior to Oct 27<sup>th</sup> deadline for responses. Council received requested Marine Resource Committee (MRC) synopsis and the information was also put into letter form. The Economic Development Council (EDC) put together an economic analysis.

Mary Knackstedt, Coordinator of the Marine Resource Committee spoke to Council and summarized three parts of NOAAS proposed rules:

- 1) approach limit of 200 yards
- 2) prohibition against parking in path of a whale, 400 yards
- 3) No-Go Zone.

MRC formed a subcommittee to inform Council on recommendation to NOAA. The MRC and the subcommittee support elements 1 and 2, and thinks it's useful for NOAA to consider a speed limit to reduce noise impact to whales.

Enforcement is very important and it should be applied as fairly as possible to U.S., Canadian, tribal boats and commercial boats. Enforcement needs to be locally based and backed up by education.

MRC does not support a No-Go Zone and recommends that first two elements are acceptable, but would like a year to put together a plan for an alternative to a No-Go Zone.

Mr. Knapp suggested targeting a fully-funded enforcement plan first. Mr. Fralick pointed out that the existing NOAA rules have never been enforced.

Bill Watson, SJC Economic Development Council (EDC) addressed Council. He reported that a balanced and conservative analysis of NOAA regulations result in a 6.5 million dollar impact.

Mr. Myhr asked if NOAA cares about the economic impact of their decisions. Ms. Pratt asked about the economic impact of orcas extinction. Mr. Watson included total whale watch industry sale numbers in report (\$64 million statewide); not counting kayak industry, indicating that it would have a significant impact.

Mr. Peterson reminded attendees that the cost of enforcement was \$400,000 per season.

Mr. Rose provided a synopsis of Prosecuting Attorney Randall Gaylord's letter to Congressman Rick Larsen.

Dona Wuthnow, Director of San Juan County Parks and Recreation, addressed Council about development of launch fees. Wuthnow reported that there are 5000-6000 non-commercial launches that could be charged a fee at the No-Go Zone, but there will be associated costs. The education of kayakers with regards to approaching whales would be included.

Stephanie Buffum, Friends of the San Juans, addressed Council. Ms. Buffum objected that economic analysis is phrased in terms of “loss” – kayakers may make changes in travel plans and visit another area. Encourages Council to send a letter to Ms. Melanie Rollins, counsel to NOAA, in regards to Treaty and enforceability in San Juan County.

Mr. Myhr asked if Treaty could be a non-issue; Buffum agrees.

Mr. Peterson asked if Friends have a position on No-Go Zone. Ms. Buffum responded that the Friends are in agreement with MRC on NOAA proposed rules and encourages clarification on what exactly “enforcement” means.

Mark Anderson, Chairman and Founder of Orca Relief, addressed Council and said that the Council does not have power against Federal authority. He urged serious consideration of the sort of economic impact that the disappearance of orcas would make. Mr. Anderson recommended reading the Endangered Species Act and noting that it is illegal to pursue the southern resident orcas now that they are endangered. Mr. Anderson encouraged enforcement of all three elements of NOAAs Proposed Rules.

Mr. Rose asked Mr. Anderson to address distinctions between kayaks and motorized boats. Mr. Anderson responded that the least impact would be from kayaks, although there is no science. Sports fisherman probably have no or little impact, but a boat staying with a whale all day, all year has a negative impact.

Mr. Myhr asked how starvation ties in with salmon. Mr. Anderson said it has an impact, but the boats need to be addressed first.

Mr. Fralick asked that if we look at the impact of fishing, how it affects salmon and subsequently orcas. Mr. Anderson answered that it’s not as much of a problem that we compete with orcas for fish, but if they are deafened and the fish are chased away, they won’t thrive. Stationary noise is not a problem, but Mr. Anderson believes that the presence of a flotilla of boats that never leaves them is killing them.

Mr. Rosenfeld asked if a No-Go Zone will increase pressure on pods outside the zone. Mr. Anderson responded that the west side of the Island is a fish buffet, which makes it important to provide safety in that area.

Brian Goodremont with Pacific Whale Watch Association addressed the Council. Mr. Goodremont supports a slow-zone and adopting a 100-yard strictly enforced distance. He said that it will sufficiently mitigate negative effects of vessels. Also, adequately funding enforcement and a 7- knot slow-zone will further mitigate boating impact.

Mr. Fralick asked what the difference is between state laws and rules. Pacific Whale Watch Association has more stringent voluntary guidelines, and most watchers as well as Canadians are on board with the guidelines.

Mr. Myhr asked what happens when whales approach closer than a hundred yards. Mr. Goodremont said they remain shut down to protect the whale from a turning propeller, even though it’s in violation of state law.

Kari Koski of the Whale Museum addressed Council. She is concerned that if NOAA doesn’t grant another year for an alternative plan, no plan is currently in place and she offered a variety of suggestions. Another concern is that commercial operators are the major violaters, but a lot of private motorized boaters are impacting the orcas as well. A speed limit would cut down on dangers and she recommends a two hundred yard zone.

