

ORDINANCE NO. 376-2007

ORDINANCE REGARDING GROWTH MANAGEMENT,
REVISIONS TO TITLE 19 (CRITICAL AREAS)

BE IT ORDAINED:

Section 1. General Findings. The Kitsap County Board of Commissioners makes the following findings:

1. On December 1, 2005, the Kitsap County Board of Commissioners (Board) adopted Ordinance 351-2005, enacting new amendments to the 1998 Kitsap County Critical Areas Ordinance.
2. In February 2006, appeals were filed with the Central Puget Sound Growth Management Hearings Board (CPSGMHB) challenging various provisions of the 2005 Critical Areas Ordinance (CAO). In one appeal, the Hood Canal Environmental Council and others asserted that Kitsap County's CAO provided inadequate protection for wetlands and marine shorelines. In another appeal, Kitsap Alliance of Property Owners and others asserted that Kitsap County's CAO was too restrictive. The CPSGMHB consolidated these appeals into one: *Hood Canal v. Kitsap County*, CPSGMHB Case No. 06-3-0012c.
3. On August 28, 2006, the CPSGMHB issued its Final Decision and Order denying Kitsap Alliance of Property Owners' appeal, but granting Hood Canal Environmental Council's appeal, and remanding the challenged wetland and shoreline provisions back to Kitsap County. *Hood Canal v. Kitsap County*, CPSGMHB Case No. 06-3-0012c, Final Decision and Order (August 28, 2006). The CPSGMHB determined that Kitsap County's exemption of small, isolated Category III and Category IV wetlands under a certain size was not compliant with the Growth Management Act (GMA) and the Best Available Science (BAS) in Kitsap County's record. The CPSGMHB also determined that Kitsap County's 35-foot buffers on marine shorelines designated Urban, Semi-Rural, and Rural were not compliant with the GMA because they were not supported by the BAS in Kitsap County's record.

Section 2. Procedural Findings. The Kitsap County Board of Commissioners makes the following findings regarding the process and public participation aspects for amending Kitsap County's Critical Areas Ordinance (CAO):

1. Between September and December 2006, the Kitsap County Department of Community Development reviewed the record established during the 2005 CAO update for the Best Available Science related to the remand issues.
2. In December 2006, Kitsap County Staff developed and published a work plan to amend the 2005 CAO and achieve compliance as ordered by the CPSGMHB.

3. On December 11, 2006, following timely and effective public notice, the Kitsap County Board of Commissioners (Board) held a work-study session to discuss and review and proposed work plan, the remand issues, and various options for amending the CAO to achieve compliance.
4. On December 19, 2006, following timely and effective public notice, the Kitsap County Planning Commission (Planning Commission) held a work-study session to discuss and review the proposed work plan, the remand issues, and various options for amending the CAO to achieve compliance.
5. On December 28, 2006, Kitsap County Staff issued a memo to the Planning Commission explaining the background of the proposed changes and identifying the proposed changes to the CAO for the Planning Commission's consideration. This memo was posted to the County's website, mailed to all interested parties, and made available to the public.
6. On January 9, 2007, following timely and effective public notice, the Planning Commission held a public hearing from 6:30-10:00 PM to hear public testimony on the proposed amendments. Over 150 citizens attended and were invited to comment orally and in writing. The Planning Commission held the comment period open to allow for the submittal of additional comments prior to their scheduled deliberations.
7. On January 19, 2007, Kitsap County Staff issued a memo to the Planning Commission summarizing the status of the remand effort and transmitting key items of Best Available Science that were identified and relied upon by the CPSGMHB in their remand order. This memo was posted on the County's website and made available to the public, along with its attachments.
8. On January 22, 2007, following timely and effective notice, the Board of County Commissioners held a public afternoon briefing session at which the Board was apprised of the status of the remand effort and the upcoming Planning Commission deliberations.
9. On January 23, 2007, following timely and effective public notice, the Planning Commission began deliberations on the proposed amendments. This public meeting was continued to January 26, 2007, at which time the Planning Commission concluded their deliberations and voted on recommendations to the Board.
10. On February 7, 2007, Kitsap County Staff issued memo to the Board of County Commissioners summarizing the recommendations to the CAO voted on by the Planning Commission. This summary was posted to the County's website, mailed to all interested parties, including the Planning Commission, and made available to the public.
11. On February 8, 2007, Kitsap County Staff issued a Fact Sheet clearly comparing the existing CAO provisions with the proposed changes to the CAO and answering common questions asked by the public.

12. On February 12, 2007, following timely and effective public notice, the Board of County Commissioners held a public hearing to hear public testimony on the proposed amendments, taking into account the recommendations of the Planning Commission and the recommendations of Kitsap County Staff. The Board held the comment period open to allow for the submittal of additional comments prior to their scheduled deliberations.
13. On February 13, 2007, the Planning Commission formally adopted its Findings of Facts explaining the rationale for its recommendations.
14. On February 14, 2007, the Board of County Commissioners began deliberations on the proposed amendments, as recommended by the Planning Commission and Kitsap County Staff. The public meeting was continued to February 21, 2007 to have additional time to review the record. It was then continued to February 26, 2007, the Board's regular Monday morning public meeting that is televised, to ensure greater public dissemination. The Board is aware that this is one business day past the deadline set by the Growth Board. However, the Board felt it was very important to make its decision at a televised meeting given the affect of these changes throughout the County. At the February 26, 2007 meeting, the Board voted to adopt changes to the 2005 CAO in accordance with the remand order.

Section 3. General Substantive Findings. The Kitsap County Board of Commissioners makes the following substantive findings regarding the amendments to Kitsap County's Critical Areas Ordinance (CAO):

1. Pursuant to RCW 36.70A.172, and WAC 365-195-900 through -925, the following amendments to the CAO are based on and supported by BAS. These amendments protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.
2. By removing the wetland exemptions identified by the CPGMHB and by requiring mitigation for functions impacted by development, Kitsap County is protecting all functions and values of each identified wetland. No wetland function will be lost.
3. By increasing the buffers for marine shorelines Kitsap County is protecting the full range of the applicable functions and values that are present in the critical area. Kitsap County chose not to, at least not at this time, differentiate among the various resources within the marine shoreline, the County is committed to conducting a nearshore habitat assessment in the near future to be able to more specifically understand and protect these resources.

Section 4. Kitsap County Code Section 19.200.210, last amended by Ordinance 351-2005, is amended as follows:

A. General

1. Wetlands are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do

support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, estuaries, marshes, bogs, and similar areas. For regulatory purposes, wetland delineations shall be determined by the Washington State Wetlands Identification and Delineation Manual, March 1997, or as amended hereafter.

2. Kitsap County uses the Washington Department of Ecology Washington State Wetland Rating System for Western Washington, revised 2004, or as amended hereafter, to categorize wetlands for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. Wetlands shall be generally designated as follows:

B. Regulated Wetlands. (See Chapter 19.800 Appendix A for more detailed description).

1. Category I Wetlands: Category I wetlands are those regulated wetlands that include but are not limited to rare, unique wetland types that are more sensitive to disturbance than most wetlands and that contain ecological attributes that are impossible to replace within a human lifetime. Category I wetlands score 70 points or more out of 100 on the wetlands ratings systems.
2. Category II Wetlands: Category II wetlands are those regulated wetlands that score between 51-69 points out of 100 on the wetlands ratings system.
3. Category III Wetlands: Category III wetlands are those regulated wetlands, ~~2,500 square feet or greater~~, that score between 30-50 points on the wetlands ratings system. Activities affecting isolated, non-mosaic Category III wetlands that are less than 2,500 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.
4. Category IV Wetlands: Category IV wetlands are those regulated wetlands, ~~7,500 square feet or greater~~, that score less than 30 points out of 100 on the wetlands ratings system. Activities affecting isolated, non-mosaic Category III wetlands that are less than 2,500 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.
5. Wetlands intentionally created from non-wetland areas to mitigate conversion of other wetlands.
6. Mosaic wetlands as defined at 19.150.695.

C. Non-Regulated Wetlands.

- ~~1. Category III Wetlands: Isolated wetlands less than 2,500 square feet.~~
- ~~2. Category IV Wetlands: Isolated wetlands less than 7,500 square feet.~~

- 3.—Created Wetlands: Wetlands created intentionally from a non-wetland site that were not required to be constructed as mitigation for adverse wetland impacts. These may include, but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment ponds, farm ponds not contiguous, as defined in this title, and landscape amenities.

D. Criteria for Determining Wetlands Divided by a Manmade Feature.

1. When a wetland is divided by a manmade feature (e.g., a road embankment), the wetland shall be rated as if it is not divided, if there is a perennial or intermittent surface water connection between the two wetlands and either of the following criteria is met:
 - a. It can be demonstrated that the separate wetlands were one discrete wetland prior to construction of the manmade feature. This may be accomplished through an analysis of secondary information such as aerial photographs and soils maps; or
 - b. The two separated wetlands can be shown to function as one wetland. This shall be determined based on normal conditions (i.e., in the absence of unauthorized activity, the wetlands possess similar vegetative or wildlife assemblages or hydrologic regime).
2. Separated wetland areas may be rated jointly in the absence of a perfectly level culvert where it can be demonstrated that a level surface water connection is present within the culvert that permits flow of water, fish, or other organisms in both directions. Separated wetland areas may also be rated jointly in the absence of a perfectly level culvert with two-way water flow if the bottom of the culvert is below the high water marks in the receiving wetland or if the high water marks on either side differ by six inches or less in elevation.
3. Connecting Mosaic Pattern Wetlands. In cases where the wetlands to be categorized are smaller than one acre in size and separated from each other by 100 feet or less (on average), the DOE mosaic methodology shall be used to determine the wetland category. The area of the wetlands must be greater than 50 percent of the total combined area of wetland and upland for the patchwork to be categorized as one wetland. The boundary of the mosaic wetlands must reflect the ecological interconnectedness of the wetlands within the mosaic. The County will not accept mosaic boundaries drawn to minimize the area of wetland within the mosaic.

Section 5. Kitsap County Code Section 19.300.315(A), last amended by Ordinance 351-2005, is amended as follows:

A. Buffers and Building Setbacks.

1. Buffers. Buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Buffers shall be

maintained along the perimeter of fish and wildlife habitat conservation areas, as listed in Table 19.300.315. Refuse shall not be placed in buffers.

Table 19.300.315: Fish and Wildlife Habitat Conservation Area Development Standards			
Streams			
Water Type	Buffer Width	Minimum Building Setback	Other Development Standards
S Segments of Big Beef Creek, Curley Creek, Chico Creek, Burley Creek, Union River, Blackjack Creek and Tahuya River	200 feet	15 feet beyond buffer	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologically Hazardous Areas). Where such features occur on site, the more restrictive buffer or building setback shall apply.
F	150 feet	15 feet beyond buffer	
Np	50 feet	15 feet beyond buffer	
Ns	50 feet	15 feet beyond buffer	
Saltwater Shorelines and Lakes			
Shoreline Designation¹	Buffer Width	Minimum Building Setback	Other Development Standards
<u>Urban</u>	<u>50 feet</u>	<u>15 feet beyond buffer</u>	Where applicable, refer to the development standards in Chapters 19.200 (Wetlands) and 19.400 (Geologically Hazardous Areas). Where such features occur on site, the more restrictive buffer or building setback shall apply.
Urban, Semi-Rural and Rural shorelines and Lakes less than 20 acres	<u>35 feet</u> <u>100 feet</u>	15 feet beyond buffer	
Conservancy	50 feet	15 feet beyond buffer	
Natural	100 feet	15 feet beyond buffer	
Wildlife Habitat Conservation Areas			
Class I	Buffer widths and setbacks will be determined through a mandatory Habitat Management Plan (HMP)		

Table 19.300.315: Fish and Wildlife Habitat Conservation Area Development Standards

Class II	Site-specific conditions will determine the need for the preparation of a HMP
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¹as defined in Title 22 Kitsap County Code (Shoreline Management Master Program)

2. Buffer Measurement. Distances shall be measured from the ordinary high water mark (OHM) or from the top of the bank where the OHM cannot be identified. Buffers shall be retained in their natural condition. It is acceptable, however, to enhance the buffer by planting indigenous vegetation, as approved by the department. Alteration of buffer areas and building setbacks may be allowed for development authorized by Section 19.100.140 (Reasonable Use Exception), Section 19.100.125 (Exemptions), Section 19.100.130 (Standards for Existing Development) or Section 19.100.135 (Variances). The buffer width shall be increased to include streamside wetlands, which provide overflow storage for stormwaters, feed water back to the stream during low flows or provide shelter and food for fish. In braided channels, the ordinary high water mark or top of bank shall include the entire stream feature.

3. Buffer Widths and Setbacks for Shorelines. The building setback or buffer width for new development shall be based on the Kitsap County Shoreline Management Master Program environment designation, or as required by Chapter 17.450, (View Blockage Requirements), as now or hereafter amended, whichever is greater. (Note: Setbacks for Conservancy-Public Lands to be determined by the Kitsap County Shoreline Management Master Program.)

4. Provision for Decreasing Buffer.
 - a.—In lieu of going through the formal variance process, an administrative reduction to buffer widths for streams, except for urban, conservancy and natural shorelines, may be granted subject to the requirements of this section. Where an applicant demonstrates pursuant to the variance criteria that buffer widths cannot be met, a habitat management plan (HMP) will be required that shall meet the requirements as described in Chapter 19.700 (Special Reports). The department may decrease the buffer if, after consultation with the Washington State Department of Fish and Wildlife, and review of the HMP, the department determines that conditions are sufficient to protect the affected fish and wildlife habitat conservation area. The department may reduce the buffer width by up to fifty percent for construction of a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet. Administrative buffer reductions may be allowed for rural, semi-rural shoreline environments and lakes less than 20 acres where a vacant parcel has a common property line with two or more lots which abut the ordinary high water line and which are developed with structures. In these cases, the standard buffer may be reduced to the greater of 50 feet or the average of the standard buffer and setbacks of the structures on the adjacent properties. All other

Reductions of greater than twenty-five percent for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800 Appendix F). Granting of a reduced buffer shall be the minimum necessary for the permitted use. When applicable, the order of sequence for buffer reductions shall be as follows:

- i. Use of buffer averaging, maintaining one hundred percent of the buffer area under the standard buffer requirement;
- ii. Reduction of the overall buffer area by no more than twenty-five percent of the area required under the standard buffer requirement;
- iii. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;
- iv. Use of alternative on-site wastewater systems in order to minimize site clearing;
- v. Infiltration of stormwater where soils permit; and,
- vi. Retention of native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.

~~b. Only stream buffers are eligible for administrative buffer reductions.~~

5. Provision for Increasing Buffer. The department may increase the buffer width whenever a development proposal has known locations of endangered or threatened species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species, or when the buffer is located within a landslide or erosion hazard area.
6. Buffers for Streams in Ravines. For streams in ravines with ravine sides ten feet or greater in height, the buffer width shall be the minimum buffer required for the stream type, or a buffer width that extends twenty-five feet beyond the top of the slope, whichever is greater.
7. Channel Migration Zones. In areas where channel migration zones occur outside of Urban Growth Areas (as of the date of the adoption of this title), the buffer distance shall be measured from the edge of the channel migration zone.
8. Protection of Buffers. Buffer areas shall be protected as required by the department. The buffer shall be identified on a site plan and filed as an attachment to the notice as required by Section 19.100.150 (Critical Area and Buffer Notice to Title).
9. Building or Impervious Surface Setback Lines. A building or impervious surface setback line of 15 feet is required from the edge of any fish and wildlife habitat conservation area buffer. Minor structural or impervious surface intrusions into the areas of the setback may be permitted if the department determines that such intrusions will not adversely

impact the fish and wildlife habitat conservation area. The setback shall be identified on a site plan and filed as an attachment to the notice as required by Section 19.100.150 (Critical Area and Buffer Notice to Title).

10. Buffer and Building Setbacks for Water Dependent Activities: The department may allow an administrative alteration to the required buffer and building setback for water dependent activities when no other reasonable or practicable alternative exists and the development is consistent with the Kitsap County Shoreline Management Master Program. Any alteration of a buffer or building setback shall be the minimum necessary and shall require an approved habitat management plan which identifies and adequately protects any affected fish and wildlife habitat conservation area.

Section 6. The provisions in this Ordinance were adopted at the Kitsap County Board of Commissioners public meeting on February 26, 2007 and became effective upon that date.

Section 7. If any sentence, section, provision, or clause of this ordinance or its application to any person, entity or circumstance is for any reason held invalid or unconstitutional, the remainder of the ordinance, or the application of the provision to other persons, entities, or circumstances is not affected.

Section 8. Should any amendment to Kitsap County Code Title 19 that was passed by the Board during its deliberations be inadvertently left out, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board.

DATED this 26th day of Feb, 2007.



ATTEST:

Opal Robertson
Opal Robertson
Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON**

Chris Endresen

CHRIS ENDRESEN, Chair

VOTED NO

JAN ANGEL, Commissioner

Josh Brown

JOSH BROWN, Commissioner

Approved as to form:

Deputy Prosecuting Attorney
Deputy Prosecuting Attorney

NOTICE OF ADOPTION

NOTICE IS HEREBY GIVEN that the Kitsap County Board of Commissioners on **February 26, at 10:00 AM** in its Chambers, County Administrative Building, 619 Division Street, Port Orchard, Washington, adopted and enacted **Ordinance 376-2007, REGARDING GROWTH MANAGEMENT, REVISIONS TO TITLE 19 (CRITICAL AREAS)**. A summary of the ordinance is as follows:

Section 1 includes General Findings of Fact made by the Kitsap County Board of County Commissioners regarding the revisions to the 2005 Critical Areas Ordinance based on the remand by the Central Puget Sound Growth Management Hearings Board (CPSGMHB) and compliance with the Growth Management Act.

Section 2 includes General Procedural Findings of Fact pertaining to the process and public participation aspects for the revisions to the CAO based on the remand by the CPSGMHB and compliance with the Growth Management Act.

Section 3 includes General Substantive Findings of Fact relating to text amendments to the CAO based on the remand by the CPSGMHB and compliance with the Growth Management Act.

Section 4 adopts revisions to Kitsap County Code Section 19.200.210 relating to regulating small, isolated Category III and IV wetlands.

Section 5 adopts revisions to Kitsap County Code Section 19.300.315 relating to adjusting shoreline buffers in urban, semi-rural and rural shorelines and lakes under twenty acres and modifying the associated provisions for adjusting buffer widths.

The full text of the ordinance will be sent upon request. Any additional information on the documents referenced above can be inspected or obtained by visiting the Department of Community Development located at 614 Division St. Port Orchard, or by contacting the Community Planning Division of the Department of Community Development at (360) 337-7181.

Publication Date: March 3, 2007
THE KITSAP NEWSPAPER GROUP

Notice of Adoption
To: PAPER 2/28/07
✓ CAROLYN
Publish: 3/3/07

NOTICE OF PUBLIC HEARING AND PROPOSED ORDINANCE ADOPTION

NOTICE IS HEREBY GIVEN that the Kitsap County Board of Commissioners will hold a public hearing on Monday, **February 12, 2007 at 6:30 PM** at the **Kitsap County Administration Building, 619 Division Street, Port Orchard WA 98366** to consider adopting amendments to an **Ordinance**, RELATING TO GROWTH MANAGEMENT, AMENDING TITLE 19 (**CRITICAL AREAS**) OF KITSAP COUNTY CODE. A summary of the proposed amendments is as follows:

Section 1 includes findings of fact pertaining to the revisions to the CAO based on the remand by the Central Puget Sound Growth Management Hearings Board (CPSGMHB).

Section 2 includes findings of fact pertaining to the process and public participation aspects for the revision to the CAO based on the remand by the CPSGMHB.

Section 3 includes substantive findings relating to text revision to the CAO based on the remand by the CPSGMHB.

Section 4 proposes revisions to Kitsap County Code Section 19.200.210 relating to regulating small, isolated Category III and IV wetlands.

Section 5 proposes revisions to Kitsap County Code Section 19.300.315 relating to adjusting shoreline buffers in urban, semi-rural and rural shorelines and lakes under twenty acres, and modifying the associated provisions for adjusting buffer widths.

The Kitsap County Planning Commission will be preparing their recommendations on this Ordinance for consideration by the Board of County Commissioners.

The full text of the ordinance will be sent upon request. Any additional information on the document referenced above can be inspected or obtained by visiting the Department of Community Development located at 614 Division St., Port Orchard, contacting the Natural Resources Division at (360) 337-4558 or by visiting the Kitsap County web page at www.kitsapgov.com/dcd/.

ALL THOSE INTERESTED are welcome to attend.
Opal Robertson, Clerk of the Board

Kitsap County does not discriminate on the basis of disability. Individuals who require accommodations at this meeting or who require this information in a different format should contact the ADA Coordinator at (360) 337-7146 (voice) or (360) 337-7275 (TDD) or (800) 816-2782. Please provide five business days notice for accommodations, if possible.

Publication Date: **January 31, 2007**
THE KITSAP NEWSPAPER GROUP



10:00 A

Kitsap County Board of Commissioners

Department: Department of Community Development

Staff Contact: Patty Charnas, Natural Resources Manager X 455 8 Initials: _____

Title: Critical Areas Ordinance Revisions based on Remand Order

Recommended Action: Take public testimony on February 12, 2007, review Planning Commission's recommendations, and adopt revisions to the Critical Areas Ordinance based on the remand by the Central Puget Sound Growth Management Hearings Board (CPSGMHB) on or before February 23, 2007.

Summary: Kitsap County adopted updates and revisions to its CAO on December 1, 2005. In February 2006, the CAO was challenged by two groups, one representing environmental interests and one representing property rights. On August 28, 2006, the Growth Board affirmed the County on all but two narrow issues, which it remanded back to Kitsap County. One issue dealt with certain wetland exemptions, the other with certain shoreline buffers. The rest of the ordinance is valid and not a part of this remand effort. The Growth Board gave the County until February 23, 2007 to take legislative action to bring the CAO into compliance with the Growth Management Act.

On Friday, January 26, 2007, the Planning Commission completed deliberations on their recommendations to revise the Critical Areas Ordinance (CAO) based on the remand by the CPSGMHB (Growth Board). The Planning Commission recommended all of the proposed staff revisions to the CAO and added two items of their own, as shown in the attachment.

Attachment:

- 1) Draft CAO Revisions and Planning Commission Recommendations

Fiscal Impact

Expenditure Required (for this specific action): None

Total Cost (including all related costs): Unknown

Related Revenue: N/A

Cost Savings: None

Net Fiscal Impact: Unknown

Source of Funds : General Fund

Clearances

Affected Departments	Department Representative
Department of Community Development	Patty Charnas, Natural Resources Manager

Attachment

Port Orchard Independent
P.O. Box 27, Port Orchard, WA 98366
360-876-4414

FILE

Affidavit of Publication

STATE OF WASHINGTON }
COUNTY OF KITSAP } SS

Rich Peterson being first duly sworn, upon oath deposes and says: that (s)he is the publisher of the Port Orchard Independent, a twice-weekly newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a twice weekly newspaper in Port Orchard, Kitsap County, Washington and is and always has been printed in whole or part in the Port Orchard Independent, Central Kitsap Reporter, North Kitsap Herald, and Bainbridge Island Review and the Bremerton Patriot and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Kitsap County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of County Ordinances - ORD 276-2007 (PC9416) as it was published once a week in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 03/03/07 and ending on 03/03/07 and that said newspaper was regularly distributed to its subscribers during all of said period. The amount of the fee for such publication is \$28.88 which has been paid in full.

Rich Peterson

Subscribed and sworn before me on this
3rd day of March,
2007.

Janis E. French

Notary Public in and for the State of Washington, residing in Port Orchard, Washington.

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Date of publication: 03/03/07 (PC9416)



ORD-376-07

Affidavit of Publication

STATE OF WASHINGTON }
COUNTY OF KITSAP } ss

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The amount of the fee for such publication is \$28.88 which has been paid in full.

