

**MEETING MINUTES
SAN JUAN COUNTY (SJC), WASHINGTON
COUNTY COUNCIL
DECEMBER 3, 2012**

Legislative Hearing Room, Legislative Building, Friday Harbor

08:49 AM CALL TO ORDER OF SPECIAL MEETING

Council Chair Patty Miller called the meeting to order at 8:49 AM. Present: Council Members Howard (Howie) Rosenfeld, Rich Peterson, Patty Miller, Richard Fralick, Lovel Pratt and Jamie Stephens; Interim County Manager Bob Jean; Clerk to the Council Ingrid Gabriel and interested members of the public.

08:49 AM PUBLIC HEARINGS (continued from November 27, 2012):

At 8:49 AM, Ms. Miller opened the following public hearings to adopt all sections of the Critical Area Ordinance.

1. To Adopt an Ordinance Regarding General Regulations for Critical Areas; Amending San Juan County Code Sections 18.10.040, 18.20.010, 18.20.020, 18.20.030, 18.20.040, 18.20.060, 18.20.070, 18.20.080, 18.20.090, 18.20.110, 18.20.120, 18.20.130, 18.20.140, 18.20.160, 18.20.170, 18.20.180, 18.20.190, 18.20.200, 18.20.220, 18.20.230, 18.30.110, 18.80.010, 18.80.020, 18.80.070, and 18.80.090 and Adding a New Section to San Juan County Code 18.80 – Shireene Hale, Planning Coordinator; Jon Cain, Deputy Prosecuting Attorney
2. To Adopt an Ordinance Regarding Critical Area Regulations for Wetlands; Amending San Juan County Code Sections 18.10.040, 18.20.010, 18.20.020, 18.20.040, 18.20.070, 18.20.080, 18.20.090, 18.20.120, 18.20.130, 18.20.140, 18.20.170, 18.20.180, 18.20.190, 18.20.200, 18.20.230, 18.30.150, and 8.60.170; and Repealing Appendices A-C of SJCC 18.30.150 - Shireene Hale, Planning Coordinator; Jon Cain, Deputy Prosecuting Attorney
3. To Adopt an Ordinance Regarding the Critical Area Regulations for Fish and Wildlife Habitat Conservation Areas (FWHCA), Amending San Juan County Code Sections 18.10.040, 18.20, and 18.30.160 – Shireene Hale, Planning Coordinator; Jon Cain, Deputy Prosecuting Attorney
4. To Adopt an Ordinance Regarding Critical Area Regulations for Geologically Hazardous Areas and Frequently Flooded Areas; Amending San Juan County Code Sections 18.10.040, 18.30.120 and 18.30.130 – Shireene Hale, Planning Coordinator; Jon Cain, Deputy Prosecuting Attorney

Present: Full Council, Interim County Manager Bob Jean, Deputy Prosecuting Attorney Jon Cain, Planning Coordinator Shireene Hale, Clerk to the Council Ingrid Gabriel and interested members of the public.

After intermittent discussion with Staff and each other, the Council took the following actions:

08:52 AM

General Section:

