

The Sentry

Kitsap Alliance of Property Owners

May 2009

KAPO President's comments

Tim Matthes

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Is burning yard brush and land clearing debris in Kitsap's future? According to the Puget Sound Clean Air Agency in Seattle, the answer to that question is **No Way!**

Commissioner Steve Bauer and Bremerton Mayor Bozeman have voted through their alternates to further restrict and ban most burning in Kitsap County, along with all the other members of the Clean Air Agency in Seattle. Their decision was made even though many residents, as well as KAPO leadership, had testified and proven that these extreme measures were not necessary.

Your KAPO leadership tried to get a sit down meeting with both Bozeman and Bauer to discuss our concerns. At the very least we wanted to request that the decision be tabled for a month, so our testimony could be considered. It seems that they didn't want to hear what we had to say. It looks like the decision was made at staff level in Seattle, and no amount of public input would change their minds. It looks like the Seattle tail is wagging the Kitsap dog, again! Another question that begs to be asked is; why is the mostly **urban** Bremerton Mayor making decisions for all of **rural** Kitsap County?

Property owners in Port Orchard won a small victory when the Port Orchard Planning Commission recommended no change to the buffers of the category S type of stream. The old regulation was 100 ft, the staff recommended 150 ft. Also, the Port Orchard Commission members recommended that the Type F stream buffer of 100 ft should not be changed to 200 ft as staff recommended.

This recommendation from the Planning Commission will now be presented to the City Council for their vote and adoption. I hope that these two buffer recommendations will be approved. If you know any Port Orchard City Council members, call and ask them to support the smaller buffers. KAPO has the science that will support the smaller buffers. We just need a few elected officials to take a stand that will protect Kitsap residents, not cave in to state bureaucrats.

Testimony to Clean Air Agency in the matter of Outdoor Burning

Ron Ross

Editor's Note: Ron prepared and delivered this testimony to the CLA at the public hearing before the vote. His reasoning and facts are clear. His argument is sound. Unfortunately, as the results will show, being right does not count when power is delegated to unelected agenda zealots.

My name is Ronald R. Ross. I am a long time resident of Kitsap County and have been developing raw land into residential lots as well as commercial properties since 1957 in Kitsap County. I submit the following for the public record of the Kitsap County land clearing debris burn ban proposal.

I am the owner of the real estate that The Soil Factory is operating from. The property is located in the city of Bremerton and some uses are allowed under a Special Use Permit which does not include stump grinding. It is very unlikely that this location will be available for tipping and grinding much longer.

I have been forced by Bremerton code enforcement, just last week, to evict a tenant that has a 1/2 acre corner of the same property rented for truck storage, all behind a high cyclone fence. He has also been a tenant of mine for over six years on this site, However the city says that storage is not allowed on the site. If I am forced or desire to close this site being used by The Soil Factory, this will eliminate the most central location that affords much of the county the opportunity to be within a 30 mile driving distance for tipping and grinding disposal.

The Soil Factory does not take in stumps or other yard derbies free of charges as your report states. They normally quote \$6.00 to \$10.00 per yard as a tipping fee. Also note that your own report shows this site has limited capacity.

There is only one legally permitted site in Kitsap that is allowed to grind stumps and compost the material. That is the Emu Topsoil site near Hansville, in the extreme north end of the county.

I question the "free tipping" that is reported by your staff for the following reason. On Jan 8, 2009 at 3:40pm, I called Emu Top Soil and he said that there would be no fee for the month of January only. I asked why that was and he said that he is a new operator and wants some chips to start some composting.

I called Allen Shearer on 1/9/09 at 8:35 am (275 3456) and the girl said their tipping fee was \$12.00 per ton. I am most often charged by the estimated cubic yard and so asked the lady how they estimated the weight. She said they have a scale on site.

There are many other glaring errors in assumptions made by either your staff or information sent to you by others. It is not reasonable to use 1/2 acre as an example. We are often dealing with road clearing 60 foot in width and not at all uncommon to be 1/2 to one miles in length. We are developing 480 acres in the southwestern portion of the county (Seabeck area) and much of the land is zoned 1 dwelling unit per 5 acres and some is designated 1 dwelling per 20 acres. Most buyers of these tracts either have live stock, or intend to acquire some after the construction of a new home. It is not uncommon to clear 3 to 4 acres on a 5 acre tract. Several buyers recently (2008) have bought two 5 acre tracts side by side and intend to clear most of the land for their pasture. Both of these folks have horses that are boarded at local equestrian barns.

There has been no showing by your staff that there are adequate facilities with room for increased capacity for grinding and storage once a burn ban on all land clearing is placed on the entire Kitsap County. What is your estimated amount of additional land clearing debris, in yards or tons, that will be caused to be hauled if burning is not allowed?

In your undated Impact Analysis, on page 8, it is stated that the State median tipping fee is \$73.32. It further states that that is a 2006 finding. I note that 4 counties are not listed. This type of outdated information is certainly not worthy of justifying such a burdensome requirement on

an area that has not been shown to have a smoke pollutant problem. Look at your clean air record of Kitsap, certainly natural pollen is more of a problem than smoke from remote fires in rural areas.