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Date of publication:
03/03/07
(PC9416)

COPIES INDIVIDUALLY
ADDRESSED TO ALL
THREE (3)

2-11-07 FEB 21 2007

Dear Recipients,

I am writing to you to express
my view on the waterfront
buffer.

I strongly oppose this
plan to change from 35'
to 100'.

Thank you,

Margaret Sumlin
2501 E. Pliny Bay Pl.
Bremerton, WA. 98312

Copy: OPAL ROBERTSON
CHRISTINA LINDER

RECEIVED AFTER
FEB 13 DEADLINE



Meeting Date: Monday, February 12, 2007
Agenda Item No.

6:30 P.

Kitsap County Board of Commissioners

Department: Department of Community Development

Staff Contact: Patty Charnas, Natural Resources Manager *X4558* Initials: _____

Title: **Critical Areas Ordinance Revisions based on Remand Order**

Recommended Action: Take public testimony on February 12, 2007, review Planning Commission's recommendations, and adopt revisions to the Critical Areas Ordinance based on the remand by the Central Puget Sound Growth Management Hearings Board (CPSGMHB) on or before February 23, 2007.

Summary: Kitsap County adopted updates and revisions to its CAO on December 1, 2005. In February 2006, the CAO was challenged by two groups, one representing environmental interests and one representing property rights. On August 28, 2006, the Growth Board affirmed the County on all but two narrow issues, which it remanded back to Kitsap County. One issue dealt with certain wetland exemptions, the other with certain shoreline buffers. The rest of the ordinance is valid and not a part of this remand effort. The Growth Board gave the County until February 23, 2007 to take legislative action to bring the CAO into compliance with the Growth Management Act.

On Friday, January 26, 2007, the Planning Commission completed deliberations on their recommendations to revise the Critical Areas Ordinance (CAO) based on the remand by the CPSGMHB (Growth Board). The Planning Commission recommended all of the proposed staff revisions to the CAO and added two items of their own, as shown in the attachment.

Attachment:

- 1) Draft CAO Revisions and Planning Commission Recommendations

Fiscal Impact

Expenditure Required (for this specific action): None
Total Cost (including all related costs): Unknown
Related Revenue: N/A
Cost Savings: None
Net Fiscal Impact: Unknown
Source of Funds : General Fund

Clearances

Affected Departments	Department
Department of Community Development	Patty C

*P. H. 2/12/07
6:30 p.m.
To PAPH: 1/26/07
PIU
Publish: 1/31/07*

Attachment

cont to 2/14/07 Work Study

DRAFT

Critical Areas Remand Proposed Revisions Recommended by the Planning Commission with Staff Comments

(strikeout indicates removing language; underline indicates adding language)

I. Wetlands Exemption

*Background: Chapter 200 of the CAO addresses wetlands and wetlands regulations. The remand directed specific attention to the subsection that addressed **Non-regulated wetlands**, citing the need to ensure no net loss of wetland functions and values by, among other means, mitigation. These remand issues were considered in drafting of following revisions.*

a. Proposed Revisions Recommended by the Planning Commission:

Section 19.200.210

B. Regulated Wetlands. (See Chapter 19.800 Appendix A for more detailed description).

1. Category I Wetlands: Category I wetlands are those regulated wetlands that include but are not limited to rare, unique wetland types that are more sensitive to disturbance than most wetlands and that contain ecological attributes that are impossible to replace within a human lifetime. Category I wetlands score 70 points or more out of 100 on the wetlands ratings systems.
2. Category II Wetlands: Category II wetlands are those regulated wetlands that score between 51-69 points out of 100 on the wetlands ratings system.
3. Category III Wetlands: Category III wetlands are those regulated wetlands, ~~2,500 square feet or greater~~, that score between 30-50 points on the wetlands ratings system. Activities affecting isolated, non-mosaic Category III wetlands that are less than 2,500 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.
4. Category IV Wetlands: Category IV wetlands are those regulated wetlands, ~~7,500 square feet or greater~~, that score less than 30 points out of 100 on the wetlands ratings system. Activities affecting isolated, non-mosaic Category IV wetlands that are less than 7,500 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the wetland function, on a per function basis.
5. Wetlands intentionally created from non-wetland areas to mitigate conversion of other wetlands.
6. Mosaic wetlands as defined at 19.150.695.

C. Non-Regulated Wetlands.

- ~~1. Category III Wetlands: Isolated wetlands less than 2,500 square feet.~~
- ~~2. Category IV Wetlands: Isolated wetlands less than 7,500 square feet.~~
3. Created Wetlands: Wetlands created intentionally from a non-wetland site that were not required to be constructed as mitigation for adverse wetland impacts. These may include, but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment ponds, farm ponds not contiguous, as defined in this title, and landscape amenities.

b. Staff Comments

It is recommended the Planning Commission proposed revisions be adopted unchanged. The language is the same as staff recommendations and has been analyzed for its responsiveness to the Growth Board's remand order.

Attachment (*continued*)

II. Shoreline Buffers

Background: Chapter 300 of the CAO addresses fish and wildlife habitat conservation areas, which includes establishing buffers for designated areas such as streams, marine shorelines and lakes. The remand order was less specific on this issue, but was clear that 35 feet for certain shoreline areas was inadequate to protect designated fish and wildlife habitat types. In reviewing the sources cited in the remand order, which were from the 2005 CAO Index, an increase to the buffer width of certain shorelines was proposed, as were new provisions to decrease buffer widths based on Habitat Management Plan. Provisions to decrease buffer widths for water dependent activities originally provided in Kitsap County CAO have also been proposed to be reinstated.

a. Proposed Revisions Recommended by the Planning Commission:

Table 19.300.315 Fish and Wildlife Habitat Conservation Area Development Standards
Saltwater Shorelines and Lakes

<u>Shoreline Designation¹</u>	<u>Buffer Width</u>	<u>Setback</u>
Urban, semi-rural and Rural shorelines and Lakes less than 20 acres	35 <u>100</u> feet	15 feet beyond buffer
Conservancy	50 feet	15 feet beyond buffer
Natural	100 feet	15 feet beyond buffer

Section 19.300.615 A.

4. Provision for Decreasing Buffer.

a. In lieu of going through the formal variance process, an administrative reduction to buffer widths ~~for streams~~ may be granted subject to the requirements of this section. Where an applicant demonstrates pursuant to the variance criteria that buffer widths cannot be met, a habitat management plan (HMP) will be required that shall meet the requirements as described in Chapter 19.700 (Special Reports). The department may decrease the buffer if, after consultation with the Washington State Department of Fish and Wildlife, and review of the HMP, the department determines that conditions are sufficient to protect the affected fish and wildlife habitat conservation area. The department may reduce the buffer width by up to fifty percent for construction of a single-family dwelling or up to twenty-five percent for all other development, but the buffer shall not be less than twenty-five feet. Administrative buffer reductions of greater than fifty percent may be allowed for urban shoreline environments and lakes where a vacant parcel has a common property line with two or more lots which abut the ordinary high water line and which are developed with structures or county roads. In these cases, the standard buffer may be reduced to the greater of 50 feet or the average of the standard buffer and setbacks of the structures on the adjacent properties. All other reductions

of greater than twenty-five percent for single-family dwellings will be a Type II decision and require notification (see Chapter 19.800 Appendix F). Granting of a reduced buffer shall be the minimum necessary for the permitted use.

When applicable, the order of sequence for buffer reductions shall be as follows:

- i. Use of buffer averaging, maintaining one hundred percent of the buffer area under the standard buffer requirement;
- ii. Reduction of the overall buffer area by no more than twenty-five percent of the area required under the standard buffer requirement;
- iii. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;
- iv. Use of alternative on-site wastewater systems in order to minimize site clearing. Infiltration of stormwater where soils permit; and,
- vi. Retention of native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.

~~b. Only stream buffers are eligible for administrative buffer reductions.~~

10. Buffer and Building Setbacks for Water Dependent Activities: The department may allow an administrative alteration to the required buffer and building setback for water dependent activities when no other reasonable or practicable alternative exists and the development is consistent with the Kitsap County Shoreline Management Master Program. Any alteration of a buffer or building setback shall be the minimum necessary and shall require an approved habitat management plan which identifies and adequately protects any affected fish and wildlife habitat conservation area.

b. Staff Comments

It is recommended the Planning Commission proposed revisions for Table 19.300.315 (buffer widths) be adopted unchanged. It is also recommended that the revisions recommended for decreasing buffers be adopted except for the word "county roads" which appears in bold and cannot be supported by staff at this time. Otherwise, the language is the same as staff recommendations and has been analyzed for its responsiveness to the Growth Board's remand order..

III. Additional motions made by the Planning Commission:

A motion was made by Commissioner Gustavson and seconded by Commissioner Coppola to incorporate the words "existing properties and lots be deemed conforming existing rather than non-conforming existing". The motion carried.

b. Staff Comments

It is recommended that this particular language not be adopted as it cannot be supported by staff at this time. This motion proposes language which would affect other, unremanded sections of the CAO and which has not been thoroughly analyzed in terms of its feasibility and its legality relative to land use planning and other laws.

NOTICE OF PUBLIC HEARING AND PROPOSED ORDINANCE ADOPTION

NOTICE IS HEREBY GIVEN that the Kitsap County Board of Commissioners will hold a public hearing on Monday, **February 12, 2007 at 6:30 PM** at the **Kitsap County Administration Building, 619 Division Street, Port Orchard WA 98366** to consider adopting amendments to an **Ordinance**, RELATING TO GROWTH MANAGEMENT, AMENDING TITLE 19 (**CRITICAL AREAS**) OF KITSAP COUNTY CODE. A summary of the proposed amendments is as follows:

Section 1 includes findings of fact pertaining to the revisions to the CAO based on the remand by the Central Puget Sound Growth Management Hearings Board (CPSGMHB).

Section 2 includes findings of fact pertaining to the process and public participation aspects for the revision to the CAO based on the remand by the CPSGMHB.

Section 3 includes substantive findings relating to text revision to the CAO based on the remand by the CPSGMHB.

Section 4 proposes revisions to Kitsap County Code Section 19.200.210 relating to regulating small, isolated Category III and IV wetlands.

Section 5 proposes revisions to Kitsap County Code Section 19.300.315 relating to adjusting shoreline buffers in urban, semi-rural and rural shorelines and lakes under twenty acres, and modifying the associated provisions for adjusting buffer widths.

The Kitsap County Planning Commission will be preparing their recommendations on this Ordinance for consideration by the Board of County Commissioners.

The full text of the ordinance will be sent upon request. Any additional information on the document referenced above can be inspected or obtained by visiting the Department of Community Development located at 614 Division St., Port Orchard, contacting the Natural Resources Division at (360) 337-4558 or by visiting the Kitsap County web page at www.kitsapgov.com/dcd/.

ALL THOSE INTERESTED are welcome to attend.
Opal Robertson, Clerk of the Board

Kitsap County does not discriminate on the basis of disability. Individuals who require accommodations at this meeting or who require this information in a different format should contact the ADA Coordinator at (360) 337-7146 (voice) or (360) 337-7275 (TDD) or (800) 816-2782. Please provide five business days notice for accommodations, if possible.

Publication Date: **January 31, 2007**
THE KITSAP NEWSPAPER GROUP

Port Orchard Independent
P.O. Box 27, Port Orchard, WA 98366
360-876-4414

Affidavit of Publication

STATE OF WASHINGTON }
COUNTY OF KITSAP } ss

Rich Peterson being first duly sworn, upon oath deposes and says: that (s)he is the publisher of the Port Orchard Independent, a twice-weekly newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a twice weekly newspaper in Port Orchard, Kitsap County, Washington and is and always has been printed in whole or part in the Port Orchard Independent, Central Kitsap Reporter, North Kitsap Herald, Bainbridge Island Review, and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Kitsap County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of County Notices - CRITICAL AREAS (PC9005) as it was published once a week in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 01/31/07 and ending on 01/31/07 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is \$ 35.75 which has been paid in full.

Rich Peterson

Subscribed and sworn before me on this 31st day of January, 2007.

Janis E. French

Notary Public in and for the State of Washington, residing in Port Orchard, Washington.

BOARD OF COMMISSIONERS



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Date of publication:
01/31/07
(PC9005)

Port Orchard Independent
P.O. Box 27, Port Orchard, WA 98366
360-876-4414

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STATE OF WASHINGTON }
COUNTY OF KITSAP } SS

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Janis E. French

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BOARD OF COMMISSIONERS



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AMENDING TITLE 19 (CRITICAL AREAS) OF KITSAP COUNTY CODE A summary of the proposed amendments is as follows:

Section 1 includes findings of fact pertaining to the revisions to the CAO based on the remand by the Central Puget Sound Growth Management Hearings Board (CPSGMHB).

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Date of publication:
01/31/07
(PC9005)

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THREE (3)

16
FEB 20 2007
DE



106
Feb. 14, 2007
8018 Illahee Road NE
Bremerton, WA 98311

Kitsap County Commissioners

Re: Shoreline Buffers

The proposed shoreline buffers is a very critical issue, especially for us waterfront owners, and I am hopeful you commissioners will make a realistic decision.

The initial plan for 150' buffers was totally unrealistic. The proposed 100' buffers are far more restrictive than necessary. The only justification for change of the 35' buffer would be documented evidence that habitat has been damaged. The Best Available Scientific answer is questionable and is not documented evidence.

I live on the waterfront and I have spent all my life (70+ years) on beaches. For example, I've read that "eel grass" and "sand smelt" must be protected. I have only ever seen eel grass at or near minus tide and I have never seen sand smelt in Puget Sound. Where is the proof of damage to this habitat?

About variances. If the shoreline buffers are set at any distance over 70' it is extremely important that you allow variances of at least 50%. Almost every shoreline is different and therefore a variance must be an option.

Currently we have lots of conditions (houses, bulkheads, docks, roads, etc.) on shorelines that affect shoreline habitat. Stormwater is out of control. It would be very unfair and a financial hardship to penalize the small percentage of waterfront proper owners while the current conditions exist.

Respectfully

Peter Grahn
(360) 308-9706

COPY TO:

OPAL R

CHRISTINA LINDER

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THREE (3)

GMA INDEX

COPIES TO: OPAL R
CHRISTINA LINDER

January 31, 2007

FEB 15 2007

★

DE
Board of County Commissioners
KITSAP COUNTY
619 Division Street
Port Orchard, Washington 98366

RECEIVED AFTER FEB 13
DEADLINE (POSTMARKED 2/13)

SUBJECT: Critical Areas Ordinance – Central Puget Sound Growth
Management Hearings Board Remand

Honorable Commissioners:

In the beginning, our Creator gave us our world and our unalienable rights, and He was Best Available Science – and that was good.

In December 2005, Kitsap County decided that 35 foot buffers were necessary to protect all shorelines. They used Best Available Science because staff said it was so – and that was good.

In 2006 the Puget Sound Growth Management Hearings Board said that 150 foot shoreline buffers were more correct. They had BETTER Best Available Science because they said so – and that was good.

In January 2007, the Kitsap County Planning Commission compromised on 100 foot shoreline buffers. They had EVEN BETTER Best Available Science because staff said it was so – and that was good.

In January 2007, the Planning Commission also decided that variation on the theme of buffers was appropriate if the property involved was designated “urban in nature” and if adjacent (county definition) was already developed. Under these circumstances, a 50 foot buffer would be acceptable as long as the property owner piled layers of paper on the counter at the County offices. This appeared to be consistent with SUPERIOR EVEN BETTER THAN BEST Best available Science because staff said it was so – and that was more CONFUSING than good

In January 2007, the Planning Commission agreed with the Puget Sound Growth Management Hearings Board that any wetland of any size, regardless of location or actual demonstrated environmental impact required the stringent protection of law. This appeared to be consistent with the GMHB BETTER Best Available Science and the EVEN BETTER Best Available Science because they said so and staff approved – and that was good.

In February 2007, Kitsap County must decide exactly which Best Available Science is actually best and establish shore line buffers and wetland regulations. Staff seems to be variable on Best – and that is NOT good.

Consider:

A senior staff member, now advising on this issue, once defined Best Available Science as: **“That science which is available and which best fits the regulations being proposed”** It would appear this is the definition being used throughout this process.- and that is NOT good

Salt water shorelines are of specific interest to the State since they claim control and ownership of all water and shoreline to the higher high water mark. If that is so, the State is the owner of the “eel grass beds” and “smelt spawning” habitat as well as all other saltwater fish habitat. The state is claiming “harm” to their owned habitat but the State feels no need to clearly demonstrate that harm in each individual case before summarily finding against the adjacent (common meaning) property owners as the cause of that harm. – and that is NOT good

Those areas most frequently noted as presenting the greatest danger to the waters of Puget Sound are the developed “urban” areas. The modification of the shoreline buffers in “urban” areas would appear to be contradictory to the best interest of a healthy Puget Sound and the goals of the now infamous “Shared Strategy” and the proposed “Puget Sound Partnership” agency. Now we can anticipate conflict between the federal government, state government, county government, and the various “protectors” of our environment as they fight out who really has the BEST Best Available Science – and that is NOT good.

Any area now determined to have the basic characteristics of a wetland will require regulation, buffering and control. No inventory or estimate of such additional wetland areas currently exists, but numerous instances of small wetlands on property either purchased expressly by the county for development or currently owned by the county and in use have wetlands. How those properties (many of them existing park properties) will be controlled is not clear – and that is NOT good.

It should be clear to all that what started out as an effort to bring general order and sense to expansion and development of land areas in counties to ensure that infrastructure and development were coordinated with some degree of efficiency is now out of control. No longer are we concerned with growth. The issue now is limiting growth and using “environmental protection” as the new altar to lay our sacrifices upon. – and that is DEFINITELY NOT good.

It now appears that the end result of this effort will be a political effort to define which science – Best Available Science, BETTER Best Available Science, EVEN BETTER Best Available Science, or SUPERIOR EVEV BETTER THAN BEST Best Available Science – will be implemented to control our future. – and that is REALLY, REALLY NOT good.

It might be AMUSING if it were not so important and have such an impact on our lives BUT it is REALLY, REALLY NOT GOOD.

Sincerely



Jack Hamilton
Silverdale, WA

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ADDRESSED TO ALL
THREE (3):

RECEIVED AFTER FEB 13
DEADLINE
(POSTMARKED 2/13)

GIMA INDEX

February 10, 2007

FEB 15 2007
DE

Board of County Commissioners
KITSAP COUNTY
619 Division Street
Port Orchard, Washington 98366

SUBJECT: Critical Areas Ordinance – Central Puget Sound Growth
Management Hearings Board Remand

COPIES TO
OPAL R.
CHRISTINA LINDER

Honorable Commissioners:

In December, you, as Commissioners, approved and enacted the CAO which detailed Critical Areas and the protections necessary for those Critical Areas. On adoption of the CAO, you assured us that the ordinance was supported by "best available science" During period leading up to the adoption of the ordinance the people of the county were repeatedly assured that the provisions of the ordinance were based in and supported by solid, irrefutable scientific evidence.

In July 2006, the growth Management Hearings Board rejected the provisions of our CAO finding that the scientific basis for shore line protections and some wetland protections was not appropriate. Instead, the Hearings Board specified scientific evidence presented by a state agency to be overriding. Of note, the scientific evidence that you told us you were using for the December decision apparently came from the same agency and the same basic sources.

In response to the Hearings Board remand order, you had two clear options; appeal that order, or comply with the order. You chose compliance. In doing so you implicitly agreed that the scientific basis for your December decision was flawed and that the approval action you took was not appropriate. Your decision to comply also ignored the applicable case law, because you accepted the authority of the Hearings Board to set policy and override the primary authority assigned to you by law. In essence, you failed to carry out your sworn duty. Your actions in this remand response, as in so many other instances, taken to avoid litigation, does little more than pass you responsibility to protect individual rights to private citizens who must enter litigation to correct your errors.

If your December decision was correct and you have the facts to support that decision, to acquiesce to the whim of the Hearings Board is wrong and totally inappropriate. To do so makes your regulatory decision political and arbitrary and contrary to the requirements of the underlying law. If you did not have clear factual basis for the December decision, why did you tell us you did, and what other parts of the CAO are not properly supported by solid science?

Please recognize that, in adopting regulations for shorelines at either the 100 or 150 foot buffer depth, you are condemning the entire shoreline of Puget Sound to

that level of regulation. If those buffers are appropriate in Kitsap, they are appropriate throughout the Sound. Through your actions, you provide the ability of the Hearings Board to force every county in western Washington to adopt similar regulations and any other regulations they may decree. You pass your legal authority to that Board.

It is not too late to appeal the Hearings Board ruling and to accept the responsibility you were elected to carry out. I ask you to file the appeal promptly

Sincerely,



Jack Hamilton
Silverdale, WA.



EVERGREEN FREEDOM FOUNDATION

...because freedom matters!

COPIES INDIVIDUALLY
ADDRESSED TO ALL
THREE (3):

February 19, 2007

CAME LETTER SENT
TO CHRIS A GILL
JAN ANSEL

FEB 20 2007

Commissioner Josh Brown
Commissioner's Office, MS-4
614 Division Street
Port Orchard, WA 98366

COPY TO OPAL ROBERTSON
CHRISTINA LINDER



RECEIVED AFTER FEB 13
DEADLINE DATE

Dear Commissioner Brown,

With all due respect, I am still in shock over your CAO public hearing on February 12. My research after the hearing is equally startling.

I have several major concerns, which I have outlined for you below.

1. You appear to think that you took an oath to uphold and defend the Growth Management Hearings Board and not the U.S. and State Constitutions. Commissioner comments at the hearing stating that the Growth Management Hearing Board is forcing you to take action that you don't necessarily agree with does not give you permission to violate your oath. I have attached a copy of your oath to refresh your memory. I am deeply troubled by your lack of understanding of what your oath of office means and how the U.S. and State Constitutions are supreme.

2. Your planning staff lied to or misinformed you and the public. They either do not know current state law or they withheld key provisions of the law from you. Several times during the hearing the staff told you and the public that you were merely doing the same thing as Pierce County which has a 100 foot setback. The staff did not inform you that only 13% of Pierce County shorelines have been designed as critical areas. The remainder is under control of the Shoreline Management Act. The only reason that 100% of your shorelines are under CAO is because you (the County Commissioners) have declared 100% of the shorelines are critical areas. That is not due to sound science, and puts private property at risk in your county. Specifically, I urge you to read the final decision and order you received from CPSGNGB: <http://www.gmhb.wa.gov/central/decisions/2006/06-3-0012cHoodCaneIFDO20060828.pdf>. They specifically refer to the difference in how you designated 100% of your shorelines as critical areas vs. Pierce County which designed only 13% as critical areas.

3. Inventory of shorelines. After your hearing on February 12, one of the planning staffers mentioned to a Commissioner that your county had funds available to inventory all the shorelines from Pierce County to a point in Kitsap. Why haven't you used the money to inventory the shorelines? Why did you designate 100% of your shorelines as critical when you have no evidence that they are?

4. In addition, including 100% of the county's shorelines under CAO violates state law. As I pointed out at the public hearing, in 2003 the Legislature unanimously passed ESHB 1933 which states that not all shorelines are critical areas. This came about because the Legislature was concerned that bureaucrats at the state and county level were falsely interpreting the intent of the GMA and SMA. They unanimously passed ESHB 1933 to clarify the relationship between state and local agencies and to prevent them from designating all of shorelines as critical areas. Specifically the act provides:

- a. All the goals of GMA are of equal importance including protecting private property rights.
- b. All shorelines of the state are not critical areas just because they are shorelines. (You only have to look at Pierce County to see the difference.)
- c. The legislature clearly intended that critical areas within the jurisdiction of the Shoreline Management Act be governed by the SMA and not the GMA.

You and your staff are violating state law and common sense.