- a. Moved by Mr. Fralick, seconded by Mr. Peterson to direct staff to use as a template the language that Ms. Miller put forward. VOTE 6:0; MOTION CARRIED.
- b. Moved by Mr. Fralick, seconded by Mr. Stephens to direct staff to change in Section 18.30.110 of page 48, letter “G” the word “limited” to “diminished” per Ms. Miller’s proposed change. VOTE 6:0; MOTION CARRIED.
- c. Moved by Mr. Fralick, seconded by Mr. Stephens to direct staff to add the words “legally established” in front of “structures” in letters “A” and “B” in section “G” in 18.30.110, G. VOTE 6:0; MOTION CARRIED.
- d. Moved by Mr. Fralick, seconded by Mr. Stephens to direct staff to renumber section “G”. VOTE 6:0; MOTION CARRIED.
- e. Moved by Mr. Fralick, seconded by Mr. Peterson to direct staff to add the words “legally established” in the title for “G” after ”existing” and in the 4th paragraph after the word “any”. VOTE 6:0; MOTION CARRIED.
- f. Moved by Mr. Stephens, seconded by Mr. Fralick to adopt the new language for section “G” and “H” as revised. VOTE 6:0; MOTION CARRIED.
- g. Moved by Mr. Fralick, seconded by Mr. Stephens to direct staff to adopt the WAC definition of “shoreline modifications” with the addition of the word “human” before “actions.” VOTE 6:0; MOTION CARRIED.
- h. Moved by Mr. Fralick, seconded by Mr. Peterson to direct staff to modify existing G ...VOTE 6:0; MOTION CARRIED.
- i. Moved by Ms. Miller, seconded by Mr. Stephens to direct staff to modify #2 on page 42 of 70 by removing the first words ”with the exception of the replacement of structural shoreline stabilization measures” and the last sentence in that paragraph and add a sentence that reads “existing structures uses and activities located within shorelines of the State are addressed separately as described in SJCC 18.30.110(b) above and 18.30.160.” VOTE 6:0; MOTION CARRIED.
- j. Moved by Ms. Miller, seconded by Mr. Peterson to direct staff to modify the reasonable use section as follows: “Private property shall not be taken for public use without just compensation having been made. The property rights of land owners shall be protected from arbitrary and discriminatory actions. The County shall evaluate proposed regulatory or administrative actions to assure that such actions do not result

in an unconstitutional taking of private property.” Also, at the end of the first paragraph in the reasonable use exception draft, add a sentence to read “Reasonable use shall be liberally construed to protect the constitutional rights of the applicant.” VOTE 6:0; MOTION CARRIED.

k. Moved by Ms. Pratt, seconded by Ms. Miller to direct staff to add the following to Section 30 of the General Section: “This ordinance is intended to be read together with Ordinance 25-2012. If both ordinances amend the definition of the same word, this ordinance should be used.” VOTE 6:0; MOTION CARRIED.

11:11 AM

Wetlands Section:

a. Moved by Ms. Miller, seconded by Mr. Peterson to direct staff to modify letter “W” on page 7 second sentence to read: Thus, it is not possible to provide the same specificity of variable buffer sizes that would be essential to sustain viable populations of San Juan County plants or animal species. Therefore, guidance was provided by the County’s wetlands specialist. VOTE 6:0; MOTION CARRIED.

b. Moved by Ms. Miller, seconded by Mr. Stephens to direct staff to replace the aspen and cottonwood wetland definition on page 12 with the definition provided by Scott Rozenbaum: Aspen of cottonwood wetland means a stand of five or more black cottonwood (*Populus balsamifera*) trees growing inside a wetland and being greater than 15 inches diameter at breast height (dbh), within 40 feet of another cottonwood tree, that forms a cottonwood stand or grove, whose canopy cover is greater than 0.1 acre in size, OR a stand (no specific stem or trunk count) of trembling aspen (*Populus tremuloides*) trees, with aspen trunks located within 40 feet of another tree in the stand, and the stand having a minimum size of 0.25 acre. VOTE 6:0; MOTION CARRIED.

c. Moved by Ms. Pratt, seconded by Ms. Miller to direct staff to add on page 13 definition 9 after .25 acres “when measured.” VOTE 6:0; MOTION CARRIED.

d. Moved by Mr. Stephens, seconded by Ms. Miller to direct staff to remove last sentence from paragraph “D” on page 16 and replace it with “Regulated wetland mosaics greater than 2500 square feet collective or cumulative wetland area are not exempt.” VOTE 5:0:1 (Peterson abstained); MOTION CARRIED.

e. Moved by Ms. Miller, seconded by Mr. Peterson to direct staff to delete second paragraph in letter “D” on page 16. VOTE 4:2 (Rosenfeld, Pratt opposed); MOTION CARRIED.

f. Moved by Ms. Miller, seconded by Mr. Peterson to direct staff to increase the low habitat important sensitivity wetland minimum size threshold from 2500 to 4000 square feet. VOTE 2:4; (Rosenfeld, Stephens, Pratt, Fralick opposed); MOTION FAILED.

g. Moved by Ms. Miller, seconded by Mr. Stephens to direct staff to modify on page 25, Table 3.7 Tree Protection Zone the 5 trees to 10 trees, the 70 feet to 50 feet, twice, and

add the following words in the first sentence after the word “height”: ...and more than 9 inches (dbh).” VOTE 6:0; MOTION CARRIED.