I respectfully request that a current, in depth analysis be conducted, considering my comments and the many others that were submitted in writhing from other residents of Kitsap.

I concur with the statements made by Jack Hamilton, Robert Ross, Dan Defenbaugh, KAPO, and all others from Kitsap, and ask that they also be submitted as part of my record.

Sincerely, Ronald Ross, Kitsap resident and Manager of Royal Valley LLC

CLEAN AIR AGENCY ABUSES POWER

Karl Duff

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By restricting outdoor land-clearing burning without complying with the applicable state law, the Puget Sound Clean Air Agency has seriously abused its regulatory power over the citizens of Kitsap County.

RCW 70.94.745(6) enables the Puget Sound Clean Air Agency to prohibit land-clearing and residential burning in areas outside of the Urban Growth Area (UGA) "...when the agency has determined that an alternate technology or method of disposing of the organic refuse is (a) available, (b) reasonably economical, and (c) less harmful to the environment than burning."

A debris-hauling alternative to burning exists, but it is expensive and cumbersome. Evidence presented to the Clean Air Agency shows it may actually cause more harm to the environment than burning. Despite written comments that included specific data clearly demonstrating the proposed rulemaking does not satisfy the RCW criteria noted above, and without responding to the public comments, the Agency voted on April 23rd to restrict outdoor land-clearing burning in Kitsap County's rural areas -- despite the fact the Agency acknowledges there have been no ambient clean air violations related to outdoor burning in the county for a number of years. In fact, air cleanliness for Kitsap County has improved 40 percent in the past 7 years!

In their justification, the Agency developed burning/hauling comparisons for small lots, involving ½ acre or less of clearing. They assumed free dump sites and costs for burning based on outside contractors doing the work, rather than the owners doing the work themselves, which is the usual practice. The result showed an approximate "break even" between burning and hauling – but only for the small lot size selected. However, costs for clearing larger development sites of 5 or 10 acres or more, require significantly more robust loading equipment and larger capacity trucks for hauling the stumps and other debris – in some cases to the opposite end of the county. The result is that hauling costs far outweigh burning costs.

By gun-decking the issue with bogus calculations, the Agency clearly abused the bounds of their authority, perhaps expecting that no one would notice. In doing so, the Agency appears guilty of pursuing its own private agenda, which is to continually tighten regulatory restrictions, regardless of merit, public input or the controlling RCW.

Indeed, in a public hearing, Agency officials acknowledged there is no regional air quality problem. They candidly admitted that the real reason they wanted the ban was because they wanted to cut down the volume of “nuisance” phone calls from neighbors complaining about burning. They apparently feel no shame in imposing tens of thousands of dollars in unnecessary costs just to avoid answering a few phone calls.

To add insult to injury, after unanimously voting to stop land-clearing burning, Agency officials boldly informed Kitsap County that next year they intend to shut down ALL residential burning in Kitsap! Think about that! How many citizens owning acreage are prepared to pay a contractor to haul away the downed trees from even one good storm?

Down-zoning once implied stabilized opportunities for ranches and farms. But now we’ve become a giant ‘commons’ for imaginary public benefit where landowners foot the costs to keep up with ever more difficult public standards.

If you want a job where performance is measured in terms of “How many regulations did you force on the public this month?” -- The Clean Air Agency might be the place for you.

Climate Change, Energy, and Sprawl on a more personal level

Bob Benze

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The following letter written by Bob Benze was published in the TDR – Turbo Diesel Register, Issue 62, Nov/Dec/Jan 2008-2009. The TDR is the Bible for Dodge/Cummins diesel pickup truck owners, published quarterly by Diesel Registry, Inc.

STICK WITH WHAT YOU KNOW

In your writings in the TDR, I would greatly appreciate it if you would stick to subjects that are within your expertise – i.e., Dodge trucks with Cummins engines and the industry that produces them.

A few issues back, there was a negative comment about Wal-Mart. I chose to ignore it. But in Issue 60, Page 55, you elected in your column to present some “thought provoking” comments by someone named Ken Freund. It turns out that Mr. Freund is one of those individuals who thinks that people are the problem and that mother earth would be better off without them – or at least a significant number of them. But his arguments have, long ago, been invalidated.

Consider Mr. Freund’s statement: “We can only bore more oil wells, dig more water wells and pave over farmland for so long before we run out of resources and space. As long as population is unchecked, everything we do to reduce cost-consumption is simply a trade-off, not a cure, which will buy a little more time before the crisis hits.”

What absolute nonsense. Let’s look at some facts:

In the United States, no more than 5% of the land is developed. “Sprawl” only occupies a land mass approximately the size of Kansas.