5. Your proposed ordinance violates RCW 36.70A.370 – protection of private property (<http://apps.leg.wa.gov/RCW/default.aspx?cite=36.70A.370>) – as well as the private property protections in the U.S and State Constitutions. In addition it violates the private property protections in the GMA (<http://apps.leg.wa.gov/RCW/default.aspx?cite=36.70A.020>) which states that “private property shall not be taken for public use without just compensation having been made.” The property rights of landowners shall be protected from arbitration and discriminatory actions! Please note that both state laws use the term “shall” not “may.” In other words you are required “to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.” Your staff apparent ignored this law! No BAS has been provided showing 100’ is a necessary taking of private property!

6. CAO appeals. I believe you received an incomplete and inaccurate response from the Kitsap County Prosecutor's Office regarding applying for an extension date. I suggest you review the role of the Hearings Board (http://www.gmhb.wa.gov/board_role/index.html). Further I recommend you review the law on noncompliance. (<http://apps.leg.wa.gov/RCW/default.aspx?cite=36.70A.330>)

7. Your proposed ordinance violates the law. There is no BAS cited in your findings of fact to indicate the factual basis for changing the buffers from 35’ to 100’. Your staff has falsely implied that you must increase the buffers; there is nothing in the Hearings Board order that states you must do that. You created the problem by not including the BAS provided by KAPO in your original file that you submitted to the Hearings Board and you compounded that by designating 100% of your shorelines as critical areas.

8. I was deeply troubled when I learned from Vivian Henderson that none of you had reviewed the public file that had been turned in after the hearing on Monday night. Why did you leave the public record open for comments if none of you bothered to look at it? It was this exact same error in your original submittal that has resulted in the problem you have now. If you had included the BAS provided by KAPO in your original filing you would not be facing the problem you currently have.

Conclusion:

Commissioner Endresen stated that the commissioners get their power from the state. That is true, but you are not following state law or the constitution. It is not the Hearings Board that is forcing you to take action, it is your false designation of 100% of all shorelines as critical areas; the incomplete filing (not including KAPO's BAS in your initial filing); and poor staff work that has resulted in the current situation.

Commissioner Endresen also stated that she is tired of battling the Hearings Board. However, this is a battle caused by a self inflicted wound. You brought this on yourself.

You are not trumped by an unelected State Hearings Board. Your oath is not to the Hearings Board, but to uphold the U.S. and State constitutions and laws.

Recommendation:

Pass an ordinance reaffirming the 35' buffers as BAS, eliminate the 15' setbacks, and include the material you omitted in your initial filing (the KAPO BAS). In addition, notify the Hearings Board of your plan to inventory 100% of your shorelines (similar to what Pierce County did). You have the funding to complete a major portion of it.

If I can be of any assistance, please feel free to contact me.

Cordially,



Bob Williams
President

cc: Russ Hauge, Kitsap County Prosecutor

OATH OF OFFICE

STATE OF WASHINGTON COUNTY OF KITSAP

I, Josh Brown, do solemnly swear that I am a Citizen of the United States and of the State of Washington; that I will support the Constitution and Laws of the United States and the Constitution and Laws of the State of Washington, and will to the best of my judgment, skill and ability, truly, faithfully, diligently and impartially perform the duties of the office of Kitsap County Commissioner District 3 in and for Kitsap County, Washington, as such duties are prescribed by law.


Signature

Subscribed and sworn to before me
this 21st day of December 2006


The Honorable Sally Olsen



A G E N D A

KITSAP COUNTY BOARD OF COMMISSIONERS

February 12, 2007 - PM

6:30 PM) Meeting Called to Order with Pledge of Allegiance.

PUBLIC MEETING:

6:30 PM) Public hearing to consider an **Ordinance** relating to Growth Management, amending Title 19, Critical Areas of the Kitsap County Code. **Staff Contact:** Patty Charnas, 337-4558.

NOTE: Kitsap County does not discriminate on the basis of disability. Individuals who require accommodations should contact the Commissioners Office at (360) 337-7146 or TDD (360) 337-7275 or 1-800-816-2782. (Please provide five business days notice for interpreter services).



CINMA INDEX

FEB 12 2007

ONLY 1 CD SENT
CHRIS HAS.

February 9, 2007

Honorable Chris Endresen, Chair
Honorable Jan Angel
Honorable Josh Brown
Board of Commissioners for Kitsap County
Commissioners' Office, MS-4
614 Division Street, Port Orchard, WA, 98366

COPIES INDIVIDUALLY
ADDRESSED TO ALL
THREE (3):

Only: OPAL R
JAN ANGELO
CHRIS E

Dear Chair Endresen and Commissioners Angel and Brown:

Subject: Comments on the Critical Areas Ordinance Remand

Thank you for the opportunity to comment on Kitsap County's proposed response to the Critical Areas Ordinance Remand. Futurewise is a statewide citizens' group working to protect working farms and forests while making cities and towns great places to live. Futurewise has members across Washington State, including Kitsap County.

We strongly support the proposal to increase the buffers to 150 feet on marine shorelines designated Urban, Semi-Rural, and Rural in the county's shoreline master program. We also strongly support the proposal to eliminate the exemptions for smaller wetlands. As this letter will show, these proposals are well support by scientific information. These proposals are a responsible way of addressing the remands from the Central Puget Sound Growth Management Hearings Board in the *Hood Canal* case. We very much appreciate the county's responsible resolution of this appeal.

150-Foot Wide Marine Buffers are Well Support by the Scientific Data

Salt water shorelines, including the marine riparian zone, are important habitats for fish and wildlife. For example, Jim Brennan writes:

Healthy (i.e., intact and functional) riparian systems along marine shorelines support abundant and diverse assemblages of wildlife. Many wildlife species are dependent upon riparian areas for their entire life cycle, with requirements for feeding, breeding, refuge, cover, movement, migration, and climate that are intricately interwoven into the ecological balance of riparian structure, functions, and processes. Other wildlife may only depend on riparian areas during a specific life stage, for limited periods during seasonal migrations, or simply as a migration

corridor. However, regardless of the timing, the availability and condition of riparian habitat can be a determining factor in their survival.¹

“All juvenile salmon move along the shallows of estuaries and nearshore areas during their outmigration to the sea, and may be found in these habitats throughout the year depending on species, stock, and life history stage.”² “It may be emphasized that two salmon stocks (fall chinook and summer chum salmon) federally listed as threatened under the Endangered Species Act in Puget Sound, are also the most estuarine/shoreline dependent species/stocks in the region.”³ East Kitsap County’s shorelines account for nearly half the nearshore habitat in south and central Puget Sound for threatened Chinook salmon and bull trout populations from those areas.

Many of these salmon rely on marine riparian areas for food. For example, “juvenile chinook salmon stomach contents analyzed from beach seine samples collected throughout King County shorelines in Central Puget Sound indicate a predominance of terrestrial insects in their diet.”⁴ Insects that fall from marine riparian vegetation are an important food source for Chinook and other salmon:

Of the dietary studies of marine fishes that were reviewed for this report, it appears that salmonids may benefit most from riparian vegetation. The direct input of insect prey from riparian vegetation for salmonids in freshwater systems has been well documented. However, the importance of insect fallout from riparian vegetation in juvenile salmon (and juvenile and adult cutthroat trout) diets in the marine environment is just being realized and may play an important role in early marine survival.

¹ Jim Brennan, “Riparian Functions and the Development of Management Actions in Marine Nearshore Ecosystems” p. 11 in Lemieux, J.P., Brennan, J.S., Farrell, M., Levings, C.D., and Myers, D. Proceedings of the DFO/PSAT sponsored Marine Riparian Experts Workshop, Tsawwassen, BC, February 17-18, 2004. 2004. Can. Man. Rep. Fish. Aquat. Sci. No. 2680. A copy is enclosed on the CAO on a CD enclosed with the paper original of this letter. It is in the Fish and Wildlife Habitat Directory, Salt Water Habitats subdirectory with the filename: MREW Proceedings5.pdf.

² Gregory D. Williams and Ronald M. Thom. *White Paper: Marine and Estuarine Shoreline Modification Issues* p. 12 (Sequim, WA: Battelle Marine Sciences Laboratory, Pacific Northwest National Laboratory, April 17, 2001). References omitted. Available at: <http://www.wa.gov/wdfw/hab/ahg/marnsrc.htm> It is also on the CAO on a CD enclosed with the paper original of this letter. This report has been identified as best available science in Washington State Office of Community Development *Citations of the Best Available Science for Designating and Protecting Critical Areas* p. 23 (March 2002). This document is also on the CAO on a CD enclosed with the paper original of this letter.

³ *Id.*

⁴ Jim Brennan. “Riparian Functions and the Development of Management Actions in Marine Nearshore Ecosystems” p. 14 & J.S. Brennan, K.F. Higgins, J.R. Cordell, and V.A. Stamatiou. *Juvenile Salmon Composition, Timing, Distribution, and Diet in Marine Nearshore Waters of Central Puget Sound in 2001-2002* pp. ii – iii & p. 3-1 (King County Department of Natural Resources and Parks, Seattle, WA: 2004). It is also on the CAO on a CD enclosed with the paper original of this letter.

....

Juvenile chinook salmon have also been shown to prey upon insects in the Puget Sound nearshore and other estuaries in Washington State. Insects were identified as a significant dietary component of juvenile chinook collected off of Bainbridge and Anderson Islands by Fresh et al. (1981). Miller and Simenstad (1997) found that insects (chironomids and aphids) were the most important prey items for juvenile chinook at created and natural channels in the Chehalis River estuary. Studies by Cordell et al. (1997, 1998, 1999a,b) have shown similar results in juvenile chinook salmon diet studies, but have also shown prey species variability between years and seasons studied in the Duwamish and Snohomish River estuaries. The importance of insects in juvenile chinook diets is also supported by studies in the Fraser River estuary (Levings et al. 1991, Levings et al. 1995), the Nisqually estuary (Pearce et al. 1982), the Puyallup River estuary (Shreffler et al. 1992), the Nanaimo estuary (Healey 1980), and the Nusqually Reach area of Puget Sound (Fresh et al. 1979). More recently, juvenile Chinook salmon stomach contents analyzed from beach seine samples collected throughout King County shorelines in Central Puget Sound indicate a predominance of terrestrial insects in their diet (King County, DNRP, unpublished data).⁵

Juvenile salmon also depend on near shore small creek mouths and sub-estuaries (often referred to as pocket estuaries) and marsh environments for migration, rearing and shelter from predators. Studies have found that juvenile salmon use these creek mouths, regardless of whether spawning occurs in these creeks.⁶ Also please see the description of salmon use of the nearshore in Puget Sound and Hood Canal in *Regional Nearshore and Marine Aspects of Salmon Recovery in Puget Sound* on the CAO on CD enclosed with the paper original of this letter.⁷

Kitsap County's Puget Sound saltwater shorelines have many other important functions and values. The *White Paper on Marine and Estuarine Shoreline Modification Issues* documents the importance of retaining riparian vegetation on marine shorelines to both reduce shoreline erosion, which threatens lives and property, and to protect the marine environment. The White Paper says:

⁵ Jim Brennan. "Riparian Functions and the Development of Management Actions in Marine Nearshore Ecosystems" p. 11 in Lemieux, J.P., Brennan, J.S., Farrell, M., Levings, C.D., and Myers, D. *Proceedings of the DFO/PSAT sponsored Marine Riparian Experts Workshop*, Tsawwassen, BC, February 17-18, 2004. 2004. Can. Man. Rep. Fish. Aquat. Sci. No. 2680).

⁶ Eric Beamer, Aundrea McBride, Rich Henderson, and Karen Wolf, *The Importance of Non-Natal Pocket Estuaries in Skagit Bay to Wild Chinook Salmon: An Emerging Priority for Restoration* (Skagit System Cooperative Research Department May 2003).

⁷ Scott Redman, Doug Myers, and Dan Averill, *Regional Nearshore and Marine Aspects of Salmon Recovery in Puget Sound* (Puget Sound Action Team, June 28, 2005) in the directory Fish & Wildlife Habitat\Saltwater Habitats with the filename: RegionalNearshore.pdf

Live plant foliage and forest litter break the force of falling rain, reduce surface water runoff velocity, and increase the absorptive capacity of soil, whereas plant roots provide a fibrous web that stabilizes and anchors soil. Therefore, maintenance of existing vegetation and revegetation of bare ground on bluffs with native trees, shrubs, and herbs can improve slope stability by trapping sediment and controlling surface runoff (Cox et al. 1994, Manashe 1993) (Table 9). Besides reducing erosive forces, riparian vegetation is a key element of shoreline ecological function and has a significant influence on habitat value, both in the riparian zone itself, and in adjacent aquatic and terrestrial areas (Zelo and Shipman 2000, Brennan and Culverwell in prep). Riparian vegetation contributes to maintenance of fisheries habitat and water quality, functioning as shade, cover for fish and wildlife, organic matter input, and source of insect prey (Levings et al. 1991, Thom et al. 1994a). It may have particularly high value in Puget Sound because of its contributions to marine forage fish that utilize the upper intertidal for spawning (Pentilla 2000) and to juvenile salmonids for cover and foraging (Thom et al. 1994a).⁸

For these and other reasons, the Growth Management Act requires Kitsap County to adopt development regulations to protect the functions and values of saltwater shorelines and Puget Sound.⁹ In protecting these functions and values, best available science must be included in the record and must be considered substantively in the development of critical areas regulations.¹⁰ RCW 36.70A.480(3)(b) also provides that until the Department of Ecology approves a shorelines master program under the 2003 shoreline master program guidelines, critical areas within shoreline jurisdiction must be protected through a Growth Management Act critical areas regulation that complies with the Growth Management Act.¹¹

King County has prepared a summary of best available science for marine shorelines. This study identified buffer recommendations ranging from 100 feet to 1,000 along saltwater

⁸ Gregory D. Williams and Ronald M. Thom, *White Paper: Marine and Estuarine Shoreline Modification Issues* p. 62 (Sequim, WA: Battelle Marine Sciences Laboratory, Pacific Northwest National Laboratory, April 17, 2001).

⁹ RCW 36.70A.172(1).

¹⁰ *Whidbey Environmental Action Network (WEAN) v. Island County*, 122 Wn. App. 156, 171, 93 P.3d 885, 893 (2004) quoting *Honesty in Environmental Analysis & Legislation (HEAL) v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 532, 979 P.2d 864 (1999).

¹¹ RCW 36.70A.480(3)(b), RCW 36.70A.060, & RCW 36.70A.172(1). Also see Department of Ecology & Department of Community, Trade and Economic Development. *Questions and Answers on ESHB 1933 Critical Areas Protection Under the Growth Management Act and Shoreline Management Act* p. 4. This document can be downloaded at: Ecology's Web site at: http://www.ecy.wa.gov/programs/sea/sma/laws_rules/90-58/1933_Guidance.pdf and CTED's website at: http://www.cted.wa.gov/portal/alias_cted/lang_en/tabID_464/DesktopDefault.aspx?alias=cted&lang=en&tabID=464. It is also on the CAO on a CD enclosed with the paper original of this letter in the Shoreline Management Act directory with the filename: 1933 guidance 2-17-04 w RCWs Attach1.pdf.

shorelines in Washington, British Columbia, and Alaska.¹² All but one recommended northwest buffer widths were 300 feet or wider.¹³ WDFW is currently drafting marine-habitat GMA/CAO guidelines for local jurisdictions in which minimum marine riparian buffers of 150 feet in width are to be recommended. The rationale for these buffers are the same as for riparian buffers on freshwater streams and wetlands, filtration for water quality maintenance, wildlife habitat, maintenance of certain microclimate functions, beach shading, nutrient inputs (including juvenile salmonid prey items), bank stabilization, and production of woody debris.¹⁴

Where properties cannot meet the 150 foot setback due to their size or configuration, the county should ensure the reduced buffers will not result in the need for hard shoreline armoring in the future and will avoid or mitigate impacts to salmon and wildlife habitat. The reduced buffers must be planted with native vegetation to provide fish and wildlife functions and prevent shoreline erosion. Common lot line reductions should be limited to lots a half acre or smaller and must not result in buffers of less than 50 feet. When any reduction is granted, development of the site should use best management practices, including proper septic tank maintenance and avoidance of pesticide and herbicide use, to protect the marine habitats and water quality.

The proposed 150 foot buffers will help protect upland property from storm damage and protect important fish and wildlife habitats. We strongly urge you to adopt them.

The Elimination of the Wetlands Exemptions are Well Supported by the Scientific Data and Consistent with the Kitsap County Comprehensive Plan

Kitsap County Comprehensive Plan policy NS-22 provides that that the County is to:

Strive to achieve no net loss of wetland function in the short term, and a measurable gain of wetland function in the long term, in the following manner: Avoid direct impacts on wetlands and buffers; minimize direct impacts to wetlands and buffers; and mitigate impacts through creation, restoration, or enhancement of wetlands or buffers.

¹² Stephanie Brown, Terry Butler, Robert Fuerstenberg, Ph.D, Priscilla Kaufmann, Gino Lucchetti, Klaus Richter, Ph.D., Jeanne Stypula, P.E. Jennifer Vanderhoof, & James Hatch, *Best Available Science: Volume I: A Review of Science Literature* p. 7-24 (Seattle, Washington: King County Executive Report, February 2004). Available at: <http://www.metrokc.gov/ddes/cao/> This report is also on the CAO on a CD enclosed with the paper original of this letter.

¹³ *Id.*

¹⁴ Personal Communication from Daniel E. Penttila, WA Department of Fish and Wildlife to the Honorable Dean Maxwell Mayor of the City of Anacortes p. 2 (December 30, 2004). Enclosed on the CAO on CD in the Fish & Wildlife Habitat\Saltwater Habitats directory.

The wetlands exemptions, because they allowed unmitigated wetland losses, will fail to achieve this policy. The Washington State Department of Ecology has completed a synthesis of the best available science related to wetlands. This study summarized the following important functions of small wetlands:

- The studies of the correlation of wetland size to wildlife use conflict somewhat in their findings, but most generally conclude that small wetlands are important habitats (particularly where adjacent buffer habitats are available) and that elimination of small wetlands can negatively impact local populations.
- Small wetlands provide habitat for a range of species that are not a subset of the species found in larger, more permanently inundated wetlands. Small wetlands do not just provide a smaller area for the same array of amphibian species found in larger wetlands.
- Small wetlands are very important in reducing isolation among wetland habitat patches. Smaller wetlands provide significant habitat for wildlife and affect the habitat suitability of larger wetlands by reducing isolation on the landscape.
- The presence of small wetlands reduces the distance between wetlands and thus increases the probability of successful dispersal of organisms. This, in turn, likely increases the number of individuals dispersing among patches in a wetland mosaic, thereby reducing the chance of population extinction.
- Isolated wetlands provide the same range of wetland functions as non-isolated wetlands. Isolated wetlands provide important water quantity, water quality, and habitat functions.¹⁵

In addition, Ecology's official guidance on wetland management provides:

8.3.3.1 Wetland Size

While recognizing that local governments have to make difficult choices about where to expend their efforts, we do not believe it is appropriate to recommend a general threshold for exempting small wetlands in Washington because the scientific literature does not provide support for such a general

¹⁵ Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale. *Wetlands in Washington State - Volume 1: A Synthesis of the Science* pp. 5-13 - 5-14 (Washington State Department of Ecology Publication #05-06-006. Olympia, WA: March 2005). Available from: <http://www.ecy.wa.gov/pubs/0506006.pdf> This document is also included on the CAO on a CD enclosed with the original of this letter in the Wetlands directory with the filename: 0506006.pdf.

Honorable Chris Endresen, Chair
Honorable Jan Angel
Honorable Josh Brown
February 9, 2007
Page 7

exemption. Volume 1 (Chapter 5) documents the relationship between the lower levels of protection afforded to small wetlands and the resulting fragmentation and increase in distance between wetlands on the landscape as well as the important functions provided by small wetlands. The loss of small wetlands is one of the most common cumulative impacts on wetlands and wildlife in Washington.

....

A more appropriate way to deal with small wetlands would be to exempt projects from the need to avoid small wetlands. This type of exemption should still require that the loss of wetlands be compensated either directly or through an in-lieu fee program.¹⁶

Eliminating the wetland exemptions will help protect water quality, habitat, help maintain the quantity of available water, and help reduce flooding. We strongly support eliminating the wetland exemptions and requiring mitigation for any wetland lost wetland functions even for category III and IV wetlands smaller than 2,500 square feet.

Thank you for considering our comments. If you require additional information, please contact me at 206-343-0681 or tim@futurewise.org

Sincerely,

A handwritten signature in blue ink, consisting of two stylized, overlapping loops that resemble the letters 'S' and 'S'.

Planning Director, AICP

cc: Ms. Patty Charnas, Kitsap County Department of Community Development
w/enclosure

Enclosure

¹⁶ T. Granger, T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands* pp. 8-13 - 8-14 (Washington State Department of Ecology Publication #05-06-008 Olympia, WA: April 2005) available at: <http://www.ecy.wa.gov/pubs/0506008.pdf> This document is also included on the CAO on a CD enclosed with the original of this letter in the Wetlands directory with the filename: 0506008.pdf.

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THREE (3);

ONMA INDEX

FEB 13 2007

To: Kitsap County Commissioners cc: Patty Charnas
From: Ron Ross
Subject: CAO
Date 12 Feb. 2007

Dear Commissioners, Please enter these comments to the record under consideration for the changing of the CAO buffer widths. I spoke at the public hearing and am adding these comments to the record for your consideration.

After the meeting on Feb. 12, 07 at the commissioners hearing room where I had spoken about my belief that a 15 foot building setback not being necessary in addition to a shoreline buffer, I asked Patty Charnas why she thought a 15 ft building setback would be needed. Her reply was that it was needed to allow construction workers full access around the entire building project and that it did not affect any other use of the property. She stated that one could use it for lawn or whatever use that they wanted after the building was completed.

I commented to her that I thought her reasoning was a bureaucratic answer in as much as buildings in congested areas often do not have the privilege of a 15 foot walk around area. Many times in cities homes are built on small lots that only have 5 foot side yard setbacks and that commercial high rise buildings are often built to a property line. I further commented that I thought the draft that was under consideration stated that the building set back could only be used in the same manner as the actual buffer: that is, as a natural vegetation area. She claimed "not true" so I suggested that I would look it up and notify her if I was correct or apologize if I were incorrect.

By copy of this letter I am notifying her that I found the statement I was referring to. It is found on unnumbered page 5 under the heading of "Section 5. A. Buffers and Building Setbacks. 1. Buffers. Buffers or setbacks shall remain undisturbed natural vegetation areas". SIDE BAR: wouldn't it be better to say "Buffers and setbacks???" Or does my suggestion change the meaning???

Commissioners, this is not a complaint against Patty or any of the staff. It is a comment about over worked personal that are not allowed enough time to do the thorough job that is ordinarily required of the code writing personnel.

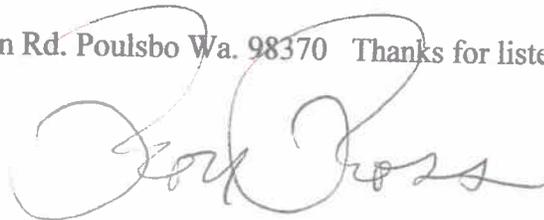
There are many other written errors in grammar and text that should be proof read and corrected prior to adoption. I will not take my time to write about them. I am 'most always prepared to give public testimony about errors that should be pointed out, however, can not do so in the 3 minute time allowed at public hearings.

Again I ask that the building set backs be eliminated as there is no science that justifies them or any findings that show they are needed or required.

Please do not rush this very important part of our county code.

"It's time for a tea party" Ron Ross 905 Paulson Rd. Poulsbo Wa. 98370 Thanks for listening.

COPY TO OPAL R
CHRISTINA LINDER



February 13 2007

COPIES INDIVIDUALLY
ADDRESSED TO ALL
THREE (3).

FEB 13 2007

To: Kitsap County Commissioners
Jan Angel
Chris Endresen
Josh Brown

COPY TO: OPAL R
CHRISTINA LINDER

Subject: CAO Re-man response

I see from your comments at the meeting last night that you feel you must respond to the State GMA staff people and your response must be more stringent laws. I certainly hope you really understand the GMA intent and are not exaggerating or over reacting yourself. I applaud you, that you are trying to keep some sanity in governmental bureaucracy by placing administrative policies to allow for fairness.