12:15 PM RECESS FOR LUNCH

01:20 PM RESUME PUBLIC HEARINGS:

h. Moved by Mr. Fralick, seconded by Ms. Miller to direct staff to insert in the General Section, page 51, Section 23 “A” and page 57, Section 24 “B”, “any fee assessed for such a pre-application conference and site inspection shall be fully refunded upon submission of a permit application.” VOTE 6:0; MOTION CARRIED.

k. Moved by Mr. Peterson, seconded by Ms. Miller to direct staff to replace “H” in the Fish and Wildlife Habitat Conservation Area Section (FWHCA) with alternative language as proposed by Mr. Peterson. VOTE 1:5 (Rosenfeld, Stephens, Miller, Pratt, Fralick opposed); MOTION FAILED.

l. Moved by Ms. Miller, seconded by Mr. Rosenfeld to direct staff to add in the General Section, page 49 of 70, letter “G1”, a new letter “C” to read “Risk to people and property will not be increased.” VOTE 6:0; MOTION CARRIED.

03:02 PM

Fish and Wildlife Habitat Conservation Areas Section (FWHCA):

m. Moved by Ms. Miller, seconded by Mr. Peterson to direct staff to modify Table 3.12 to remove any reference to “requirements” and reference all as “recommendations” in FWHCA Section. VOTE 3:3 (Rosenfeld, Fralick, Pratt opposed); MOTION FAILED.

n. Moved by Ms. Miller, seconded by Mr. Peterson to direct staff to modify Step One in Figure 3.2 on page 16 of the FWHCA Section to change 205’ to 125’, and anywhere else in the ordinance as necessary to correct any error. VOTE 6:0; MOTION CARRIED.

o. Moved by Ms. Miller, seconded by Mr. Peterson to direct staff to modify Table 3.9 on page 18 first row to add “...designated FWHCA after ‘marine waters’.” VOTE 6:0; MOTION CARRIED.

p. Moved by Ms. Pratt, seconded by Ms. Miller to direct staff to change on page 16 of the FWHCA Section, Figure 3.2, Step 2, 125’ to 200’. VOTE 6:0; MOTION CARRIED.

q. Moved by Ms. Miller, seconded by Ms. Pratt to direct staff to clarify in the FWHCA Section distances from ordinary high water marks as modified. VOTE 6:0; MOTION CARRIED.

r. Moved by Ms. Pratt, seconded by Mr. Rosenfeld to direct staff to amend Table 3.13 of FWHCA Section under Gerry Oaks and insert the words “and authorized in tree protections zones” after “encouraged.” VOTE 6:0; MOTION CARRIED.

s. Moved by Mr. Peterson, seconded by Ms. Miller to direct staff on FWHCA Section page 35 and page 36 in table 3.13 under bluff-backed and pocket beaches, to replace the words “where possible, remove...” with “encourage removal of” VOTE 4:2 (Pratt, Rosenfeld opposed); MOTION CARRIED.

03:49 PM DISCUSSION: Conformance and Consistency with Comprehensive Goals and Policies - Shireene Hale, Planning Coordinator; Jon Cain, Deputy Prosecuting Attorney

After discussion, the Council took the following actions:

a. Moved by Ms. Pratt, seconded by Ms. Miller to direct staff to add paragraph 4 from the November 27, 2012 Gateway Pacific Terminal letter to the “Economy” section of Critical Areas Comprehensive Plan document:

San Juan County’s economy is inextricably connected to the beauty of its environment and the health of its ecosystems. Many islanders depend upon a healthy and sustainable salmon fishery and Orcas population. Jobs are directly tied to commercial and recreational fishing and shellfish farming. The tourist industry is the engine that runs our economy. People come to the San Juan Islands from all over the world to enjoy the beautiful environment and to see birds and sea life.