Mr. Fralick asked Ms. Koski about fines and enforcement. Ms. Koski agreed that a lower fine is desirable and recommended a tiered approach to fines.

Mr. Peterson noted that the County adopted the first ordinance in whale protection, which was copied by the State and then taken up by the Federal Government.

Cary Cooper with Soundwatch addressed Council and talked about their education program for kayakers through KELP.

Brian Endres, recreational sea kayaker, addressed the Council. Endres' main concern is that a No-Go Zone of a half-mile or quarter-mile could put the safety of kayakers at risk and asked for a clause for innocent passage.

Robin Jacobsen from the Visitors Bureau addressed the Council. San Juan Islands Visitors Bureau Board is preparing a response to NOAA proposal – Visitors Bureau takes the responsibilities of education regarding the marine environment seriously and supports MRC and enforcement.

Johannes Krieger, member of MRC, addressed the Council and reiterated the importance of true enforcement.

Ms. Pratt asks about science regarding kayaks, and Mr. Krieger responded that it's lacking and the quality is inconclusive.

Jenny Atkinson, Executive Director of the Whale Museum addressed the Council and supports Kari Koki's work with Soundwatch. She reiterated that the focus must remain on how vessels impact whales.

Public comment ended at 11:53 am.

Mr. Rosenfeld raised concern over waiting a year to formulate a plan and asked if it's conceivable for the community to make a plan within the requested 90 day extension from NOAA. NOAA is having a local meeting on Oct. 5 to take public comment from 7:00 to 9:00 at the Grange. Mr. Fralick suggested that the Council begin by taking the MRC report and putting down individual thoughts to bring back for discussion on Monday, Oct. 5<sup>th</sup> at 10:30.

Assistant Chair Fralick adjourns at 12:00 to reconvene at 2:00 PM

**12:00 PM RECESSED FOR LUNCH**

**2:01 PM DISCUSSION:** Health & Community Services Budget Review, John Manning, Health & Community Services (HSC), Director

Mr. Rose told Council that the budgets to be presented have a stake in the lid lift and reflect the impacts with and without the lift.

John Manning addressed the Council with the Health and Community Services Budget.

Mr. Manning responded to Mr. Myhr's question that without a lift, there would be two Senior Center Coordinators for the entire County and Lopez would only be partially served on a to-be-determined basis. The department assistant would be in a fixed location, while the two coordinators would move around. Mr. Myhr was concerned that a senior coordinator be dedicated on each of the major islands and considers the service on Lopez vital. A levy lid lift would allow for a senior coordinator at least four days on each island.

Mr. Peterson noted that the departments are being asked to provide two budgets (with and without lift), and a third alternative budget that is without a lift, but that projects changes within that budget.

**2:30 PM Community Services:** Community Development & Planning - John Manning, HCS Director

Health & Community Services: Mr. Manning discussed various grant programs and funding, and how personal health services, environmental health services and community services are funded.

**3:00 PM Community Services:** Parks & Recreation - Dona Wuthnow, Director

Donna Wuthnow presented the Parks Budget that included cuts in programs between 2008 and 2009 on each of the Islands. She discussed Volunteer-run Day Parks and various developments including Odlin barge landing and septic system at San Juan.

**3:30 PM Community Services:** WSU Extension; Noxious Weeds - Tom Schultz, Extension Director

Richard Lee discussed the budget and various areas where savings occurred in weed control.

Tom Schultz discussed WSU Extension budget and sources of funding.

**4:15 PM Community Services:** Fair - Rev Shannon, Fair Director

Rev Shannon presented budget and discussed staffing and Fairgrounds Activity Center, Facilities/Maintenance and Improvements.

**4:26 PM Community Services:** Land Bank - Lincoln Bormann, Land Bank Director

Lincoln Bormann presented budget Expenditure and Acquisition Plan for 2010.

**4:46 PM ADJOURN AND SIGN DOCUMENTATION:**

Council Chair Peterson adjourned the meeting at 4:46 p.m. The next regular meeting will be held on Monday, October 5, 2009.

\*\*\*\*\*

**COUNTY COUNCIL  
SAN JUAN COUNTY, WASHINGTON**

\_\_\_\_\_  
Rich Peterson, Chair  
District 2, San Juan North

ATTEST: Clerk of the Council

By: \_\_\_\_\_  
Ingrid Gabriel

\_\_\_\_\_  
Richard Fralick, Vice-Chair  
District 4, Orcas West/Waldron

\_\_\_\_\_  
Lovel Pratt, Member  
District 1, San Juan South

\_\_\_\_\_  
Howie Rosenfeld, Member  
District 3, Friday Harbor

\_\_\_\_\_  
Gene Knapp, Member  
District 5, Orcas East

---

Bob Myhr, Member  
District 6, Lopez/Shaw