I wish for no new buffers at all but if you have to, at least the planning boards approach shown last night is better than a flat carte-blanc 100' + 15'. Here is what I hope you will do now:

1. **Make the proposal interim and to expire in two years**, then with adequate science in 2010 you can incorporate reality into the new Shoreline regulations. Give the State the responsibility to fund research that you direct based on scientific method (define problems, test several alternative solutions with placebo type tests as well, and monitor real results). Hire an out of State Engineering Company to design it for you.
2. Change **building setback to be included in the buffer**. Semantics, but extremely important as they do the same thing. If you say 50 feet stick to 50, not slip it to 65' If you fix this you will preserve the status quo in some areas.
3. Do not go to regulating tiny wet areas. If so every mud puddle will be a massive problem for every one. We must draw the line, at least keep a say **1500sq ft minimum as non regulated**. Can you see the court cases over a tuft of wetland grass here or there -- are we not famous for our rainy environment.
4. **Put a delay between your signing and implementing** so that people who will be devastated can go for a building permit right now. One or two months would be adequate and not swamp the County Staff.

In this way your consciences will be clean, your laws will not be overly burdensome and you have time to find real truth. The GMA can tell you again that they want more, and if so that at least buys you more time. This is probably the most serious governmental constitutional issues ever raised.



R A Boston.

COPIES INDIVIDUALLY
ADDRESSED TO ALL
THREE (3):

February 13 2007

FEB 13 2007

To: Kitsap County Commissioners
Jan Angel
Chris Endresen
Josh Brown

COPY TO: OPAL R.
CHRISTINA LINDER

Subject: What to do about CAO Re-man dictate

I was at the Feb 12th meeting and listened to your questions and comments. I do respect the difficulty you have in responding to the State legal process which is attempting to make you be the scapegoat for its dirty work. I realized that you see thru the phony sham called "best available science". What we have here is a power and land grab by some very deceitful people (and maybe some ignorant ones).

I hope you can find a legal way to buy time and sponsor studies to assure yourself that you are signing your name to truth based beneficial laws.
Three low cost suggestions with no bias or political gain:

1. On pollution run off, put all the names of Kitsap County approved Septic designers, installers, and O&M people in a hat and at random pick 9. Then ask them to write their take on where real pollution problems come from and their take on the effectiveness of existing codes. Does their experience indicate we need house buffer-setbacks at all? I will bet they would do it for a few hundred bucks each. (Prove to yourself whether the issue is runoff pollution or habitat.)
2. On habitat, Do the same with some zoo keepers and old fishermen. This is more complicated as you would have to ask if they feel qualified to give a fact based opinion. Have them describe what environment should we create or save for birds, fish, wild animals, and bugs. Have them describe how you could do some tests based on scientific method; set up several different habitats and monitor the species.
3. On habitat, Do the same with several Land Use Attorneys, have them discuss the constitutionality of taking a few peoples private property for public good. This will likely be quite expensive but you need expert opinion of law. You will save the County and property owners millions and millions of lawsuit dollars.

A Citizen desirous of Good Government

COPIES INDIVIDUALLY
ADDRESSED TO ALL
THREE (3)

February 13 2007

FEB 13 2007

To: Kitsap County Commissioners
Jan Angel
Chris Endresen
Josh Brown

COPY TO: OPAL R
CHRISTINA LINDBER

Subject: Buffer Science

I am a licensed septic system installer and a civil engineer for over 30 years. You need to know a simple fact. Septic effluent is considered **clean after traveling thru three feet of appropriate soil** yes 3'. That is why we dig 5' test pits checking soil and water table level, The septic is installed in the upper two feet. The bacteria works in the lower three feet. Since that just seems incredibly short we apply a safety factor by setbacking the drainfield 30' horizontally from any downgrade 5' cut bank.

I personally have been involved building industrial treatment facilities for the Boeing Company (heavy metals etc) but I still am uncomfortable with collecting and concentrating millions of gallons of sewage in a treatment plant (the liquid is dumped directly into Puget Sound). It is far better spread out in the ground in septic systems. This power of the soil seems amazing but that is how the Bible describes God designed it. Ancient Isrealites were commanded to bury excrement in soil, of course the science of microbes was not described to them, he left it to human's intelligent minds to figure that out over time. I guess some still haven't.

Regarding the CAO Buffers on lakes and wetlands, both are totally ridiculous. Here is why:

1. Houses themselves do not discharge or pollute in any way.
2. Septic drainfield are setback 100 feet so no chance of pollution occurs. (See Post Script)*
3. Run-off from roofs is clean drinkable water, in many area they collect rain from roof into drinking water cisterns.
4. Driveway run off (with its oil from cars) is treated via systems that are designed by professionals via current Kitsap County Storm Water manuals.
5. Grass lawns are actually bio-swales. This is the best possible surface water filtering system known, the soil bacteria even breaks down oil particles.

Don't let these phony bureaucrats and lying special interest groups (who call themselves environmentalist and hold the flag of motherhood and god) play games with you; They set you up as the scapegoat in destroying public trust in

government. Make them explain the truth of their stand. I am sure different individuals have different reasons:

1. Many are gaining financial gain and power over others, big salaries, study grants, astronomical fees.
2. Some are immature and ignorant do-gooders (heart is right but brain is not).
3. Some feel a prideful arrogance that they are good guys.
4. Clearly none of them really care about the environment, they are stomping ants and letting the elephants run free. And clearly they do not care about justice for all because they want to take peoples private property without paying for it.

One last comment, remember **pollution is not the issue. Apparently habitat is.** When "they" say we need habitat, remember birds and bugs don't care if the are in front yard or back yard. Think a moment, what do they need to live? They just like a undisturbed native shielding environment which covers them from predators. So make rules such that every one in the County and State must buy or build this kind of area somewhere. Common sense indicates that habitat area would be best in large contiguous blocks (like parks) with no dogs, cats, kids or other predators.

I hope this helps you to base law on reality and truth, those of you that take oaths to govern fairly have a tremendous responsibility.



R A Boston

* **PS:** With regard to personal sewage running into water bodies. In my experience failed septic systems are usually very old and undersized or actually non-existent. Many old weekend cabins used sess pools (say a rusted out 55 gal steel drum and no drainfield). As usage increased the owners did not install a legal system. Current codes are very, very strict, It is extraordinarily rare to find a failed legal system and usually the designer, installer, and health department are right on it if they are told about it.

By focusing on the few vacant lots and the very new houses to be built under current code, you totally miss looking for any real problems, these existing old homes, major million gallon sewer plant issues, or old and non existent stormwater run off systems.

Rec'd @ 2/12/07 P.H.
submitted by Karl Duff

TESTIMONY FOR RECORD REGARDING PROPOSED CHANGES TO
KITSAP COUNTY CRITICAL AREAS ORDINANCE (CAO) - February 12, 2007

1. I'm Karl Duff, a South Kitsap waterfront owner, also a Doctor of Science. I usually don't introduce myself in this manner; however, in 2004 and 2005, I spent hundreds of hours with two other PhD.'s, studying Best Available Science (BAS) applicable to the Puget Sound region to support preparation of the Kitsap Critical Areas Ordinance (CAO). We provided Kitsap an excellent study. The findings, plus abstracts, all referenced scientific papers and a 3-hour DCD debrief were received under signature and then ignored. Instead, Kitsap elected the strict ("one size fits all.") guidance of the Washington State Department of Ecology. It is the most unreasonable in the State and seems ludicrous when counties smaller than Kitsap have conducted their own BAS determinations. Kitsap County has rejected official interest in real BAS while playing politics and establishing buffers and set-backs which exceed all other counties.
2. Kitsap's BAS ^{summary} was primarily based upon a publication by a civil engineer, Dr. Chris May. Kitsap endorsed and published May's recommended stream buffer widths ranging from 30 to 100 meters (i.e., 100 to 330 feet) for large woody debris (LWD). But actual science shows "well over 50% of LWD in streams arises from trees growing within 5 meters (15 ft.) of streams." This is a factor of ten less than Kitsap's BAS. called for
3. Now Kitsap County seeks more drastic restrictions on property through further unsupported CAO restrictions. These render nearly all improved waterfront 'non-conforming'. Competent legal counsel with interest in this case has advised that Kitsap County should not ignore submission of the scientific papers, research summaries and opinions of competent scientists submitted last month to the Kitsap Planning Commission. The State possesses no applicable BAS for marine or lake shorelines. In fact, Kitsap County's own BAS publication noted the "scarcity of scientific data examining the marine-riparian interactions." (BAS, December 2004, page 20, citing Levings and Jamieson, 2001) The studies reviewed in Kitsap BAS "do not identify specific widths based on direct scientific evidence." (BAS, page 20). Instead of relying on science specifically addressing the impact of proposed development within lake and marine shorelines, the County is using inapplicable science relating only to streams – even though all of the science in the County's record states that the science is uncertain as to how wide marine or shoreline buffers need to be to protect any of the functions or values. Even if Kitsap had newer updated BAS on shorelines within the past two years, the WEAN, HEAL and Ferry County cases hold unequivocally that a County may not ignore competing science.
4. The proposed remand revisions are based on speculation, not science. The best available science mandate is meant to preclude local authorities from doing exactly what Kitsap County has proposed doing in its remand revisions; i.e., relying upon pure "speculation (or) surmise" when protecting critical areas. [See *Honesty in Environmental Analysis and Legislation (HEAL) v. Central Puget Sound Growth Management Hearings Board*, 96, Wn. App, 522, 532 (1999); see also *Ferry County v. Concerned Friends of Ferry County*, 155 Wn.2d.824 n.8, 837 (2005)]
5. Kitsap claims 100% of its 228 mile saltwater shorelines to be critical area while Pierce County claims only 26 miles of its nearly equivalent shoreline (190 Miles) to be critical area. What's up? The same Growth Hearings Board to which Kitsap is responding has SUSTAINED the Pierce County position (i.e., only 13% of its saltwater front is critical area!) on the basis of a phone conference call! [Refer to CPSGMHB Consolidated Case No. 05-3-0004c. Also attached for the record.] Our two counties face each other across Puget Sound! How can we be so different?! Pierce County performed some science! It is evident that the Kitsap position is not scientifically founded at all nor imposed by the Hearings Board! Kitsap's position is based either on incompetence or politics. If our elected government won't fight on our county's behalf, then our citizens must! How could Kitsap's position possibly be found in court to be anything except speculative and capricious? Why should we place our County Prosecutor in a position to defend an indefensible case? { The GHB he asked for some science!
{ Mention also Island County,
6. With these CAO recommendations, I feel much like an English serf being granted limited permission by the King to use his land. Increasing waterfront set-backs from 35 feet to 100 feet (or more) will impose huge delays and costs (variance fees, attorneys and land use consultants) to recover legal use of my waterfront. Even if I am ultimately granted such use, I will still be subject to either limited opportunities or penalties for insurance and financing – costing me more money. (See the attached sheet for the record developed by Thurston County illustrating definite impact on both insurance and refinancing.) Why would any American consent to pay the government to repurchase what he already

owns? Why would he consent to public hearings, where radical environmentalists and no-growth advocates line up to impede variances? Even recovering a 50 ft. setback offers much less than the rights and liberties I now enjoy to enjoy my property without harassment by government and radical "greenies".

7. This is NOT hypothetical OR trivial! I have three adjacent waterfront properties, involving my extended family. I live 30-35 feet from the water. The recent (December 2006) storm felled two large trees on my house. Damage is about \$18,000. Repairs are still in progress. Submitting such repairs to Kitsap County for variances or permits is ludicrous. No such permission should be required to protect or restore property. Citizens in similar situations will likely act illegally if the current draft CAO revision is enacted. Impact of new set-backs on me will be extensive and totally unnecessary, tying up my property for years (as with the recent Mullenix case), delaying property sales and reducing property values. Everyone knows the county doesn't care.
8. The absence of any CAO "grandfather" clause makes the county's goals crystal clear. Approximately 6000 non-conforming properties become totally dependent upon government benevolence. Why does Kitsap seek to impose yet more citizen dependency on government's good graces and benevolence? Bland promises such as offered by DCD staff saying that the "buffers only effect new construction." (Jim Bolger, Port Orchard Independent, 10 February 2007; attached for the record.) are wildly untrue and misleading. Lacking a grandfather clause that existing homes will be exempted or "grandfathered" such statements aren't credible. Put it in writing, Jim! Unwritten promises have no accountability. They will evaporate with the next personnel turnover! The CAO should justly protect existing improved waterfront properties from being rendered 'nonconforming'.
9. Environmental and no-growth extremists call these views "selfish" and "greedy". They claim we should all embrace radical environmental laws for their "greater benefit". They seem utterly content to ignore Constitutional rights and demand compliance to their extreme ideology, not science. Not one shred of science says increasing setbacks will aid eel-grass, clams or kelp beds. Nor does science demand my front yard for deer habitat (and feces on beaches). Nor will any of this contribute to fisheries or to ground water recharge. There is simply no science in the BAS record justifying this enormous buffer expansion -- this is a simple uncompensated and unjust political land grab.
10. The Planning Commission's ballyhooed "100 ft. compromise" is only a politically expedient dog bone offered to buy off property owners in the name of mother earth, but again having no science. It ignores Kitsap's egregious "taking" and "damage" of private property expressly prohibited by the law of the land; i.e., our federal and Washington State Constitutions and only reflects Planning Commission consensus on what they think the Commissioners "might get away with" in government sanctioned theft. Without true (instead of concocted) science, that's all it is!

Respectfully,



Karl Duff, President

Kitsap Alliance of Property Owners

Hearing set on county's critical areas ordinance

By CHARLIE BERMANT
Kitsap County Writer

The Kitsap County commissioners are planning to conduct a hearing to discuss changes to the Critical Areas Ordinance (CAO) during which they will hear testimony on two contested aspects of the document they ratified in December 2005.

The hearing will address shoreline buffers and small wetlands. Both items result from citizen challenges filed with the Puget Sound Growth Management Hearings Board.

The Department of Community Development (DCD) is coordinating the hearing and the public is invited to attend and offer testimony.

The hearing is scheduled for 6:30 p.m. on Feb. 12 in the commissioners' chambers in Port Orchard; DCD staff will be on hand to answer additional questions beginning at 6 p.m.

"There are a lot of misconceptions about the buffers," said Assistant DCD Director Jim Bolger. "Some people think that if they live within the buffer area and their house burns down, they will not be able to rebuild. This is not true, as the buffers only affect new construction."

The original CAO required a buffer zone of 35 feet between the shoreline and any proposed new construction. The new version will require 100 feet. Both require an additional 15-foot building setback.

"We thought we had protected the shoreline adequately with the original limits," Bolger said. "But it turns out we didn't do enough."

The successful challenges originated from a group that included the Hood Canal Environmental Council and the Suquamish Tribe.

Bolger said shoreline buffers restrict new construction but allow the construction of passive recreational trails in the buffer area.

The second challenge governs small wetlands and, like the buffer challenge, was determined to not be stringent enough.

Here, the original ordinance decreed that new construction didn't need to make allowances for low-functioning wetlands smaller than a certain size.

The new regulations decree that even these wetlands have some importance. Building in their proximity will require compensating for them in some way; usually within the same water district.

The Impact of Nonconforming Status on A Homeowner's Ability to Purchase Insurance Coverage - A Telephone Survey of Insurance Companies

Insurance Companies	Insurance Availability	Possible Limitations or Special Requirements	Specific Comments From Insurance Company Representatives
Mellie	Yes, insurance is available.	The homeowner may be required to purchase flood insurance if the nonconforming structure is located in a wetland, floodway, or other area where flooding is a concern.	"As long as building codes are met there should not be a problem getting insurance. They require flood insurance for their cash settlements for rebuilding in another area (another property) are available." (Company Representative)
GE Insurance	Yes, insurance is available.	Amount of insurance coverage may be limited to the actual cash value of the nonconforming structure. The cost for insurance may be slightly increased.	"Homeowners can get insurance. It will be limited to actual cash value. Insurance is more likely to come from a non-standard market where homeowners may have to pay more from the get go for less coverage. The concern of limitation for potential buyers is that the price of the property may be higher than the actual cash value they could get covered for if the house is a total loss and expansion/modernizing is limited by nonconforming structure regulations. The cost may be a little different but insurance is still available." (Company Representative)
Allstate	Yes, insurance is available.	None	"Homeowners can still get insurance if nonconforming. They are able to get insurance as long as building code requirements are met. If house cannot be rebuilt in the same area then owner can have cash settlement for a like kind of home. The home can also be rebuilt elsewhere in most cases. The only exception is if land is subdivided, then it is likely no insurance will be granted." (Company Representative)
Farmers	Yes, insurance is available.	If homeowner is unable to rebuild on the same property or any other property then they will receive a cash settlement which may be less than the settlement they would receive if able to rebuild. This is determined on a case by case situation by the insurance company.	"Homeowners can still get insurance if it is a nonconforming structure, that stands does not keep it from being insurable. If it burns down and can't be rebuilt on the same spot, it can be rebuilt elsewhere. However, if owner does not rebuild elsewhere (does not rebuild at all) they may receive less money. A reduced settlement - this is determined on a case by case situation." (Company Representative)

The Impact of Nonconforming Status on A Homeowner's Ability to Refinance - A Telephone Survey of Bank Companies

Banks	Refinancing Allowances	Possible Limitations or Special Requirements	Specific Comments From Bank Representatives
Timberland Bank	Refinancing is allowed	None	"Refinancing is allowed, as long as it meets the unified building code requirements. If house/structure is nonconforming typically refinancing is offered in house via an adjustable rate loan where the rate adjusts annually with the market." (Company Representative)
Heritage Bank	Refinancing is allowed	None	"Refinances for homeowners are done with larger lenders and no directive that would prohibit refinancing has come down from them regarding nonconforming structures that were legally established and meet building codes." (Company Representative)
Open Credit Union	Refinancing is allowed	May refinance in-house rather than refinancing through secondary lender.	"Refinancing is allowed for nonconforming structures. Nonconforming status doesn't change much when it comes to refinancing. When it comes to secondary lenders the market can get stricter regarding nonconforming status, but it is generally stricter in general." (Company Representative)
Key Bank	Refinancing is allowed	May require extra insurance, such as flood insurance if the structure is subject to a hazard	"Refinancing is allowed for nonconforming structures that may require extra insurance, ex. Flood insurance if near flood plain, etc." (Company Representative)
Bank of America	Refinancing is allowed	The homeowner may face slightly higher rates, and if applicable flood insurance may be required.	"Refinances are available for nonconforming homes, the homeowner may face slightly higher rates, and if applicable flood insurance may be required." (Company Representative)

COPY

2. By no later than **January 26, 2006**, Pierce County shall file with the Board an original and four copies of the legislative enactment(s) adopted by Pierce County to comply with this Order along with a statement of how the enactments comply with RCW 36.70A.172(1) and RCW 36.70A.480 (**compliance statement**). The County shall simultaneously serve a copy of the legislative enactment(s) and compliance statement on Petitioners People for Puget Sound and Citizens for a Healthy Bay.
3. By no later than **February 9, 2006**, Petitioners People for Puget Sound and Citizens for a Healthy Bay *may* file with the Board a Petitioners' Response to the County's compliance statement and the legislative enactments. Petitioners shall simultaneously serve a copy of such comment on the County.
4. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. February 17, 2006** at the Board's offices. [The only matter at issue at this compliance proceeding will be whether Pierce County has brought its critical areas regulations into compliance with RCW 36.70A.172(1) and RCW 36.70A.480 with respect to the designation and protection of critical salmon habitat in marine shorelines.]

If Pierce County takes the required legislative action prior to the January 12, 2006, deadline set forth in this Order, the County may file a motion with the Board requesting an adjustment to this compliance schedule.

On October 12, 2005, Respondent notified the Board electronically that its attorney would not be available for the February 17, 2006, hearing date and requested an amendment to the compliance schedule. Subsequently, on November 28, 2005, Respondent notified the Board electronically that the County Council had taken legislative action to comply with the Board's Order, and both parties stipulated by email to earlier dates for the compliance proceedings. On November 29, 2005, the Board entered its Order Amending Compliance Schedule, accelerating the deadlines for the parties to file the SATC, response, and reply, and setting the Compliance Hearing for 2:00 p.m. January 12, 2006 at the Board's offices.

On December 6, 2005, the Board received Respondent Pierce County's Statement of Actions Taken to Comply, [SATC] with 14 attachments. The SATC indicated that the County had enacted Pierce County Ordinance No. 2005-80s, "Regarding the Designation and Protection of Marine Shoreline Critical Salmon Habitat and Shoreline Density Exceptions," in order to comply with the FDO. Ordinance No. 2005-80s – specifically, Exhibits A and C - amended the County's Critical Areas Regulations by designating and mapping approximately 20 lineal miles of marine shorelines as "Marine Shoreline Critical Salmon Habitat" and by requiring vegetative buffers to protect salmon habitat in the designated high-value shorelines.¹

¹ Ordinance No. 2005-80s also amends Pierce County's development regulations by deleting a provision that allowed denser residential development in rural shorelines. Ordinance 2005-80s, at 8; Exhibit B. The amendment was in response to the Board's ruling in *Bonney Lake, et al., v. Pierce County*, CPSGMHB 05304c *Tahoma-Puget Sound v. Pierce County* (January 12, 2006)
#05-3-0004c Order Finding Compliance [Re: Ordinance No. 2005-80s
Marine Shoreline Critical Salmon Habitat Provisions]
Page 2 of 8

On December 14, 2005, the Board received Petitioners Notice of Substitution of Council and Petitioners People for Puget Sound and Citizens for a Healthy Bay's Response to Pierce County's Statement of Actions Taken to Comply [**Petitioners' Response**]. Petitioners indicated they will not contest the County's action, stating:

By offering greater protections for important portions of Pierce County shorelines, as required by the GMA, Puget Sound believes that Ordinance No. 2005-80s addresses the concerns it raised in its initial Petition.

Petitioners' Response, at 3.

For the convenience of the parties, the Compliance Hearing was convened by telephone conference call at 10:00 a.m. January 12, 2006, pursuant to the Board's December 16, 2005, Order Rescheduling Compliance Hearing. Board member Margaret Pageler convened the hearing, with Board members Bruce Laing and Ed McGuire and Board extern Justin Titus in attendance. Respondent Pierce County was represented by Pierce County Deputy Prosecuting Attorney Pete Philley. Petitioners People for Puget Sound and Citizens for a Healthy Bay were represented by Kristen L. Boyles and Esther C. Bartfeld of Earthjustice.² The proceedings were recorded by audio tape.

II. DISCUSSION

The Action Taken:

Pierce County Ordinance No. 2005-80s [**the Ordinance**] – specifically, Exhibits A and C - amends the County's Critical Areas Regulations by designating and mapping approximately 20 lineal miles of marine shorelines as "Marine Shoreline Critical Salmon Habitat" and by requiring vegetative buffers to protect salmon habitat in the designated high-value shorelines. The Ordinance was adopted, as stated in its title, "responding to the decisions and orders issued by the Central Puget Sound Growth Management Hearings Board." Ordinance, Title.

The Board's synopsis of its Final Decision and Order summarizes the issues on remand:

People for Puget Sound and Citizens for a Healthy Bay challenged the provisions of Ordinance 2004-56s concerning fish and wildlife habitat conservation areas. Petitioners asserted that Pierce County's failure to designate marine shorelines as Critical Fish and Wildlife Habitat Conservation Areas and failure to require a

Case No. 05-3-0016c, Final Decision and Order (August 4, 2005), where the Board found the shoreline density exception noncompliant with the GMA and entered an order of invalidity. The compliance hearing in *Bonney Lake* is set for March 16, 2006. The present ruling makes no determination with respect to the shoreline density component of Ordinance No. 2005-80s.

² Additional parties to the consolidated case – Petitioner Tahoma Audubon Society, Intervenor Park Junction Partners, and Amicus Snohomish County – were not involved and did not appear in the compliance proceeding.