VOTE 6:0; MOTION CARRIED.

b. Moved by Ms. Miller, seconded by Ms. Pratt to direct staff to add under Agricultural Resource Lands “provisions are included throughout the ordinances to allow for the continuation of existing agricultural activities and the creation and expansion with Best Management Practices. VOTE 6:0; MOTION CARRIED.

c. Moved by Ms. Miller, seconded by Mr. Stephens to add the statement under Resource Lands that read “Activities under forest practices have been addressed by reference to the State forest practices regulations.” VOTE 6:0; MOTION CARRIED

d. Moved by Ms. Miller, seconded by Ms. Pratt to direct staff to add in Section 6 Transportation Element “The County plans to update our transportation element in the near future. Addressing storm water runoff or pollutants from roads and road designs to address sea-level rise should be considered in that update.” VOTE 6:0; MOTION CARRIED.

e. Moved by Ms. Pratt, seconded by Mr. Rosenfeld to direct staff to adopt the Evaluation of Draft Critical Area Regulations for Conformance with Applicable Comprehensive Plan Goals and Policies as amended for the record. VOTE 6:0; MOTION CARRIED.

f. Moved by Mr. Fralick, seconded by Ms. Pratt to direct staff to ensure each ordinance includes the following statement: After considering the evidence in the record and adopting an evaluation of consistency with the Comprehensive Plan, the County Council approved the ordinance. VOTE 6:0; MOTION CARRIED.

g. Moved by Mr. Fralick, seconded by Mr. Stephens to adopt General Regulations for Critical Areas; Amending San Juan County Code Sections 18.10.040, 18.20.010, 18.20.020, 18.20.030, 18.20.040, 18.20.060, 18.20.070, 18.20.080, 18.20.090, 18.20.110, 18.20.120, 18.20.130, 18.20.140, 18.20.160, 18.20.170, 18.20.180, 18.20.190, 18.20.200, 18.20.220, 18.20.230, 18.30.110, 18.80.010, 18.80.020, 18.80.070 AND 18.80.090 and Adding a New Section to San Juan County Code 18.80 as amended. VOTE 5:1 (Peterson opposed); MOTION CARRIED.

h. Moved by Ms. Pratt, seconded by Mr. Stephens to Adopt an Ordinance Regarding Critical Area Regulations for Geologically Hazardous Areas and Frequently Flooded Areas; Amending San Juan County Code Sections 18.10.040, 18.30.120 and 18.30.130 as amended. VOTE 6:0; MOTION CARRIED.

i. Moved by Mr. Rosenfeld, seconded by Mr. Stephens to Adopt an Ordinance Regarding Critical Area Regulations for Wetlands; Amending San Juan County Code Sections 18.10.040, 18.20.010, 18.20.020, 18.20.040, 18.20.070, 18.20.080, 18.20.090, 18.20.120, 18.20.130, 18.20.140, 18.20.170, 18.20.180, 18.20.190, 18.20.200, 18.20.230, 18.30.150, and 8.60.170; and Repealing Appendices A-C of SJCC 18.30.150 as amended. VOTE 5:1 (Peterson opposed); MOTION CARRIED.

j. Moved by Mr. Stephens, seconded by Mr. Rosenfeld to adopt an Ordinance Regarding the Critical Area Regulations for Fish and Wildlife Habitat Conservation Areas (FWHCA), Amending San Juan County Code Sections 18.30.160 as amended. VOTE 5:1 (Peterson opposed); MOTION CARRIED.

Ms. Miller adjourned the meeting at 5:00 PM.

05:00 PM ADJOURN AND SIGN DOCUMENTATION

**COUNTY COUNCIL
SAN JUAN COUNTY, WASHINGTON**

These Minutes were approved and signed on December 18, 2012. The original document is retained in the Council's permanent proceedings file. Attest: Ingrid Gabriel, Council Clerk.