05304c Tahoma-Puget Sound v. Pierce County (January 12, 2006)

#05-3-0004c Order Finding Compliance [Re: Ordinance No. 2005-80s

Marine Shoreline Critical Salmon Habitat Provisions]

Page 3 of 8

150-foot vegetated buffer on marine shorelines does not comply with RCW 36.70A.172(1) and other GMA requirements.

Pierce County countered that a number of its critical areas designations protect areas of the marine shore and that in sum, these overlapping designations, determined on a site-by-site review, provide protection for anadromous fish. Pierce County also argued that the science of marine buffer widths is immature. Both Pierce County and Amicus Curiae Snohomish County point the Board to ESHB 1933, establishing the legislature's determination that shorelines of the state are not critical areas per se and should not be subject to "blanket" designation.

The Board found that the science in the Pierce County record uniformly documents the importance of Puget Sound marine shorelines in the lifecycle of anadromous fish. The Board found that a recent nearshore assessment identifies the specific reaches of Pierce County's marine shores that provide, or can be restored to provide, high quality salmon habitat. The Board also found ample science in the record concerning the role of marine riparian vegetation in protecting the "functions and values" of marine shorelines as salmonid habitat. The Board was persuaded that the action of Pierce County was clearly erroneous.

*The Board concluded that Pierce County **failed to comply** with RCW 36.70A.172(1) in failing to use best available science to designate and protect fish and wildlife habitat conservation areas, in failing to "protect the functions and values" of marine shorelines as critical salmon habitat, and in failing to "give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries." The Board entered an **order of non-compliance** and **remanded** Ordinance 2004-56s to Pierce County to amend the Ordinance consistent with this opinion.*

FDO, at 2.

By Ordinance No. 2005-80s, Pierce County created a critical area classification of "Marine Shoreline Critical Salmon Habitat." Ordinance No. 2005-80s, Exhibit A; SATC, Ex. 2. Using a scientific study which included data collection, field observations, and a recognized methodology (Tidal Habitat Model – THM) that can be replicated, Pierce County identified stretches of marine shoreline with high habitat values for salmon. Ordinance, at 6, 7; SATC, Ex. 3, with attachments. These areas were designated as Marine Shoreline Critical Salmon Habitat. *Id.* Finally, the County reviewed the studies already in its record, supplemented by additional scientific commentary [e.g., SATC, Ex. 7], concerning vegetative buffers as protective of salmon habitat functions and values along marine shorelines. SATC, Ex. 9, 10, 11. Based on this analysis, the County established a 100-foot vegetative buffer requirement on those marine shorelands being developed in areas identified as high-value salmon habitat. Ordinance, at 7; Exhibit C, at 7.

Positions of the Parties:

Pierce County asserts, and Petitioners concur, that adoption of Ordinance 2005-80s brings the County into compliance with the GMA requirements that were the basis for the challenge in this matter. Both Petitioners commented on the Ordinance during the public process prior to its enactment. Petitioner Citizens for a Healthy Bay supported the 100-foot vegetative buffer requirement but argued that the designation of salmon habitat protected areas should extend to a second tier of medium-high-value shoreline stretches. SATC, Ex. 13.

Petitioner People for Puget Sound expressed similar concern about “gaps” in protection, but their concerns were addressed by the County staff’s map which overlaid the proposed critical salmon habitat CAO protections over the previously adopted CAO designations to show cumulative protections. SATC, Ex. 14, at 2. In their comment letter, People for Puget Sound stated:

The proposed critical salmon habitat buffer, when coupled with the existing CAO provisions for shoreline erosion hazard areas, wetlands, and Fish and Wildlife Species and Habitat Conservation Areas³ support an ecosystem approach towards protecting marine shoreline ecological functions and values, including salmon migration corridors and rearing areas....

We therefore support your adoption of the proposed critical salmon habitat provisions. The critical salmon habitat designation, if implemented through the 100-foot vegetated buffer provision, would protect the following marine shoreline ecological functions and values; salmonid rearing and migratory habitat, including fish prey production; soil slope stability; wildlife; water quality, including temperature control and pollutant removal; sediment and erosion control; habitat structure; and shading.

SATC, Ex. 14, at 1, 2.

Board Discussion:

The Board’s FDO concluded that Pierce County’s critical areas regulations “failed to use best available science to designate and protect fish and wildlife habitat conservation areas in marine shorelines, failed to “protect the functions and values” of marine shorelines as critical salmon habitat, and failed to “give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries” in its regulation of marine shorelines.” FDO, at 53.

³ Section 18E.40.020, Pierce County Code, which protects federal and state listed species and associated habitats; species of local importance and their associated habitats, and habitats of local importance; commercial and recreational shellfish beds, kelp and eelgrass beds, herring, smelt and sandlance spawning areas, estuaries and tide marshes, and waters of the state.

05304c Tahoma-Puget Sound v. Pierce County (January 12, 2006)

#05-3-0004c Order Finding Compliance [Re: Ordinance No. 2005-80s

Marine Shoreline Critical Salmon Habitat Provisions]

Page 5 of 8

In remanding the non-compliant regulations to Pierce County, the Board pointed out that Pierce County's record already contained abundant science concerning the matters at issue. FDO, at 2, 37-43. Nevertheless, Pierce County undertook an additional public process and re-analysis in developing the proposal for Ordinance 2005-80s. SATC, Ex. 12. Based on the prior well-developed record, as refined in the compliance process, Pierce County has now enacted both *designation* of critical salmon habitat in Pierce County marine shorelines and *measures to protect* the functions and values of that habitat.

While there are various ways that the science in the record might have been applied by Pierce County to comply with the requirements of RCW 36.70A.172(1) and RCW 36.70A.480, the Board is persuaded that Ordinance 2005-80s meets the GMA standard.⁴

III. FINDINGS and CONCLUSIONS

The Board finds and concludes:

1. Pierce County's adoption of Ordinance 2005-80s used best available science to designate and protect fish and wildlife habitat conservation areas in marine shorelines.
2. By Ordinance No. 2005-80s, Pierce County created a critical area classification of "Marine Shoreline Critical Salmon Habitat." Ordinance No. 2005-80s, Exhibit A; SATC, Ex. 2.
3. Using a scientific study which included data collection, field observations, and a recognized methodology (Tidal Habitat Model – THM) that can be replicated, Pierce County identified stretches of marine shoreline with high habitat values for salmon. Ordinance, at 6, 7; SATC, Ex. 3, with attachments. These areas were designated as Marine Shoreline Critical Salmon Habitat. *Id.*
4. Ordinance 2005-80s designated approximately 20 lineal miles of marine shorelines as Marine Shoreline Critical Salmon Habitat.
5. Pierce County's adoption of Ordinance 2005-80s used best available science to "protect the functions and values" of marine shorelines as critical salmon habitat.
6. On remand from the Board's FDO, Pierce County reviewed the studies already in its record, supplemented by additional scientific commentary [e.g., SATC, Ex. 7], concerning vegetative buffers as protective of salmon habitat functions and values along marine shorelines. SATC, Ex. 9, 10, 11.
7. Based on this analysis, the County established a 100 foot vegetative marine shoreline buffer requirement on those lands being developed in areas identified as high value salmon habitat. Ordinance, at 7; Exhibit C, at 7.

⁴The recent Washington Supreme Court decision in *Ferry County v. Concerned Friends of Ferry County*, 155 Wn.2d 824, 123 P.3d 102 (2005) supported the Eastern and Western Washington Growth Management Hearings Boards' review of best available science challenges under a standard that requires the local jurisdiction to provide a "scientific foundation, evidence of analysis, and a reasoned process to justify [critical areas regulations]." 155 Wn.2d at 835. The Court also pointed to subsequently-enacted CTED guidelines at WAC 365-195-900 through -925 as providing appropriate guidance on BAS for local jurisdictions and for the Boards. *Id.* at fn. 9.

05304c *Tahoma-Puget Sound v. Pierce County* (January 12, 2006)

#05-3-0004c Order Finding Compliance [Re: Ordinance No. 2005-80s

Marine Shoreline Critical Salmon Habitat Provisions]

8. Pierce County's adoption of Ordinance 2005-80s "give[s] special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries" in its regulation of marine shorelines.
9. Pierce County's adoption of Ordinance 2005-80s complies with RCW 36.70A172(1) and with RCW 36.70A.480.

IV. FINDING OF COMPLIANCE

Based upon review of the July 12, 2005 Final Decision and Order, the Pierce County SATC, Petitioners' Response to the SATC, the Board's review of Ordinance No. 2005-80s and other documents in the record, the arguments and comments offered in the briefing and at the compliance hearing, the Board finds:

- By adopting Ordinance No. 2005-80s [Marine Shoreline Critical Salmon Habitat Provisions] Pierce County has complied with the goals and requirements of the GMA as set forth in the aforementioned Board FDO and the GMA. The Board therefore enters a **Finding of Compliance** for Pierce County Re: Ordinance No. 2005-80s [Marine Shoreline Critical Salmon Habitat Provisions].

V. ORDER

Based upon review of the July 12, 2005 Final Decision and Order, the Pierce County SATC, Petitioners' Response to the SATC, the Board's review of Ordinance No. 2005-80s and other documents in the record, the arguments and comments offered in the briefing and at the compliance hearing, and having deliberated on the matter, the Board ORDERS:

CPSGMHB Case No. 05-3-0004c, *Tahoma-Puget Sound v. Pierce County*, is **closed**. Pierce County's adoption of Ordinance No. 2005-80s corrects the deficiencies found in Ordinance No. 2004-56s and **complies** with the goals and requirements of the GMA as set forth in the Board's July 12, 2005 FDO. The Board therefore enters a **Finding of Compliance** for Pierce County Re: Ordinance No. 2005-80s [Marine Shoreline Critical Salmon Habitat Provisions].

So ORDERED this 12th day of January, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

Rec'd @ 2/12/07 P.H.
Submitted by Tim Mathis
Re: on behalf of Jack Hamilton

February 10, 2007

Board of County Commissioners
KITSAP COUNTY
619 Division Street
Port Orchard, Washington 98366

SUBJECT: Critical Areas Ordinance – Central Puget Sound Growth
Management Hearings Board Remand

Honorable Commissioners:

In December, you, as Commissioners, approved and enacted the CAO which detailed Critical Areas and the protections necessary for those Critical Areas. On adoption of the CAO, you assured us that the ordinance was supported by “best available science” During period leading up to the adoption of the ordinance the people of the county were repeatedly assured that the provisions of the ordinance were based in and supported by solid, irrefutable scientific evidence.

In July 2006, the growth Management Hearings Board rejected the provisions of our CAO finding that the scientific basis for shore line protections and some wetland protections was not appropriate. Instead, the Hearings Board specified scientific evidence presented by a state agency to be overriding. Of note, the scientific evidence that you told us you were using for the December decision apparently came from the same agency and the same basic sources.

In response to the Hearings Board remand order, you had two clear options; appeal that order, or comply with the order. You chose compliance. In doing so you implicitly agreed that the scientific basis for your December decision was flawed and that the approval action you took was not appropriate. Your decision to comply also ignored the applicable case law, because you accepted the authority of the Hearings Board to set policy and override the primary authority assigned to you by law. In essence, you failed to carry out your sworn duty. Your actions in this remand response, as in so many other instances, taken to avoid litigation, does little more than pass your responsibility to protect individual rights to private citizens who must enter litigation to correct your errors.

If your December decision was correct and you have the facts to support that decision, to acquiesce to the whim of the Hearings Board is wrong and totally inappropriate. To do so makes your regulatory decision political and arbitrary and contrary to the requirements of the underlying law. If you did not have clear factual basis for the December decision, why did you tell us you did, and what other parts of the CAO are not properly supported by solid science?

Please recognize that, in adopting regulations for shorelines at either the 100 or 150 foot buffer depth, you are condemning the entire shoreline of Puget Sound to

that level of regulation. If those buffers are appropriate in Kitsap, they are appropriate throughout the Sound. Through your actions, you provide the ability of the Hearings Board to force every county in western Washington to adopt similar regulations and any other regulations they may decree. You pass your legal authority to that Board.

It is not too late to appeal the Hearings Board ruling and to accept the responsibility you were elected to carry out. I ask you to file the appeal promptly

Sincerely,

Jack Hamilton
Silverdale, WA.



Mc'd @ 2/12/07 P.H.
Submitted by Mike Eliason

Kitsap County Association of Realtors®

3689 Munson Street – P.O. Box 3234
Silverdale, WA 98383

(360) 692-8852 • Fax (360) 692-8862 • admin@kitsaprealtor.org



February 12, 2007

Board of County Commissioners
619 Division Street
Port Orchard, Washington 98366

Dear Commissioners:

Regarding the Public Hearing of February 12, 2007 – Critical Areas Ordinance Revisions based on the Central Puget Sound Growth Management Hearings Board's Remand Order, we provide the following testimony for your consideration:

- Neither the Shoreline Management Act nor the Growth Management Act requires identical protection of critical areas and shorelines within a jurisdiction.
- Under the Shoreline Management Act, local governments must designate different shoreline environments, such as urban, rural, and natural. Within each of these different designations, there should be different buffer widths that reflect the authorized uses within the shoreline environments. For example, an urban shoreline should have smaller buffers than a rural or natural shoreline because more intense uses are allowed.
- Under the Growth Management Act, local government can have different buffer widths for critical areas, which can include marine shorelines, but need not include marine shorelines. For example, a local government could have smaller buffers in areas designated for intense development, and larger buffers for areas without urban development. Thus, areas inside the Urban Growth Areas should have different buffers than areas outside the Urban Growth Areas.
- Local government's obligation is to preserve a standard of "no net loss of critical areas functions and values" within the entire watershed, not for each and every critical area. Thus, greater protections of critical areas in some locations can be used to offset lesser protections in areas where intense development will occur.

Increasing the buffer width to 100 feet (universally applied to all urban, semi-rural, and rural shorelines and lakes less than 20 acres) and establishing an administrative reduction provision for decreasing the size of the buffer (limited to no more than twenty-five

percent reduction, requiring enhancement of the existing "degraded" buffer, imposing use of alternative on-site wastewater systems, and requiring retention of native vegetation on other portions of the site in order to offset "habitat loss" from buffer reduction) may be contrary to state law and relevant hearings board decisions. Therefore, please modify the provisions of your ordinance to comply with the aforementioned recommendations.

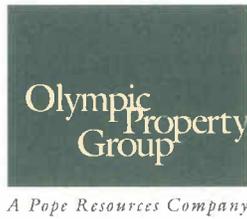
Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Mike Eliason". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Eliason
Association Executive

cc. Bill Clarke, Esq.



Mc'd @ 2/12/07 P. H.
submitted by Jim Rose

February 12, 2007

Kitsap County Planning Commission
619 Division Street, MS-4
Port Orchard, WA 98366

Re: Shoreline Buffers

Honorable Commissioners:

The shoreline buffer issue has our company very concerned. Our overarching comment is to be strategic and use discretion in the implementation of these and all environmental regulations. Target measures where they will have the most environmental benefit while reducing unnecessary hardship on land owners.

Hearings Board Decision

Our interpretation of the Hearings Board decision is that the County used land use rather than science in the development of its strategy relating to protection of marine resources (ie. Marine related fish and wildlife). We believe such a strategy that includes a graduated, logical looking buffering plan can be created, but that it will entail more time and effort than have been previously put forth. ***For that reason, we recommend adopting interim measures until more thoughtful permanent measures can be implemented.***

Goal

Kitsap County should design a marine buffering strategy that accomplishes the following:

- Protects marine resources in the whole of Kitsap County while,
- Promoting the vibrant development of our working and lifestyle waterfront

In order to do so, the County must craft a strategy that:

- looks at its shorelines holistically
- establishes the existing levels of function and values
- determine target levels of function and value for the future, AND
- Strategically, and scientifically craft a strategy in which buffers are (only) a part of the mitigation features.



— Olympic Property Group —
19245 Tenth Avenue Northeast, Poulsbo, WA 98370-7456
(360) 697-6626 • Seattle: (206) 292-0517 • Fax: (360) 697-1156



Human Serving Functions and Values

Washington's working and lifestyle urban waterfronts are at the very core of our self image. The currently proposed buffers would eliminate any significant development, or even redevelopment of these areas which *are so critical in making our urban areas thrive and attract population.*

Enclosed are some photographs that depict important images from Kitsap County. Many of which include recent and public-owned developments. It is hard to imagine the impracticality, and social impact of requiring 100 feet of trees in place of these facilities.

We understand your need to meeting the deadline the Hearings Board put before you, but strongly urge you to adopt any measures on an interim basis until you can put forth a science based, and common sense plan.

Sincerely,



Jon Rose,
President

C: Dave Nunes, President, Olympic Resource Management
Chuck Maduell, Davis, Wright, Tremaine

BREMERTON HARBORSIDE



Condos and Parking Lot Redevelopment



Commercial Developments



Transit Center

BREMERTON HARBORSIDE



Condominiums



Hampton Inn/Parking Garage

SILVERDALE WATERFRONT



Oxford Suites



Yacht Club Restaurant



Crista Shores Retirement Community



Silverdale Beach Hotel

POULSBO WATERFRONT & SUQUAMISH



Waterfront Park



Bayside Broiler Restaurant



Poulsbo Marine Science Center



Suquamish Restaurant

Mc'd @ 2/12/07 P. H.
Submitted by John Taylor

OPAL'S COPY

12 FEB. 2007

TO: BOCC

FROM: JOHN TAYLOR

9428 TRACYTON BLVD NW 98311

AS A NATIVE KITSAP COUNTY RESIDENT
THE FOLLOWING COMMENTS COME TO YOU AS
A PRIVATE CITIZEN.

IN REVIEWING THE CAO "REMAND" MATERIALS
I FIND THAT MOST ALL THE SUPPORTING DOC-
UMENTS FOR THE LARGER BUFFERS & SET
BACKS COME FROM VARIOUS STATE OFFICIALS.

IN CONTRAST MOST SUPPORT FOR KEEPING
THE APPROVED 35 FOOT BUFFERS COMES FROM
THE PROPERTY OWNERS OF KITSAP COUNTY.

IN ADDITION TO THE 35 FOOT IS A 15 FOOT "SET
BACK" REQUIREMENT FOR BUILDING, MAKING THIS
A TOTAL MIN OF 50 FEET FOR A STRUCTURE.

THEREFOR I BELIEVE WE HAVE A CASE
OF THE PEOPLE OF KITSAP VS THE STATE
OF WA. AS ELECTED REPRESENTATIVES OF
KITSAP, CAUGHT IN THE MIDDLE, I WOULD
ENCOURAGE YOU THREE COMMISSIONERS TO
HOLD THE LINE AT 35 FEET.

I ALSO WOULD ENCOURAGE THE VOTERS OF KITSAP
TO TAKE THIS LAND WAR TO THE SOURCE, THEIR
STATE REPRESENTATIVE IN OLYMPIA TO CHANGE
THE GMA TO LOCAL ELECTED OFFICIALS.
CONTROL.

John W. Taylor
360-729-8510



Rec'd @ 2/12/07 P.H.
by Don Taylor Flora for W. Palmer

January 9, 2007

Planning Commission
Board of County Commissioners
KITSAP COUNTY
619 Division Street
Port Orchard, Washington 98366

SUBJECT: Critical Areas Ordinance – Central Puget Sound Growth
Management Hearings Board Remand

Honorable Commissioners:

Seldom do legislative bodies have to work with the regulations that they pass. Consequently they do not as a rule appreciate the absurdity of “one-size-fits all” rules. Kitsap County and one has to include state agencies in these comments, seldom if ever take time to study a problem, before solutions are drafted. As decision makers, what one of you have taken the time to analyze a site to determine how rules that are now in place actually work out? The answer to that question based on observations over a twenty-four year span of time - is almost never!

Now here is Kitsap County rushing to change ill-conceived regulations passed on December 5, 2005 without taking time to study the issue! Ladies and gentlemen **that is irresponsible government. To make matters worse you set such short time frames for public notice and citizen comment that by design you clearly do not want to hear from the people most affected by the rules.** And it is clear from these actions that the proposed changes will be implemented regardless of what testimony is given or what is best for the people of this County. This is another example of the irresponsible government.

For the record, I am opposed to the proposed amendments to the Critical Areas Ordinance (CAO) for the following reasons:

1. Kitsap County has made no assessment of the environmental impact of the rule changes.
2. Kitsap County has not taken time to study the site specific impacts of the proposed rule changes.

3. County has received numerous credible scientific studies addressing appropriate wetland, stream, and shoreline buffer requirements. To date, the County has ignored almost all of those reports and instead drafted regulations that are based on generalized study information garnered from other areas outside of Western Washington published by the Department of Ecology. This same state department has no invested interest in Kitsap County and is not accountable to its citizens. There is no evidence that the proposed changes in regulations will better address Kitsap County's environmental circumstances than the existing ill conceived regulations. **In short, where is the evidence that the proposed changes are justified?**

4. Kitsap County, will be, if the "non-regulated" wetlands are removed as drafted, **regulating "mud puddles"** on property otherwise unencumbered by wetlands or streams. And one consequence of such regulation will be to over burden an otherwise paralyzed Department of Community Development and permit approval process.

5. Kitsap County has not performed a "cost / benefit" study to determine whether or not it can – a) afford the costs that will accrue to the County to enforce the regulations; b) whether or not there will be a sustainable environmental gain from the regulations; or c) whether or not the County can afford the cost of providing "just compensation" to property owners for the "property value lost" due to the regulations. Note: there are instances when isolated "mud puddle" wetlands taken in consideration with the required buffers will preclude the reasonable use of property. **Since Kitsap County has not taken the time to evaluate the potential effect of the proposed regulations, it will be faced with either paying monies to compensate property owners or it will clog an already over burdened permit review process with variance applications, reasonable use exceptions and administrative determination appeals.**

6. Kitsap County has not addressed how the existing structures and on-site improvements will be affected by the rule changes contemplated. **Please note that one of the flaws of your 2005 adopted CAO is the definition of "non-conforming uses or structure" (See KCC 19.150.475).** This definition was lifted out of the Zoning Ordinance (KCC 17) verbatim. While it is applicable to circumstances pertinent to zoning regulation it does not address the non-conforming situations with respect to environmental circumstances regulated by the CAO. **Also, consider the fact that there is no allowance for nonconformity in the wetland / buffer, stream buffer, steep slope setback or geologically hazardous slope setback regulations.** The consequence of this oversight places the County in the structure and land use abatement process. If there are no exceptions for

prior existing land uses and structures, then by default Kitsap County has committed itself to the abatement of all existing nonconforming uses and structures within the County. **Imagine the lawsuits brought against the County as a result of this oversight.**

7. Kitsap County has failed in its responsibility to consider the implications of the proposed regulations as they might pertain to existing lots within substantially developed subdivisions. There is no better illustration of this failure than is manifest in the Plats of Driftwood Keys, Miller Bay Estates, and Indian Bay. The latter two subdivisions encompass the south and east sides of Miller Bay. The CAO regulations already adopted have made vacant lots in these subdivisions non-build able unless property owners seek a CAO Variance or Reasonable Use Exception. Besides the unfairness of the CAO as it applies to these subdivisions, there is no environmental benefit to be gained by leaving a lot vacant between two homes. **This is an instance when the County is setting itself up for a lawsuit or the need to provide compensation for lost development rights to property owners.** At the very least the County is causing property owners to go through an unnecessary permit process placing demands on an already overburdened staff and Hearing Examiner not to forget the \$5,000 to \$10,000 extra expenses the lot owner must bear to go through the process or the year or more it takes to get his or her building permit.

8. Kitsap County has failed to justify the need for a 150 foot buffer width along all saltwater shorelines having an Urban, Semi-Rural and Rural Environment classification. Where is the scientific study data that supports such a change? Are Urban and Rural Environments the same? Should a developed area like Annapolis or Kingston be treated the same as the Olalla area? Are the environmental issues the same in Semi-Rural as Rural? The obvious answer to these questions is no! Did the County so quickly forget the issues involved in the creation of its Shoreline Master Program (SMP)? The reason there are separate Environment classifications in the SMP is because there are distinguishable differences. The SMP more correctly recognizes the characteristics of each environment and sets appropriate standards based on the type of environment found along the County's shorelines. **The CAO is not based on any serious study of the shoreline areas and makes no such environmental distinction. Therefore the County can not justify the proposed 150 foot buffer any more than it could defend the thirty-five (35) foot existing buffer requirement.**

9. Kitsap County is required by 2011 to update its SMP. That is the appropriate legislative process in which to consider appropriate buffer requirements for the various Environment classifications. Compared to the CAO, there was a very deliberate and considered analysis of the County's

shoreline areas prior to the adoption of the SMP in July of 1977. The County staff and even the elected officials back then went to each part of the County to hear from the citizens as well as study the shoreline areas. The Environment classifications were derived from that process. By contrast, there was no "on-site analysis" prior to the adoption of the 2005 regulations and the County has allocated no time for such study in this proceeding or made a concerted effort to hear from its citizens. **More important than these facts is that Kitsap County can not preempt the work required in the SMP update with CAO regulations.** First of all it is piecemeal legislation and second if the information used to justify the CAO regulations is incomplete (and clearly it is) then any legislation based on incomplete information is subject to challenge.

Kitsap County is apparently trying to adopt rules to satisfy an agency of state government that is not accountable to the people the Board of County Commissioners were elected to represent. Apparently the Board of County Commissioners is so bent on responding to the Central Puget Sound Growth Management Hearings Board compliance order that it is prepared to use whatever sloppy legislative process available to you to change the rules. It is apparent the Board has limited or no understanding of wetland classification, wetland or shoreline buffer impacts nor is there resident in the Board any concept of how existing rules or the proposed changes might affect your constituency. **If you argue otherwise, then it is clear you do not care.**

There is more that could be said and if time permitted examples can be presented as to how the proposed rule changes would be implemented. However, it seems apparent the Board has no interest in facts. If the Board seriously wants to pass legislation appropriate for Kitsap County then the County needs to do its homework, study the issue in detail and allocate enough time to hear from your constituency. Otherwise it appears that the Board is nothing more than a gutless lackey of state agencies. Also, it might be added that key state agencies have failed to do their homework as well and these comments are directed at the State Department of Ecology and the State Department of Fish and Wildlife. These state agencies want Kitsap County to implement regulations that are not based on field studies either in Kitsap County or Western Washington. **So why the rush?**

Respectfully submitted,



William M. Palmer

W.M. PALMER CONSULTANTS

Rec'd @ 2/12/07 P. H
Submitted by Tom Ostrom

12 February 2007 Testimony of Tom Ostrom (Suquamish Tribe Fisheries Department) to the Kitsap County Board of Commissioners

Good evening and thank you for the opportunity to testify on behalf of the Suquamish Tribe regarding proposed changes to the Critical Areas Ordinance.

The Tribe appreciates the county's efforts to address CAO issues remanded by the Growth Management Hearings Board and believes that the proposed changes will improve protection of small wetlands and shorelines in Kitsap County. The science is unequivocal: wetland protections and shoreline buffers are necessary to protect the ecological health of Puget Sound. For unincorporated Kitsap County, the difficult decision to act on this science and comply with state law is one that only you can make.

The Tribe recognizes the hard work of staff and the planning commission in developing their recommendations to you. However, the Tribe believes that there is sufficient science to support the staff's original recommendation to the planning commission calling for increasing the 35' shoreline buffer to 150'.

More importantly, the Tribe continues to be concerned about the underlying scheme to determine buffer size for shoreline critical areas. The Tribe has commented on this aspect of the CAO many times over the past several years. The primary problem with the shoreline buffer scheme is that it relies exclusively on the shoreline use designation for assigning a buffer size. This use designation is essentially a land use zone. Buffer size should be based on 2 factors: the intensity of land use and the sensitivity of the critical area. We hope that the county will consider revising the ordinance once it completes its SRF-Board funded project assessing shoreline habitats. We believe that the assessment will indicate certain shoreline habitats require larger buffers.

In addition, we believe that the proposed changes to the CAO could be improved by limiting administrative buffer reductions on shorelines to no greater than 25%. Buffer reductions greater than 25% should be type II permits requiring notification.

The Tribe supports the Planning Commission and County staff's recommendation on revisions to eliminate exemptions for small, isolated wetlands. These wetlands have ecological value, and if properly implemented, the proposed changes will ensure that their functions are properly protected.

Again, thank you for addressing these CAO remand issues and for your efforts to protect Puget Sound.

Recd @ 2/12/07 P. H.
submitted by Tom Donnelly

KITSAP CITIZENS FOR RESPONSIBLE PLANNING

10922 Horizon Lane ESE
Port Orchard, Washington 98367

February 12, 2007

Kitsap County Board of Commissioners
614 Division Street
Port Orchard, Washington 98366

Re: Kitsap County Critical Areas Ordinance - Compliance with the CPSGMHB remand

Dear Commissioners:

To comply with the CPSGMHB remand of the Kitsap County Critical Areas Ordinance by February 23, 2007, the County staff originally proposed to:

1. Remove the exemptions from regulation of certain small isolated wetlands.
2. Extend the buffer width on certain shorelines from 35 feet to 150 feet while providing for administrative reductions up to twenty-five percent by the Department and fifty percent by the Hearing Examiner.

Our letter of January 7 states that we believe these actions would satisfy the Hearings Board's objections to the ordinance. We also expressed our concern that:

1. The shoreline designations in the Kitsap County Shoreline Management Plan will need modification to meet the standards of the new Shorelines Management Act.
2. The 50-foot Conservancy Shoreline buffers and the 100-foot Natural Shorelines buffers established in the CAO are not likely to provide an adequate level of protection in the future. However, in the near term, natural topographical features may continue to afford protection.

It is important to create full harmony and compatibility between the state's Growth Management and Shorelines Management Acts and the county's Critical Areas and Shorelines Management Plans. However, such a project would be complex and disruptive of current work schedules. More to the point, it is not necessary to comply with the Hearings Board's remand.

The Planning Commission concluded that 100' shoreline buffers would be adequate and staff has prepared a new recommendation to that effect. KCRP can accept the new recommendation with the understanding that the County will accelerate the project to update and integrate the Critical Areas and Shorelines Management Plans in the near future.

Thank you for your consideration.

Sincerely,

Charlie Burrow and Tom Donnelly

cc: Cris Gears, Kitsap County Administrator
Larry Keeton, Kitsap County Planning Director

MC'd @ 2/12/07 P. H.
Submitted by Judith Higgins

Critical Areas Public Hearing
February 12, 2007

The four laws of ecology

- .. Everything is connected to everything else.
- .. Everything must go somewhere.
- .. Nature knows best.
- .. Don't give away what you can't replace.

Tonight I would like to tell you how it is and more importantly how we must change it.

The Critical Areas Ordinance has lacked teeth to protect our shorelines, wetlands and streams. That is why we are here to cast personal opinions on where we have come from and where we need to go. The science behind these decisions is not up for vote. You don't vote on science. Your science should meet peer review acceptability. As our elected officials, we must trust that you use science, not pressure to come to your conclusions.

Our individual wetlands are disappearing at an alarming rate throughout Kitsap County. One by one they are being ^{compromised} comprised by the v words, vesting, variances, and the e words, exemptions and exclusions. Did you know that in many counties throughout the country variances are only given only to old construction? New development does not qualify for variances. Close the loopholes and move on to a place where neighbors are not pitted against neighbors, but work for the common good.

Disappearing wetlands are not pretty. My closest shoreline neighbor uses Illahee estuary for a parking lot. Next door to him another 50 feet of wetland was given away. Next door to him the entire wetland was removed this year. Do not kid yourselves into believing that these are but small examples of working against the protection of our shoreline and wetlands. Until we get serious about closing the gaps which allow these events to occur, we will continue down this same path.

People understand and respect rules when they are clear. People will abide by and will respect rules which have consequences when they are bent. I believe we bend too much in Kitsap County.

Permit, variances and site plan decisions are made on a case-by-case basis without any tracking or analysis of the cumulative impacts of Critical Area development. Retroactive variances and permits are given to even those who have willful violations of the law. Those who have violated the law by building without permits are rarely fined. In building permits, health department waivers and variances have tipped in favor of development over environment.

These actions, whether overt or overlooked are part of the reason we are here tonight. We need to accept the smoking gun which has gotten us to this point. We must work together to get us to a point where we can say to ourselves that we are part of the problem that needs fixing. Plain and simple, let US be the catalyst for change. Let it begin with giving our wetlands and shorelines new life. Vote in favor of increased buffers, and the protection of our smaller wetlands. We need some gains. We could like the change!

Judith Krigsman
5171 Illahee Road NE
Bremerton, Washington 98311

October 26, 2006

Puget Sound Partnership
c/o Puget Sound Action Team,
P.O. Box 40900
Olympia, WA 98504-0900

Dear Puget Sound Partners

SUBJECT: PARTNERSHIP RECOMMENDATIONS TO:
IMPROVE WATER QUALITY AND HABITAT BY MANAGING STORMWATER RUNOFF
PROTECT ECOSYSTEM BIODIVERSITY AND RECOVER IMPERILED SPECIES
PROVIDE WATER FOR PEOPLE, FISH AND WILDLIFE, AND THE ENVIRONMENT

We, the undersigned members of Washington State's scientific community, have been studying impacts of urbanization on habitat and aquatic life for decades. There is a large body of literature regarding the relationship of urban runoff and the health of waterbodies. We have had the privilege of contributing papers describing the status and trends in Northwest rivers, wetlands, and coastal environments, the impacts of urban runoff (and other effects of human activities on Puget Sound waters), the effectiveness of mitigation measures, and original and effective methods for monitoring waterbody health. All undersigned have credentials to comment on effective approaches for urban runoff management.

These comments are in response to preliminary recommendations by the Puget Sound Partnership, dated October 2006, for action to preserve and recover Puget Sound.

IMPORTANCE OF STORMWATER RUNOFF MANAGEMENT IN THE PUGET SOUND BASIN

Urban runoff scours streams, destroys aquatic life characteristic of a healthy ecosystem, and carries enormous loads of contaminants to Puget Sound. Stormwater is most likely a primary source of destructive flows and contaminants leading to the precipitous decline in the health of the Puget Sound ecosystem.

Because of urbanization, peak stormwater flows can increase stream discharge by factors of up to 10-fold over predevelopment peaks. Annual flow volumes can double. Contaminants in and volumes of urban runoff discharged to streams change the types and numbers of aquatic species, changes that are key signals of declining ecological health.

The decline in stream health begins with the clearing of the forest and modification of river channels in a watershed. Stream flow usually increases dramatically after clearing and often streams are devastated even before any development takes place. Every square foot of effective impervious surface then added to a watershed counts further toward the stream's decline.

("Effective" impervious area is that connected by a conveyance system to surface water.) With the first increments of effective impervious area in a watershed, the numbers of the most sensitive species decline dramatically. Contrary to popular dogma, there is no threshold of development below which there will be no biological degradation.

Although all groups of aquatic organisms are affected by the actions of humans, anadromous fish in our region are the most widely understood and appreciated species that suffer enormously in streams draining urbanized watersheds. Salmon and sea-run cutthroat trout spawned and nurtured in Puget Sound's streams are important for several reasons: regional icons, contributors to regional economies, and key players in the food webs that range from mountain forests to the health of Puget Sound orcas. In short, a healthy Puget Sound depends on a healthy regional

biota, especially anadromous fish populations.

END-OF-PIPE TREATMENT AND DETENTION DISCREDITED

“End-of-Pipe” management of stormwater refers to the practice of treating and detaining runoff from urban land uses before discharging it to surface water. Underlying the employment of end-of-pipe management is the assumption that forested watersheds can be converted to any type of land use (including 100% impervious) and that the impacts of these changes on receiving waters can be negated through the use of engineered stormwater-management hardware.

The prescriptions and methods for design of such hardware are found in drainage design manuals in use by every jurisdiction in the basin. An example of such a manual is the DOE’s “Stormwater Management Manual for Western Washington”. Newly written NPDES permits require that jurisdictions use this manual (or its equivalent) in mitigating for urban runoff.

However, the DOE manual itself disavows claims to protect aquatic life. From Volume 1, Section 1.7.5: ... land development as practiced today is incompatible with the achievement of sustainable ecosystems. And also from Volume 1, Section 1.7.5: The engineered stormwater ... systems advocated by this and other stormwater manuals ... cannot replicate ... hydrologic functions of the natural watershed that existed before development, nor can they remove sufficient pollutants to replicate the water quality of predevelopment conditions.

End-of-pipe stormwater management has been and continues to be a failure at adequately protecting streams, wetlands, and Puget Sound. The literature in the past 30 years documents the negative effects of stormwater discharges on receiving waters.

In the past 5 years several papers have been published describing the marginal differences in stream damage between those watersheds where treatment and detention is installed and those where discharges are unmitigated. Hydrological studies are available that show that no amount of end-of-pipe mitigation can protect streams from urban runoff. In short, conversion of forests to traditional urban land uses cannot be mitigated by end-of-pipe prescriptions.

Since 1996, the correlation between urbanization (and concomitant decline in forest cover, loss of stream buffers, new impervious area) and stream health has been documented in detail. It is now possible to predict, with considerable confidence, the ill-effect of continuing urbanization on the last vestiges of healthy streams in the basin if such development follows the same formula employed in the past.

THE PARTNERSHIP LEANS ON FAILED PRACTICES FOR PROTECTION

The following is the stormwater recommendation from the latest draft of Puget Sound Partners recommendations (dated October 2006):

1. Issue NPDES Phase I and Phase II permits that brings 80% of the Puget Sound’s population (and some 80 cities) into active stormwater management. Also:
 - a. Implement a coordinated water quality monitoring program.
 - b. Expand programs to maximize stormwater infiltration.
 - c. Promote a basin approach to stormwater by sponsoring pilot projects.
 - d. Increase funding for Low Impact Development (LID) demonstration projects and develop incentives to encourage the use of LID.

The Partnership recommendation to issue NPDES permits is unnecessary in that this will be done regardless of Partnership stance.

Furthermore it is widely known that NPDES offers little hope of protecting streams and Puget Sound. NPDES permits issued by Washington State require only that permittees adhere to the state’s “Stormwater Management Manual for Western Washington”, a set of prescriptions for end-of-pipe engineering hardware. The manual recognizes that end-of-pipe engineering will not protect streams and source control is necessary (Volume 1). But, in the subsequent volumes

containing its prescriptions, the manual is silent about the advisability of conversion of forests to intense forms of land use. The manual allows development projects that convert up to 100% of a forested site to impervious area. The manual's prescriptions are concerned only with sizing of hardware. The scientific literature demonstrates that it is not possible to fully mitigate for any such conversions regardless of hardware size.

The Partnership should not expect that NPDES or continued end-of-pipe management of runoff will lead to the protection or recovery of Puget Sound.

Encouraging infiltration (in the absence of LID standards) is meaningless ("b." above). For traditional high-impact development, jurisdictions disallow infiltration on till soils.

Encouragement to "maximize" infiltration will not make soils more porous. And the Partnership should not be "encouraging" anything. The Partnership should be describing practices and standards that are vital to Sound recovery and recommending that they be implemented and enforced.

More low impact development pilot and demonstration projects, at best, will delay essential action ("c" and "d." above). We have sufficient experience with traditional end-of-pipe stormwater management to know that it is not an alternative and we must turn from it as quickly as possible. Sufficient projects have been constructed to show that LID projects can be successful at retaining runoff on project site. To recommend more such projects (in the absence of action to introduce changes into development code to require them) reflects unjustifiable timidity in the face of great danger to the Sound. Moreover, the Partnership recommendation for incentives ("d" above) to abide by LID standards, in the absence of regulations to force such changes, is destined to fall far short of the goal to protect and restore Puget Sound.

We regrettably conclude that, if the above is the extent of the Partnership recommendations regarding stormwater, little hope should be held for restoration of Puget Sound. Indeed it is far more likely, with the arrival of millions more newcomers and concomitant high-impact development, that the health of Puget Sound will continue in its precipitous decline.

PRACTICES THAT MUST BE IMPLEMENTED IF PUGET SOUND IS TO BE SAVED

Science supports the following actions and practices related to land use as necessary to halt the decline of Puget Sound ecosystem, provide for recovery of anadromous fish, halt the increase in and reduce the load of pollutants carried by stormwater to Puget Sound, and begin the steep climb toward restoration. This list is not all-inclusive. It is left to others to urge the many other action items needed to restore Puget Sound and other regional water bodies to healthy condition. Preserve Existing Least-Disturbed Watersheds and Subwatersheds. The scientific literature is clear that the healthiest and most biologically productive streams are found in undisturbed watersheds. Very small levels of disturbance in the healthiest watersheds immediately start their inevitable biological or ecological decline, beginning with the loss of their most sensitive species, to decline in predators and to the increase in the most tolerant species.

Such watersheds and associated streams should be set aside and protected from disturbance. If we are serious about preserving Puget Sound, we must identify those watersheds that we can characterize as in good or excellent condition and preserve them. The means employed for preservation must ensure that it is certain and permanent.

No Net Loss of Forest Cover in the Puget Sound Basin. Forest loss must be limited in the process of conversion to urban purposes, and such loss must be balanced by increasing/restoring forest cover in disturbed areas within the basin.

Forest loss owing to new development should be limited through development code. An example of such code can be found in DOE's "Stormwater Management Manual for Western Washington", Volume V, BMP T5.30. The Partnership should recommend that this code be

used to guide all new development.

To mitigate for the fraction of forest cleared in each new development (i.e. the fraction not preserved by code), the Partnership should recommend a program of clearing trading rights. Such a program would ensure that for each portion of a site cleared for development an equivalent forest area is restored elsewhere in the basin. (Forest restoration in disturbed areas can be affected by a variety of programs. Restoration of buffers along urban streams is an example.)

Halt Runoff From New Impervious Area in the Puget Sound Basin. Methods for eliminating runoff from impervious surfaces include (but are not limited to) using pervious paving materials, associating impervious area with bioretention facilities, reducing such areas to functional minimums, and so on.

The Partnership should recommend code changes requiring that most new paving and roofing be constructed using materials and practices to prevent them from generating runoff to surface water.

These methods are some of the tools in the practice of "low impact development".

Preserve Existing and Restore Destroyed Buffer Areas Adjacent to Streams. Destroyed buffers are often found in private ownership. The Partnership should recommend that these be purchased, or otherwise protected, and that soil and riparian vegetation be restored. The protection of Puget Sound as a public good requires creative approaches to these activities. The Partnership should recommend that jurisdictions adopt a system of prioritization of stream buffers to be restored and a time table for restoration. Obviously, restoration of existing problem-buffers may take decades; even so, the Partnership should set reasonable targets for buffer restoration for year 2020 and other milestone dates.

Reduce the Amount of Runoff From Existing Impervious Area. Much existing impervious area is unnecessary and should be removed. (For example, two-way streets could be converted to oneway and a lane eliminated.) Existing impervious area could be disconnected from surface water by repaving using pervious materials or bordering with bioretention facilities or both. The Partnership should recommend a program of prescriptions and incentives to reduce existing total and effective impervious area.

The Puget Sound Partnership has a daunting task and carries the burden of responsibility for the fate of the basin's ecosystem. We the undersigned applaud the effort, and offer our services in making the best possible recommendations to the Governor.

Sincerely,

Douglas Beyerlein, Professional Hydrologist and Professional Engineer
Susan Bolton, PhD, Professional Engineer
Derek B. Booth, PhD, Professional Engineer and Professional Geologist
Thomas W. Holz, Professional Engineer
Thom Hooper, Fisheries Biologist
Richard R. Horner, PhD, Environmental Engineering Research
James R. Karr, PhD, Ecologist
DeeAnn Kirkpatrick, Fisheries Biologist
John Lombard, Planner and Environmental Policy Analyst
Christopher W. May, PhD
Gary Minton, PhD, Professional Engineer
David R. Montgomery, PhD, Professor of Geomorphology
David Somers, Fisheries Biologist
Cleve Steward, Fisheries Biologist



McC'd @ 2/12/07 P.H
Submitted by Mary Bertrand

February 2007

I have often come before the Planning Commission and the Board of County Commissioners stating that I represent the Chums of Barker Creek. Therefore, when you make decisions about the importance of the critical areas, I want to make sure that you realize that I truly am speaking on behalf of many, many citizens who live within the Barker Creek ecosystem or own property along the banks of Barker Creek. I have personally met with the majority of these residents in the process of obtaining signatures to preserve the Barker Creek corridor as an important greenbelt within two urban growth areas. Some of them are elderly, most of them are extremely busy with their careers and families and do not have the opportunity to come before you to testify.

However, they are not indifferent to the decisions you are making regarding the importance of the critical areas of salmon habitat and wetlands on their own property, and their significance to the entire ecosystem and aquifer recharge areas along this corridor. They are not oblivious to the fact that the standards of the Critical Areas Ordinance are often challenged. And as a result, planning staff will send potential developers and/or other groups submitting proposals for projects within environmentally sensitive areas to meet with stewards of that particular watershed. Unfortunately, this sets these stewards up as the "bad guys" who must be dealt with. . This would not be necessary if the County stood strong and firm about what can and cannot be done on the critical areas along salmon streams, steep slopes, wetlands and shorelines. We are requesting that the County take a strong leadership position. Making sure the SEPA Checklist is treated as a serious document pertaining to the Critical Areas Ordinance would be a beneficial start.

I realize that tonight's Hearing is about buffers and wetlands only. But these cannot be addressed in isolation to the procedures that have been going on within the County to undermine the value of the entire Critical Areas Ordinance because of pressure from special interest groups.

I speak on behalf of the residents within the Barker Creek corridor. However, it is just one small area of the entire Kitsap Peninsula, and there are numerous areas similar to this with residents who believe in the value of the salmon streams, the wetlands, and what the lack of regulations can and will do to the entire Puget Sound area where they reside. This is not just conjecture on my part. We have all heard the concerned testimony from those who live along other streams from North Kitsap to South Kitsap.

They worry about whether the Critical Areas Ordinance will indeed preserve the things they value in their lifestyle. They worry that the variances and lack of enforcement can destroy the wetlands where numerous species of plants and animals thrive. These constituents depend on you to make decisions based on best available science. They depend on you to have the leadership and vision to determine what is best for the health and welfare for not just those of us who come to this podium to testify, but for the generations who will come after us.

Mary Bertrand

Rec'd R 2/12/07 P. H
Submitted by Mike Gustavson

For the Record

Submitted during Public Hearing regarding Central Puget Sound
Growth Management Hearings Board remand of Kitsap County
Critical Areas Ordinance Case No. 06-3-0012c

February 12, 2007

Dear County Commissioners,

I draw your attention to the CPSGMHB remand, bottom of page 30, where the Hearings Board takes special note of the healthy juvenile salmon and herring populations in two measured studies in Sinclair Inlet. This inlet has been surrounded by hard surface roads and buildings for the past 100 years and anadromous fish are doing fine with virtually no buffers.

To qualify as science, two attributes must be present: that it be measurable and repeatable. If these attributes are not found, it doesn't qualify as science.

The studies repeatedly referred to by the CPSGMHB are Dr. Chris May's work and that of Knutsen and Naef, page 31, et.al. Knutsen and Naef only studied streams and didn't count fish. They studied secondary effects, which are assumed to affect fish.

Dr. Chris May's work compares streams in the natural setting with those in urban environments. Again, no fish are counted. He then presumes to extrapolate his conclusions to their possible effects on the marine shoreline. He gathers and analyses no data. This work, regarding marine shorelines is at best hypothesis. It certainly doesn't qualify as science.

Kitsap County seems to be in mortal fear of being sanctioned if it doesn't comply with the CPSGMHB remand.

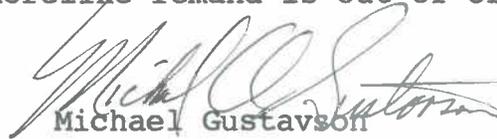
Only Chelan County has been sanctioned by the State, and that was for refusing to plan under the Growth Management Act.

The case of the CPSGMHB is so weak, there is no chance Kitsap would be sanctioned.

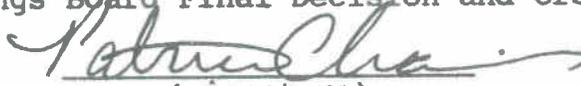
We elected you to protect the citizens' property. We only hope you have the courage to do it and reject the CPSGMHB remand.

If you don't, you will be put in the position of defending the CPSGMHB large buffers, when your initial position was 35 foot buffers were perfectly adequate.

I note also on CPSGMHB page 28, the remand passed over "Compare *Biggers v. Bainbridge Island*, 124 Wash. App. 858 (Div. II 2004)(holding RCW 36.70A.480 dictates that the SMA policies and regulations take priority over those adopted under the GMA,..." in favor of a Div. I 2006 counter ruling. The key issue is where courts differ, the local ruling has standing until adjudicated and the differences resolved by a higher court. This has not happened, so by practice, *Biggers* applies in the Division II region, of which Kitsap County is a part. The CPSGMHB shoreline remand is out of order.


Michael Gustavson

Received by Kitsap County Department of Department of
Community Development for the public record regarding Growth
Management Hearings Board Final Decision and Order of August
28, 2006.



(signature)

PATRICIA CHARNAS

January 18, 2007

Dear County Commissioners and fellow members of the County
Planning Commission,

Regarding the Central Puget Sound Growth Management Hearings
Board remand of Kitsap County's Critical Areas Ordinance, I
seem to be a bit confused. In reading the Growth Management
Act, nowhere do I find authority for the Hearings Boards to
establish or determine buffer widths. The responsibility to
plan under and balance the goals of the Growth Management Act
is specifically given to the elected officials in RCW
36.70A.020. Granting buffer width determination to the
Growth Management Hearings Board makes a sham of public
participation requirements in RCW 36.70A.035.

Shorelines:

Quoting Gary Tripp:

"1. the Growth Management Act requires you to consider Best
Available Science in forming the Critical Areas Ordinance
(CAO)- not that you adopt the DOE or Hearing boards standards
or buffers.

2. Engrossed Substitute House Bill (ESHB) 1933 rules all
shorelines are not critical areas - the county can't over
rule state law

3. ESHB 1933 rules that the Shoreline Master Program (SMP)
can not be changed by the GMA or CAO

The County should change the CAO to read:

"The marine shorelines may contain critical areas. The marine
shorelines are regulated and protected by the SMP. Kitsap
will update the SMP in 2011 in accordance with the DOE
scheduled update process.

The County should stand its ground. Only one county has ever
been fined under the GMA - that was for not completing the
CAO. The Hearing Board can't do anything and they no
authority to dictate terms of the CAO."

RCW 36.70A.345 only allows the Governor to sanction counties
for not designating critical areas. This, Kitsap County has
done.

Because the Growth Management Hearings Board has relied on such a weak foundation and in light of the strong scientific evidence countering their findings, I recommend Kitsap County retain its' current 35 foot regulation of shoreline buffers.

Interestingly, the Growth Management Hearings Board remand on page 28, first paragraph and on page 30, bottom paragraph, illustrated that not all shorelines are critical. I read this as an admonishment to Kitsap County to specifically inventory it's shorelines.

The other pieces of logic that escape me is the Growth Management Hearings Board comment in it's remand on p. 30 that spawning herring and juvenile herring are healthy and thriving in the urban environment of Sinclair Inlet with virtually no buffers and bordered entirely by paved roads and parking lots.

Numerous major scientific, data based studies showing the adverse effects of large buffers were submitted to Kitsap County during the Critical Areas Ordinance review process. The attachment lists several of these studies.

While the Growth Management Hearings Board relied on Drs. Christopher May's and Knudsen and Naef studies to justify requirements for larger buffers, neither study was developed based on shoreline data, but rather were stream studies that relied on measures of secondary effects that were assumed to adversely affect health and survival of aquatic species.

Knudsen and Naef is a strictly stream Best Available Science study in the undisturbed, natural environment. May's study compared developed to natural environment streams to prove there are differences on function, but failed to count fish. He then extrapolated the results to conclude shoreline buffer requirements with no data. This can hardly be described as science, much less best available science. Sadly the Growth Management Hearings Board relied solely on these studies, when many more convincing works were submitted with opposing conclusions. These were often huge studies by reputable researchers.

Wetlands:

No justification is given for Kitsap County waiving restrictions on small type III and type IV wetlands. With approximately 5,000 wetlands, Kitsap County is not in short supply. Extending the regulations to small 2500 square foot type III and 7,500 square foot type IV wetlands, the regulations will have an measurable effect on increasing urban sprawl.

A ten square foot wetland of either type will require a 19,216 to 19,530 square foot buffer area. There are numerous mud puddles in Kitsap County.

A three foot wide, 2,500 square foot wetland swale would require 1.92 acres of buffer for a type III wetland and a 7,500 square foot type IV wetland swale would require 3.45 acres.

William Palmer's e-mail of January 17, 2007 (attached) further illustrates the onerous burden elimination of small wetlands exemptions will bring to property owners.

Again, quoting Gary Tripp:

"The GMA is a preservation ordinance not a restoration ordinance. The GMA governs how land is developed, not the redevelopment of existing developed lands.

Suggestion:

New buffers should only be applied to development of undeveloped land.

Additional, existing law and the Camas Decision require that the buffers and other restrictions be proportional. Requiring buffers on small wetlands that are bigger than the wetland they are designed to protect is not proportional.

Suggestion:

Buffers should be no larger in area than the wetland they protect."

Excessive buffers are onerous requirements.

Because purchasing adversely impacted properties doesn't appear to be within Kitsap County's budget, it appears that County intends to grant variances for building permits to avoid property "takings".

This places tremendous burden on property owners, staff, the hearings examiner and yourselves. With the intent to grant variances, and since 81% of Kitsap County's waterfront is built out, nothing positive will be achieved with this legislation.

Because the Growth Management Hearings Board relied on such weak application of science, when much more credible science was offered (see attached partial list), I believe the Governor would be quite reluctant to sanction Kitsap County for rejecting the Growth Management Hearings Board's ruling.

In the words of Gary Tripp:

"It is our opinion that the Hearing Board grossly exceeded it's (sic) authority by making decisions on what Best

Available Science to apply and how to apply it. These are decisions which are to be made by local elected officials who can best balance all of the 14 goals of the Growth Management Act, including protecting private property rights.

If it were the intent of the Legislature that the State agencies make these decisions, they would simply have said, 'and the Department of Ecology will decide the size of the buffer'. But they did not, the legislature left it up to you to balance all the competing interests and the goals of GMA. I urge you to stand up for local control."

Kitsap County needs to stand up for the decision to conduct a thorough inventory of it's shorelines prior to the 2011 update of our Shoreline Master Program, identifying specific areas where critical animals and fish have primary association or spawn/breed and determine the requirements to keep these populations healthy.

The Legislature, in Engrossed Substitute House Bill 1933, in 1993 specifically state that not all shorelines are critical. To encumber 6,000 existing residences with non-conforming status, including permanent notice to title and preventing the owners from enjoying trail access to the properties they worked hard to buy, is unconscionable.

Wildlife:

The argument that shoreline buffers are intended to provide habitat for all wildlife is hard to swallow. Generic wildlife wander will beyond 150 feet form shorelines. Imposing the full burden for wildlife habitat on the owners of properties that contain shores, wetlands, streams or arbitrarily drawn wildlife corridors, some of which cross freeways with no safety accommodation, with no hard evidence to support these restrictions on use, amounts to flagrant discrimination. It flies in the face of RCW Title 77, which prohibits private property owners from being required to pasture the State's wildlife and RCW 36.70A.020 (6) that "property rights of landowners shall be protected from arbitrary and discriminatory actions".


Michael Gustavson

The following information was submitted for the record to the Kitsap County Planning Commission August 2, 2005:

Buffer science in general:

WAC 365-195-925 requires special consideration be given to anadromous fish. Dr. James Buell's January 2000 "Review of Kitsap County draft "Land Use & Development Policies, "Critical Areas Ordinance" and supporting documentation states clearly that salmon are best served with a variety of stream environments, ranging from open canopy to narrow forested stream edges.

The County's BEST AVAILABLE SCIENCE was derived primarily from studies conducted in other parts of the country, with different climate and geology from ours. Staff did not tell us of any Pacific Northwest peer reviewed studies. Draft 2 does not reflect the scientific studies accomplished on the western slope of the north Pacific coast regarding buffers. All "open canopy" studies of salmon biomass production were omitted from the County's "Best Available Science" supporting document.

The following studies, Best Available Science based on extensive measured science in western Washington, western Oregon, Vancouver Island and Southeast Alaska consistently show that clear-cut streams and river system consistently outperform old growth, shaded streams for salmonid biomass production:

16 large, peer-reviewed, hard science studies have shown that clear-cut streams without buffers are as productive of fish and other wildlife as buffered and even uncut riparian forests. The majority of these studies were done here, west of the Cascade mountains. Numerous additional studies continue to support the work summarized below:

• Less vegetation cover over streams is beneficial to salmon:

In 8 streams, macro-invertebrates were more numerous in non-canopy reaches. This involved counting and identifying 102,000 'bugs'.

Meehan, William R. 1996 "Influence Of Riparian Canopy On Macro-Invertebrate Composition And Food Habits Of Juvenile Salmonids In Several Oregon Streams". Portland **US Forest Service, PNW Research Paper 496**

• High temperatures don't harm fish in the Northwest:

In 3 watersheds, there was no salmonid mortality in the clear-cut despite higher temperatures.

Hall, James D. and Richard L. Lantz. 1969. Effects of logging on the habitat of coho salmon and cutthroat trout in coastal streams. (The Alsea Study on SW Oregon.) In: Northcote, T.G., ed. "Symposium on salmon and trout in streams", H.R. MacMillan Lectures on Fisheries, a symposium held at the University of British Columbia February 1968. Vancouver: Institute of Fisheries, University of British Columbia.

• **Old growth streams not as productive as logged areas:**

On 9 pairs of logged and unlogged sites, total salmonid biomass averaged 1.5 times greater after logging than in adjacent unlogged sections.

Bisson, Peter A. and James R. Sedell. 1984. Salmonid populations in streams in clear-cut vs. old-growth forests of western Washington. In: Meehan, William R., et.al., eds, "Fish and wildlife relationships in old-growth forests", proceedings of a symposium, April 1982. American Institute of Fishery Research Biologists.

• **Riparian factors had no influence on fish abundance:**

On 62 stream sites, riparian factors had no influence on fish abundance. Fish, birds, mammals persisted after logging regardless of buffers. Fish responded positively to increased solar radiation, resulting in higher primary and secondary production.

US Forest Service, PNW Station, "Science Findings" 53 (May 2003). (REMS (Riparian Ecosystem Management Study.))

2 papers in PNW Station GTR 563, 2002: "Congruent Management of Multiple Resources, Proceedings from the Wood Compatibility Initiative Workshop." Authors are Martin G. Raphael, Peter A. Bisson, Lawrence L.C. Jones, Alex D. Foster

Also described in Hayes, Richard W. and Gloria E. Perez, tech eds, 2001 "Northwest Forest Plan Research Synthesis", page 37. PNW GTR-498

• **Temporary human disturbance near streams has no effect on birds and animals. Construction setbacks are not needed:**

On 187 sites, total abundance and species richness of birds and small mammals close to streams were compared before and after harvest.

O'Connell, M.A., J.G. Hallett, S.D. West et al. 2000 "Effectiveness of riparian management zones in providing habitat for wildlife." **University of Washington and**

Washington DNR Timber Fish and Wildlife Report TFW-LWAG1-00-001 459 p.

• **Salmon are more productive in unmanaged rivers:** Two adjacent, large watersheds were logged (Vancouver Island). "The Keogh River was heavily rehabilitated and fully protected using all the latest techniques of environmental river management. The Waukwaas River was left entirely unprotected. Even with artificial feeding of fry, the Keogh was solidly outperformed by the 'poor habitat' in the Waukwaas River."

Ward, Bruce R., Donald J.F. McCubbing, and Patick A. Stanley. 2003. Evaluation of the addition of inorganic nutrients and stream habitat structures in the Keogh River watershed for steelhead trout and coho salmon. In "Stocker, John G., ed. Nutrients in salmon ecosystems: sustaining production and biodiversity. "Proceedings of the 2001 Nutrient Conference, " Eugene Beheads: **American Fisheries Society.**

Doodads, Don. 2004. **Saving salmon** (pamphlet) Portland, OR: North Pacific Research.

• **50% of all large woody debris in streams arises from trees growing within 15 feet of stream banks.** Murphy, M.L. J.M. Lorenz, J. Heifetz, J.F. Thedinga, K.V. Koski, and S.W. Johnson. "The relationship between stream classification, fish and habitat in Southeast Alaska" USDA For. Ser. Res. Paper R10-MB-10. Tongass Nat. For. Juneau. 1987; Van Sickle, J. and S.V. Gregory, "Modeling inputs of large woody debris into streams from falling trees", Can. J. For. Res 20:1593-1601 1990;

• **Little is to be gained by overmanaging stream buffers.** Buell, J.W., 2000 Review of Kitsap County draft "Land Use & Development Policies", Critical Areas Ordinance" and supporting documentation

• **Field and laboratory studies repeatedly show no predictable effect on salmon production from copious sediment input in logged watersheds, most of which lacked any buffer strip protection at all.** "Fine Sediment and Salmonid Production: A Paradox" (Everest. Beschta, Scrivener, Koski, Sedell and Cederholm, Chapter four of "Streamside Management: Forestry and Fishery Interactions" published by the University of Washington (Salo and Cundy, ed. 1987)

• **Opening the canopy of streams increased biomass of trout even where sediment in the stream bed increased at the same time.** Murphy and Hall (1981)

• **"Increased temperatures following logging, together with increased light levels and increased nutrition**

concentrations, often lead to general increases in productivity in the trophic levels that form the Best Available Science for fish production. Increased temperatures, light, and nutrients all play a role. Temperature directly affects development rates of fish; in some systems, the temperature increases lead to earlier emergence, longer growing seasons and increased survivals at critical times in the life histories of fish." "Stream Temperature and Aquatic Habitat: Fisheries and Forestry Interactions" (Beschta, Bilby, Brown, Holtby and Hofstra, 1987), Chapter six of "Streamside Management: Forestry and Fishery Interactions" published by the University of Washington (Salo and Cundy, ed. 1987)

- "Sizable (canopy) openings allowed increases in sunlight penetration to salmon streams resulted in significant increases in overall productivity" (Hetric, N.J., M.A. Brusven, W.R. Meehan and T.C. Bjornn, "Changes in solar input, water temperature, periphyton accumulation and allochthonous input and storage after canopy removal along two small salmon streams in Southeast Alaska." Trans. Am. Fish. Soc. 127(6):859-875, 1998)

- "Salal and salmonberry, two very important understory vegetation types, especially for large mammals (e.g. deer, black bear) are suppressed in closed canopy forests." (Klinka, K., H.Y.H. Chen, Q. Wang and L. deMontgny, Forest 1996 "Canopies and their influence on understory vegetation in early-serial stands on west Vancouver Island". NW. Sci. 70(3):193-200.)

- "Various forest management strategies on overwintering bird communities on the Oregon Coast Range showed total bird abundance was greatest in small-patch stands. Species richness was highest in small patch stands and lowest in clearcut and 'control' (mature forest) stands." (Chambers, C.L. and W.C. McComb, 1997 "Effects of silvicultural treatments on wintering bird communities in the Oregon Coast Range" NW Sci. 71(4):298-304)

- Desbonet et al indicates 6 foot buffers are every bit as effective as 300 foot buffers.

Non-fish bearing streams discharging directly into Puget Sound serve different functions than those that discharge into fish bearing streams and hence have different requirements.

Mc'd @ 2/12/07 P. H.
Submitted by ALAN Peterson

1/2

I AM GOING TO READ A BRIEF STATEMENT IN REGARDS TO THE
PROPOSED SHORELINE SETBACK INCREASE.

LET ME FIRST THANK COMMISSIONER JAN ANGEL AND COMMISSIONER
JOSH BROWN FOR ACKNOWLEDGING THE E-MAIL I SENT TO ALL THE
COUNTY COMMISSIONERS AND THE OFFICE OF COMMUNITY
DEVELOPMENT.

FROM WHAT I HAVE READ AND LEARNED, THE PROPOSED INCREASE IN
THE SHORELINE SETBACK ADDRESSES NO SPECIFIC ENVIRONMENTAL
PROBLEM.

TO ENACT ANY CHANGE IN THE CURRENT SHORELINE SETBACK WITHOUT
SPECIFICS IS NOT AN APPROACH THAT HAS BEEN ENGINEERED TO
PROVIDE ANY GAIN FOR THE PEOPLE OF KITSAP COUNTY OR THE
ENVIRONMENT.

IT APPEARS THAT THE COUNTY AND ITS STAFF HAVE THROWN OUT A
DISTANCE, 150 FEET, FOR THE NEW SHORELINE SETBACK, THEN WITH
WHAT THEY CALL BEST AVAILABLE SCIENCE REDEFINED THAT NUMBER
TO 100 FEET. SOUNDS LIKE THEIR REASONING TO REDUCE THE 150 FOOT
SETBACK DISTANCE TO 100 FEET IS MORE LIKELY BASED ON THE BEST
POLITICAL SCIENCE AVAILABLE THEN ON ANY SCIENTIFIC FINDINGS.
APPLYING A 100 FOOT BUFFER TO WATERFRONT PROPERTY WITHOUT
IDENTIFYING SPECIFIC PROBLEMS WILL SOLVE NOTHING.

THE ELECTED OFFICIALS OF KITSAP COUNTY AND THEIR STAFF SHOULD

BE CONTRIBUTING TO THE PRESERVATION OF THE ENVIRONMENT BASED ON FACTS.

THERE ARE ~~SOLUTIONS TO~~ IDENTIFIED ENVIRONMENTAL PROBLEMS ^{APP} IN KITSAP COUNTY. (I.E. BREMERTONS CONTINUAL SEWER OVERFLOW, AND THE REDESIGN OF SOUTHWORTH DRIVE IN HARPER TO SLOPE TOWARDS PUGET SOUND AND PROVIDE NO BUFFER). THE COUNTY, THE STATE, THE CITIES, THE PORT DISTRICTS, THE SEWER DISTRICTS AND THE CITIZENS SHOULD ALL PARTICIPATE IN SOLUTIONS TO ENVIORNMENTAL PROBLEMS NOT JUST ONE SELECTED GROUP.

IF THIS ORDINANCE IS APPROVED, WATERFRONT OWNERS BEING TARGETED TO SOLVE KITSAP COUNTY'S MISDIRECTED SOLUTION TO AN UNDEFINED PROBLEM, SHOULD THEN BE PROVIDED WITH EQUITABLE COMPENSATION.

NOTHING IS FAIR IN THIS WORLD, HOWEVER, THERE IS A BASIC RIGHT AND WRONG.

THANK YOU,

ALAN PETERSON

P.O.BOX 134, SOUTHWORTH WA 98386

Mc'd @ 2/12/07 P. H.
Submitted by Vivian Hunkin

February 12, 2007

Board of County Commissioners
KITSAP COUNTY
619 Division Street
Port Orchard, Washington 98366

SUBJECT: Critical Areas Ordinance – Central Puget Sound Growth
Management Hearings Board Remand

Honorable Commissioners:

In the beginning, our Creator gave us our world and our unalienable rights, and He was Best Available Science – and that was good.

In December 2005, Kitsap County decided that 35 foot buffers were necessary to protect all shorelines. They used Best Available Science because staff said it was so – and that was good.

In 2006 the Puget Sound Growth Management Hearings Board said that 150 foot shoreline buffers were more correct. They had BETTER Best Available Science because they said so – and that was good.

In January 2007, the Kitsap County Planning Commission compromised on 100 foot shoreline buffers. They had EVEN BETTER Best Available Science because staff said it was so – and that was good.

In January 2007, the Planning Commission also decided that variation on the theme of buffers was appropriate if the property involved was designated “urban in nature” and if adjacent (county definition) was already developed. Under these circumstances, a 50 foot buffer would be acceptable as long as the property owner piled layers of paper on the counter at the County offices. This appeared to be consistent with SUPERIOR EVEN BETTER THAN BEST Best available Science because staff said it was so – and that was more CONFUSING than good

In January 2007, the Planning Commission agreed with the Puget Sound Growth Management Hearings Board that any wetland of any size, regardless of location or actual demonstrated environmental impact required the stringent protection of law. This appeared to be consistent with the GMHB BETTER Best Available Science and the EVEN BETTER Best Available Science because they said so and staff approved – and that was good.

In February 2007, Kitsap County must decide exactly which Best Available Science is actually best and establish shore line buffers and wetland regulations. Staff seems to be variable on Best – and that is NOT good.

Consider:

A senior staff member, now advising on this issue, once defined Best Available Science as: **“That science which is available and which best fits the regulations being proposed”** It would appear this is the definition being used throughout this process.- and that is NOT good

Salt water shorelines are of specific interest to the State since they claim control and ownership of all water and shoreline in the sub-tidal regions. If that is so, the State is the owner of the “eel grass beds” and “smelt spawning” habitat as well as all other saltwater fish habitat. The state is claiming “harm” to their owned habitat but the State feels no need to clearly demonstrate that harm in each individual case before summarily finding against the adjacent (common meaning) property owners as the cause of that harm. The state is basing their required protection on an assumption of potential theoretical harm in unspecified specific areas – and that is NOT good.

Those areas most frequently noted as presenting the greatest danger to the waters of Puget Sound are the developed “urban” areas. The modification of the shoreline buffers in “urban” areas would appear to be contradictory to the best interest of a healthy Puget Sound and the goals of the now infamous “Shared Strategy” and the proposed “Puget Sound Partnership” agency. Now we can anticipate conflict between the federal government, state government, county government, and the various “protectors” of our environment as they fight out who really has the BEST Best Available Science – and that is NOT good.

Any area now determined to have the basic characteristics of a wetland will require regulation, buffering and control. No inventory or estimate of such additional wetland areas currently exists, but numerous instances of small wetlands on property either purchased expressly by the county for development or currently owned by the county and in use have wetlands. How those properties (many of them existing park properties) will be controlled is not clear – and that is NOT good.

It should be clear to all that what started out as an effort to bring general order and sense to expansion and development of land areas in counties to ensure that infrastructure and development were coordinated with some degree of efficiency is now out of control. No longer are we concerned with growth. The issue now is limiting growth and using “environmental protection” as the new alter to lay our sacrifices upon. – and that is DEFINITELY NOT good.

It now appears that the end result of this effort will be a political effort to define which science – Best Available Science, BETTER Best Available Science, EVEN BETTER Best Available Science, or SUPERIOR EVEN BETTER THAN BEST Best Available Science – will be implemented to control our future. – and that is REALLY, REALLY NOT good.

It might be AMUSING if it were not so important and have such an impact on our lives BUT it is REALLY, REALLY NOT GOOD.

Sincerely,

Jack Hamilton
Silverdale, WA

vivian

From: vivian [viviankapo@wavecable.com]
Sent: Sunday, February 11, 2007 2:33 PM
To: Vivian Henderson
Subject: Testimony on Kitsap County Critical Areas Ordinance Remand

County Commissioners: Jan Angel, Josh Brown & Chris Endresen:

My name is Bob Benze. I am an environmental engineer and a property owner residing in Silverdale. I have experience in the environmental protection of streams and the marine environment.

Last year, I gave testimony to the commissioners that said that the County's own scientific experts recognized that Best Available Science was both species-specific and site-specific. That is, that you must know what species you are trying to protect and you must know what habitat is pertinent to that species.

But the county is doing this ordinance on the cheap. They said that using site specific criteria would have been too expensive, stating it would take "a commitment of substantial human and financial resources, and is not currently feasible." So, instead of mapping the streams and shorelines to find areas where there is important habitat, such as eel grass, to support specific species of concern, the county elected to classify all stream banks and shorelines as critical areas and apply highly generalized buffer zone criteria everywhere – using buffer studies that, in most cases, do not even apply to Kitsap County species or habitat.

Was this approach driven by law or even by unaffordable cost? The answer is clearly "no". Other counties have mapped habitat and limited their buffers to areas that clearly support species of concern. The best example of stream mapping I am aware of is in the State of Maryland, where they clearly felt the expense was justified. And the 100 ft. buffers now being proposed have no more scientific justification than the previously specified buffers – They are just a larger blanket to ensure everything is covered.

So why would the county use this generalized approach to buffer zones. I would suggest that this really isn't about preserving the land for species. Most wildlife in the county is thriving. And although I don't have the figures for Washington, in the entire country no more than five percent of the land is developed. That's a lot of open space for people who want to enjoy nature.

I suspect that the real reason is actually more political than scientific. It is more about the use of the political system by people who want to retain the aesthetic values they enjoy through the use of government regulations to impose controls to prevent changes to the land -- without having to pay the property owners for the privilege.

I would point out that other countries have taken a somewhat more enlightened approach. In both Britain and Sweden, the government purchased the land, or at least the development rights, when they decided to limit sprawl and preserve open spaces.

In closing, I ask that this change to the ordinance not be approved until an actual "Best Available Science" approach is employed – using site-specific and species-specific criteria. Anything else

imposes an indefensible and unacceptable burden on far too many property owners in Kitsap County.

Robert J. Benze
11055 Mt. Vista Circle NW
Silverdale, WA 98383
(360) 692-0800

vivian

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Sent: Sunday, February 11, 2007 2:33 PM
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2/11/2007

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Robert J. Benze
11055 Mt. Vista Circle NW
Silverdale, WA 98383
(360) 692-0800



Me'd R 2/12/07 P.H.
Submitted by V. Henderson

To: Kitsap County Board of County Commissioners
Public Hearing 2-12-07

Testimony on the Actions to Revise the Critical Areas Ordinance (CAO) in Response to CPSGMHB Remand Action

If the logic and science of the original revisions were questionable, the additional proposed revisions defy all sense of logic.

First the basic problem:

1. By definition, a Critical Area is a naturally existing condition without reference to urban or rural location or the actual status of development of the location. A Critical Area is a Critical Area.

19.150.215 Critical Areas. "Critical areas" means those areas identified as: (a) wetlands; (b) areas with critical recharge effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) geologically hazardous areas; and (e) frequently flooded areas.

NOTE: The shoreline restrictions addressed in the remand action and the wetland protections considered in these revisions are directly associated with "fish and wildlife" without the specific definition of "conservation areas".

2. By definition, every Critical Area in the county is subject to the requirements of the CAO (19.100.110.B and F and 19.110.115). The only question is how and when the regulations will apply.

19.100.110.B This title applies to all uses and activities within areas or adjacent (means area of review, see 19.100.110.G) to areas designated as regulated critical areas unless otherwise exempt.

19.100.110.F Uses and activities in critical areas or their buffers for which no permit or approval is required by any other county ordinance remain subject to the development standards and other requirements of this title. While this title does not require a review or approval for such uses and activities, they remain subject to the title.

19.110.115 Relationship to other county regulations. When any provision of any other chapter of the Kitsap County Code conflicts with this title, that

"The small landholders are the most precious part of a state." - Thomas Jefferson

which provides the most protection to the critical area, as defined by the department, shall apply.

3. Statements made by either BOCC or staff that existing conditions are not subject to the provisions of CAO are clearly false (see 2 above) and would be contrary to the basic logic and purpose of the regulations “to identify and protect critical areas as required by GMA.” If the Statements by BOCC or staff regarding the non-applicability of the CAO were correct, it would follow that the actual purpose of the regulation is to hamper or deprive owners of non-developed property from realizing “enjoyable use” of that property, a right protected by the US and State Constitutions.

Therefore, it must follow that, regardless of non-binding statements by staff and elected officials, the provisions of CAO are applicable to all property in Kitsap County without consideration of status of development.

Now the specifics of the remand revisions.

1. By deleting the two categories of non-regulated wetlands, a variance from state designations, every location which retains surface water or otherwise meets the definition of a “wetland” will be subject to regulation and buffer restrictions. Assigning the responsibility for determination of impact to staff and requiring significant financial outlay by the property owner are the only result of this action. There is no clear benefit to “public health or safety” demonstrated by the action, and, if the original decision was based on “best available science” this decision must be based on political determination alone.
2. The extension of shoreline buffers to 100 or 150 feet has no clear basis in either science or logic. Major portions of the county shore line are already developed and establishing patchwork areas of buffers along the shoreline will have no significant impact on habitat. The end result of this revision will be to establish positive control over the actual use of all shoreline property in the county. Appeals on permit applications and lawsuits filed by “environmental protection groups” and or the tribes will soon follow adoption of these regulations.
3. The attempt to mitigate impact on “urban area’ shorelines, although commendable for intent, fails the rules of logic. Urban shorelines are supposed to be the most critical because they have the most significant storm water runoff and the highest potential for pollution. That must be fact because that is part of your scientific evidence for regulation. Buffer averaging in urban areas becomes less than significant in that virtually all shoreline property is already developed or the shoreline buffer is interrupted and terminated by a road. Of course, even with buffer averaging, the new development would still require the buffer to meet

"buffer" requirements such as native vegetation and non-entry. With all of those considerations, why waste the time trying to placate a very small group of property owners at the expense of all others.

As the provisions of the Ordinance become more expansive and impact larger areas of the county, the question of practical enforcement must be considered. With well over 200 miles of shoreline and now untold acres of wetland in the county, how many "natural resource" professionals and code enforcement officers will be required to enforce the Ordinance provisions? What is the economic impact of this action and how will the costs of enforcement be covered? Will this action result in higher fees for all seeking development permits or just place the cost burden on those who are unfortunate enough to have a "critical area" on their property or an "adjacent" property?

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Vivian Henderson".

Vivian Henderson, Executive Director
P. O. Box 2133
Port Orchard, WA 98366
Cell: 360-710-8560
Email: viviankapo@wavecable.com

Mc'd @ 2/12/07 P.H.
Submitted Vivian
Henderson

KITSAP



ALLIANCE

OF PROPERTY OWNERS

February 12, 2007

Kitsap County Board of County Commissioners:

***Re: Critical Areas Ordinance (CAO) Remand with Planning Commission Revisions
Public Hearing Feb. 12, 2007 6:30pm Commissioners Chambers***

Kitsap Alliance of Property Owners is submitting several testimonials tonight. The following deals with the county's very successful attempt to misinform the public on how these proposed revisions will affect existing shoreline lots that are developed.

Once again the county has failed to follow the law to "Ensure public participation" as required in RCW 36.70A.040. But - even worse - the county has reassured the public on several occasions that "... the (proposed) rules won't have any effect on existing homes (Patty Charnas, Kitsap Sun, Jan. 4, 2006; "...the buffers only affect new construction", Jim Bolger, Port Orchard Independent 2-10-06.

Adoption of the revised CAO will render thousands of existing waterfront lots non-conforming. Following are the quotes from the Zoning Ordinance (Title 17) and the Critical Areas Ordinance (Title 19) on the subject of Non-Conformance.

17.110.510 - Nonconforming use or structure.

"Nonconforming use or structure" means a use of land or structure which was lawfully established or built and which has been lawfully continued but which does not conform to the regulations established by this title or amendments thereto."

19.150.475 - Non-conforming Use or Structure.

"Non-conforming use or structure" means a use of land or structure which was lawfully established or built and which has been lawfully continued, which does not conform to the current regulations of the zone in which it is located as established by Title 17 Kitsap County Code (Zoning). (Emphasis Added)

Please be advised that the CAO does have Section 19.100.130 "Standards for existing development." Subsection B pertains to Existing Nonconforming Structures. However, since the code uses the definition of the Zoning Ordinance, there is no clear standard for a non-conforming structure regulated by the CAO.

More important, this section of the CAO does not address nonconforming uses at all. Therefore, if a person has planted a lawn say in a buffer area and had been mowing that lawn for the last twenty plus years, he or she would not have the right to continue mowing that lawn. A driveway crossing a wetland or wetland buffer is a "use" that the County could abate for non-compliance with CAO regulations. Or if a person were pasturing animals within a buffer area of a wetland or a creek or across either (practically every pasture has at least one wetland area and even a dry drainage ditch is categorized a creek) that person or persons could be forced to cease their use activity. Harvesting trees in a buffer is not allowed (except for

"The small landholders are the most precious part of a state." - Thomas Jefferson

application gives neighbors opportunity to "weigh in" on your project proposal. If they do not like you or your proposed project - either or - this is a criterion they can use against you.

*Not only can neighbors interfere with the variance procedure, environmentalist and no-growth activist organizations have abused the variance procedure to forward their political agenda, force landowners to incur incredible permit costs (and attorney fees) for what should be a simple matter, and galvanize neighbors against one another. As clearly seen in the *Krigsman v Mullenix* appeal.*

The variance procedure is not intended to be the way to get normal permitting accomplished, but it is supposed to be the last resort. Transforming a large percentage of Kitsap County properties into non-conforming uses would make variance the only way to get land use approvals. Is this what we want?

4. The granting of the variance is the minimum necessary to accommodate the permitted use.

Note: This criterion does not get you what your neighbor was able to build. He or she may have a 3,000+ S.F. house (on the ground floor), but if you are able to satisfy 1-3 you may only qualify for a 1,100 to 1,300 S.F. house. This square footage is what is in the minds of most regulators when they think of a minimum footprint for a house.

5. No other practicable or reasonable alternative exists (See Definitions, Chapter 19.150)

Note: This criterion is most debatable especially if there are people in the neighborhood who might object to a use proposal. While this criteria instructs the reader to go to the definitions section, the one most pertinent is found at 19.150.565 "Reasonable Use." Essentially this criteria requires one to prove that failure to have a variance approves would deny a property owner of all productive use of a property. Translated, if you can build a house of even the smallest size or you can pasture your potbelly pig on your rural lot, you are not deprived of all beneficial use of the property.

6. A mitigation plan (where required) has been submitted and is approved for the proposed use of the critical area.

Note: A mitigation plan is nearly always required.

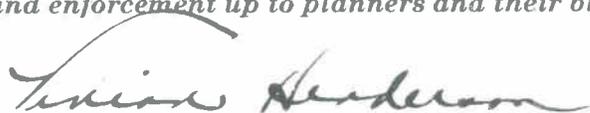
For those interested in how the new buffer requirements along shoreline areas will work consider these facts.

a. Required buffers can be reduced no more than 50% in any given spot if one is exercising the provisions for "buffer averaging." KCC 19.200.220.C.

b. "For proposed single-family dwellings, the department may administratively reduce the buffer by up to 25 percent pursuant to the variance criteria listed in Section 19.100.135....." Note: the staff has more latitude to adjust buffers for all other types of land uses but very little for single-family residences. And one might note that in saltwater shoreline areas - single-family residential is the predominate land use.

c. The minimum buffer shall be no less than thirty feet, except as allowed under a formal variance or reasonable use approval.

These regulations, as written, are very vague and subjective, leaving interpretation and enforcement up to planners and their bias.

A handwritten signature in cursive script that reads "Vivian Henderson". The signature is written in black ink and is positioned above the typed name.

Vivian Henderson

Executive Director

P.O. Box 2133

Port Orchard, WA 98366

Cell: 360-710-8560

Email: viviankapo@wavecable.com



Critical Areas Ordinance Revisions

Per the Growth Management Hearings Board

REMAND

FACT SHEET

Why is the CAO being revised?

- Two sections of the CAO were remanded (sent back) to the county for correction
- The County was directed to change wetlands exemptions and shoreline buffer widths by February 23, 2007
- Not changing these sections could result in sanctions to the County

What sections of the CAO are affected?

1. The Wetlands Section

WHAT WAS IN EFFECT BEFORE REMAND

Item #1) Non-Regulated Wetlands

Category III Wetlands: *Isolated wetlands less than 2,500 sq. feet.*

Category IV Wetlands: *Isolated wetlands less than 7,500 sq. feet.*

WHAT IS BEING PROPOSED

All jurisdictional wetlands will be regulated, regardless of size.

Including

Category III Wetlands: *Isolated wetlands less than 2,500 square feet.*

Category IV Wetlands: *Isolated wetlands less than 7,500 square feet.*

Activities affecting isolated Category III wetlands less than 2,500 square feet and Category IV wetlands less than 7,500 square feet may be allowed provided that the wetlands report identifies the specific wetland function affected or at risk, and proposes mitigation to replace the wetland function, on a per function basis



Critical Areas Ordinance Revisions **FACT SHEET**

What does this mean?

- **That exempted small wetlands may be regulated**
- **That the wetlands report you already need will be used to mitigate environmental impacts**
- **That shoreline buffer widths may increase from 35 feet to 100 feet**
- **That buffers may be reduced with a plan to protect habitat**
- **That your existing home can be rebuilt, remodeled or added on to**

For more information on Building Permits, Critical Areas, or Land Use Planning
Visit www.kitsapgov.com/dcd



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REMAND Fact Sheet, continued

2. The Shoreline Buffer Widths

WHAT WAS IN EFFECT BEFORE REMAND

<i>Shoreline Designation</i>	<i>Buffer Width</i>	<i>Minimum Building Setback</i>
Urban, Semi-Rural and Rural shorelines and Lakes less than 20 acres	35 feet	15 feet
Conservancy	50 feet	15 feet
Natural	100 feet	15 feet

WHAT IS BEING PROPOSED

<i>Shoreline Designation</i>	<i>Buffer Width</i>	<i>Minimum Building Setback</i>
Urban, Semi-Rural and Rural shorelines and Lakes less than 20 acres	100 feet	15 feet
Conservancy	50 feet	15 feet
Natural	100 feet	15 feet

WHAT ELSE IS BEING PROPOSED

- Buffer Reduction Provisions proposed to now be available for shorelines
- Special administrative buffer reductions proposed for urban shorelines and lakes.
- Habitat Management Plan is required for all buffer reduction requests.



Critical Areas Ordinance Revisions **FACT SHEET**

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**Kitsap County Board of County Commissioners Public Hearing
Revisions to the Critical Areas Ordinance; February 12, 2007**

①

Name	Mailing Address	Phone	Email	Would you like to Testify?
1. Tim McMahon	14330 24TH AVE SE MILL CREEK 98042	425-672-2688	TIM@WASHINGTONCOMMERCIAL.COM	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
2. Kurt Hinkle	16142 Tukwilla Rd. N.E. P. 15th 98370	360-779-6222	Hinklek@comcast.net	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
3. Jack Martin	2674 Prinsen Prinsen 98111	206-723-0144	cthr@pdxjva.org	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
4. Jimmy Drake	2040 Wheaton Wash	360-373-8777		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/> J Swamin Phiney Bay!
5. David Drake	P.O. Box 1533 Bremerton WA 98311	(360) 377-5255	DD@BREMERTONWA.GOV @IMTECRITY.COM	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
6. Cynilla Cook	911 Western Ave Suite 556 Sea-He	(206) 392-7507	CCOOK@PUGET-SOUND.ORG	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
7. Molly Jay	P.O. Box 1632 Port-Bo, WA 98370	360-779-4539	molly.john@national.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
8. James	↓	↓	↓	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
9. James	PO Box 2133 Port-Bo, WA 98370	206-708-5560	VISHNEAPO@COMCAST.COM	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>

Date: _____
Location: _____
Time: _____

Kitsap County Board of County Commissioners Public Hearing
 Revisions to the Critical Areas Ordinance; February 12, 2007

Name	Mailing Address	Phone	Email	Would you like to Testify?
10. ✓ CM COYLE	PO Box 38 Southworth 98386	360-710-6569	CMCOYLE@HOTMAIL.COM	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
11. ✓ Tom Ostrom	Sugvanish Tribal	360-394-8444	tomostrom@sugvanishtribe.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
12. ✓ Alan Peterson	PO Box 34 Southworth 98386	360-769-1111	alan.peterson@sugvanishtribe.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
13. ✓ XARR DUFF	6112 Lynn Jones Road	871-1265		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
14. Tom Palatras	401 Bethuel ST.	440-6443		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
15. ✓ Beth Wilson	10280 Orchard Ave. SE Blaine	253-8534	clb@wilson.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
16. ✓ Murrel Aulis	870 S.E. OAK RD	733-732-4415		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
17. ✓ ANITA AND	1111	360-353-7555		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
18. ✓ Green Skidmore	2070 EASTMAN BLVD BREMERTON	360-377-0222	GREENSKIDMORE@GMAIL.COM	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>

Date: _____
 Location: _____
 Time: _____

Kitsap County Board of County Commissioners Public Hearing
 Revisions to the Critical Areas Ordinance; February 12, 2007

Name	Mailing Address	Phone	Email	Would you like to Testify?
19. HELEN MILLER	P.O. BOX 788, BREMERTON 98337	373-0855		Yes: <u>MAYBE</u> No: _____ - dependent on presentation
20. DAVID SWEED	6625 LAKE DR Bremerton WA 9832	549-9795		Yes: <u>✓</u> No: _____
21. Janet Swery	↓	↓		Yes: _____ No: <u>✓</u>
22. Don R. e	Same as you	FILE		Yes: <u>⊕</u> No: _____
23. DRICK BRADY	ON FIRE			Yes: _____ No: <u>⊕</u>
24. JEAN BRADFORD	PO BOX 2838 Cedar Bluffs	620-4774		Yes: _____ No: <u>✓</u>
25. Harriet G. Morrison	PO BOX 1 Southweston, 98382	871.666	MGL... @H...	Yes: _____ No: <u>✓</u>
26. Sheldon Levin	5654 Wairanga Bch Port Orchard 98366	871-5906		Yes: _____ No: <u>✓</u>
27. MARY BETH	PO 111 TACOMA	698-4000		Yes: _____ No: <u>✓</u>

Date: _____
 Location: _____
 Time: _____

(5)

44

Kitsap County Board of County Commissioners Public Hearing
Revisions to the Critical Areas Ordinance; February 12, 2007

4

Name	Mailing Address	Phone	Email	Would you like to Testify?
28. Kristin Krings	5171 Illehoj PDANE N. Everett, WA 98311	702-643-4111	Christin-krings@comcast.net	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
29. Teresa Osinski	5351 Auto Center Way Brewer WA 98306	479-5778	tosinski@ketchikan.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
30. RICK BOSTON	PO BOX 222 LAKEWAY WA 98349	253-884-1726		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
31. Carol Wilson Brd Wood	14070 14th Dr SW PO 48367			Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
32. SPENCER CHEST	600 KITCHEN ST # 202 PORT MORTON WA 98366	360-876-4455	CHEST@SAILER.COM	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
33. FAHE HELEN	232 99. NEPT HILLS MURKIN, WASHINGTON	360-297-8773		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
34. FAHE HELEN				Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
35. Tom Donnelly	10902 Horizon Ln SE PO WA 98307	360-876-3129		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
36. Jim Laughlin	16541 MAASDALE AVE BAIRD RIDGE IS 98110	206-660-0574	JimLaughlin@chickadee.com	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>

Date: _____

Location: _____

Time: _____

Kitsap County Board of County Commissioners Public Hearing
 Revisions to the Critical Areas Ordinance; February 12, 2007

15

Name	Mailing Address	Phone	Email	Would you like to Testify?
46. WV. FISHER DOR FLOBA JR	P.O. BOX 6	360-769-2434	WPCOUNTY@TELETYPE.NET	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
47. Bob Williams	P.O. BOX 552 OLTON, WA 98507	360-956-3182	eFlinc@flinc.org	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
48. JOHN TAYLOR	9428 TRACYTON BLVD	602-2953		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
49. MATT RYAN	9080 E White St	502-4151	murrayan@teletype.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
50. Anna Lindsey	11598 Alameda Dr	253-565-3709	JALIND@TELETYPE.COM	Yes: <input type="checkbox"/> No: <input type="checkbox"/>
51. Christine Miller	644 Alameda	360-636-8888		Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
52. Christine Miller	366 844 Alameda Rd	830 5058	atnopa@tse.net.com	Yes: <input type="checkbox"/> No: <input type="checkbox"/>
53. James Lindsey	841 S. JACKSON AVE	253-565-3709	JALIND@TELETYPE.COM	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
54. DAN CHASE	P.O. Box 6569 Port Orchard, WA 98165	876-0309		Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>

Date: _____
 Location: _____
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Kitsap County Board of County Commissioners Public Hearing
 Revisions to the Critical Areas Ordinance; February 12, 2007

46

#6

Name	Mailing Address	Phone	Email	Would you like to Testify?
Wintha Ziskup	867 Murab Pike Dr. E. Port Orchard, WA	360 871-1321	buddhit@charmin.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Jon Rose	19245 10th Ave	360 647-6626	jon@owm-inc.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Dawn Drake	P.O. Box 2161 Buxmahon 98337	360 377-5255	DDEN@ARRAIA.R @INTEGRITY.COM	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Rebecca McCoy	9834 SE Southworth Port Orchard 98366		knitnot@250 earthlink.net	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Gary W. Womack	640 E. NE 202nd St Ketchikan 99929	907 549 509 713 56.5		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Ryan Heston	17791 Hayes St NE 572 F. Pacific	717.1440		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Gary Dand	549 Anderson Way Shaw Island WA	362-958		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Jan Butler	390 Kingdome Way Bremerton 98311	360 830 0124	jbutlette@aol windcast.com	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Jim Sommerhouser	753 Drake Hill Way	360 537-7394		Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>



OPA - Please remind people to
 speak into the microphone...

Thanks!

Date: _____
 Location: _____
 Time: _____

11-1

Kitsap County Board of County Commissioners Public Hearing
Revisions to the Critical Areas Ordinance; February 12, 2007

7

Name	Mailing Address	Phone	Email	Would you like to Testify?
37. NICHAE ESPOSE	250 Westchester B 92211 114E KNOX	360-2011155	jgmcguy@red cross.com	Yes: _____ No: <input checked="" type="checkbox"/>
38. Adelin Roes	903 NE Paulson Rd Portland, OR 97220	503-252-669		Yes: <input checked="" type="checkbox"/> No: _____
39. Ron Ross	1	1		Yes: _____ No: <input checked="" type="checkbox"/>
40. Joyce Hausen	8100 Pristine Beach P.O. P.O.	360-616-4525	joycehausen@ comverable.com	Yes: _____ No: <input checked="" type="checkbox"/>
41. Patricia Ruesling	5796 SE Vista Park Rd P.O.	360-811-2704		Yes: _____ No: <input checked="" type="checkbox"/>
42. Angie Sorenson	PO Box 1112 Silverdale, WA 98383	360-2-3407		Yes: _____ No: <input checked="" type="checkbox"/>
43.				Yes: _____ No: _____
44.				Yes: _____ No: _____
45.				Yes: _____ No: _____

Date: _____
Location: _____
Time: _____

Kitsap County Board of County Commissioners Public Hearing
 Revisions to the Critical Areas Ordinance; February 12, 2007

#8

Name	Mailing Address	Phone	Email	Would you like to Testify?
19. JAY SPADY	2285 ASPEN ST POB ORLAND	360-871 4858	jayspady @yadroo.com	Yes: _____ No: _____
20. MIKA ELIASON	KCAR @ SILVERDALE POB 3234 QB303	692- 8852	gov @ kitsaprealty.org	Yes: _____ X _____ No: _____ Kitsap Area of Realtors
21.				Yes: _____ No: _____
22.				Yes: _____ No: _____
23.				Yes: _____ No: _____
24.				Yes: _____ No: _____
25.				Yes: _____ No: _____
26.				Yes: _____ No: _____
27.				Yes: _____ No: _____

Date: _____
 Location: _____
 Time: _____