The old 1970’s concern about world population increasing exponentially and exceeding the planets “carrying capacity” have run into some harsh reality. Europe and Japan cannot even come close to reproducing at the 2.1 ratio needed to sustain their population, and the United States would be in the same position without immigration. Current UN projections suggest that, within as little as two generations, world populations will begin shrinking, as Third-World

nation's economies join the rest of the world. And this is already underway. Global free markets and accelerating technological innovations, particularly in food production, are winning the battle. World poverty, defined by the UN as people earning less than \$1.00 a day, has been cut in half in the last few decades – and would be decreasing even faster if it were not for political interference.

And there are more natural resources in the world than we can imagine, including oil. There was that famous 1980 bet that Julian Simon made with Paul Ehrlich about world resources. Ehrlich was a pessimist, like Freund, who thought that the earth's resources were running out. They made a wager on a selected set of resources – in this case metals. Simon bet that their prices would go down. Ehrlich bet it would go up. In October 1990, Ehrlich mailed Simon a check for \$576.07 to settle the wager in Simon's favor.

Carbon resources are in abundance as well and will last us thousands of years. There have been 50 to 60 years of proven reserves of oil for decades – as there are today. The problem is that we are too intimidated by the activist community to drill. Not only is there a lot of crude oil waiting to be pumped from the ground, but at prices of over \$50 per barrel, oil-shale production is profitable, and we have enough to last almost forever. Converting coal to automotive fuel, or natural gas to high-quality diesel fuel are proven, cost-effective, technologies – but, for some environmental reason, this is not popular; however, it is being done elsewhere, in places like in Oman. Indeed, there is no resource-reason that we can't use our diesels as long as we want – without fear of ever running out of fuel.

Consider also that 31,000 scientists signing a petition is probably a good indication that climate change is a natural cycle caused by predictable solar cycles, and not the result of anything humans are doing. Ask yourself, has the one degree Fahrenheit increase over the last 100 years affected your life? Are you really worried that your kids and grandchildren are in danger? Affluent America has allowed itself to become paralyzed into inaction. We are so afraid that we will do someone some marginal harm, and be sued for it, that we now prefer to do nothing. A pundit, Victor Davis Hanson, recently wrote: "Building things is a good indication of the relative confidence of a society. But the last American gasoline refinery was built about three decades ago. As „cowards of our conscious“, we've come up with countless mitigating reasons not to build new ones. Our inaction has meant that our nation's gasoline facilities have grown old, out of date, and dangerous." Mr. Hanson goes on to say: "In contrast, in the middle of the Great Depression, our far poorer grandparents built the Empire State Building in 410 days – not a perfect design, but one good enough to withstand a fuel-laden World War II-era bomber that once crashed into it."

This nonsense has gone so far that we are now allowing elitist leaders to tell us that being poorer is actually better; and a lot of us are buying into this philosophy -- completely ignoring the fact that richer "consumer" societies not only take better care of their people, but they also take better care of the environment. And rich societies utilize human talent to invent things like the ITER, a project to validate fusion reactor technology – something that will provide virtually unlimited energy long before we need to worry about running out of carbon.

Those bold, confident people that came out of WW-II to build what we have today would be appalled at the sissies we have become. Isn't it time we start acting like Americans again? In closing, let me make you a deal. If you will agree to keep the TDR on the path of informing us about Dodge-Cummins issues, and let some other publication pontificate on environmental-activist politics, I will agree not to submit further critiques.

Bob Benze
Silverdale, WA

(TDR Editor's Comment)

Bob, thanks for sharing your interesting counter-point position. I liked it. I also liked the comment "Those bold, confident people that came out of World War II to build what we have today would be appalled at the sissies we have become. Isn't it time we started acting like Americans again?" That is a statement with which all of us at the TDR can agree

BOUNDARY LINE ADJUSTMENTS

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Beginning in February of this year the Board of County Commissioners gave instruction to the Department of Community Development to make an assessment of Boundary Line Adjustments to determine what problems might exist and make a recommendation for action by early summer. Of particular concern is the use of this legal provision for altering property boundaries to create additional lots in rural areas. Also problematic are the adjustments in boundaries made by individuals without regard to survey standards.

The Boundary Line Adjustment is a tool used by attorneys, surveyors, engineers, planners and property owners to change the configuration of properties. Most notably it is the means by which disputes can be resolved between two property owners when there are building encroachments, road surface areas that are not located within the easement area or a historic fence line not built on the property line. This tool is employed at times to equalize the areas of two abutting parcels. In some instances it is used to add more area to a parcel so that it can be divided into two or more lots.

The advantage to the Boundary Line Adjustment provisions of State Subdivision law is that in Kitsap County there is no oversight review by any County agency. Because there is no County review, Boundary Line Adjustments can be accomplished in a very short time. They can be recorded in the County Auditor's Office once the legal descriptions and drawings are finished. In theory the whole process can be accomplished in one day, but often it takes a few days and perhaps a little longer if property corners are set by a licensed land surveyor.

Compare this short time frame with the protracted bureaucratic review processes required for subdivisions, rezones, short plats, conditional use permits and even building permits which can take weeks, months or in some cases years. So far, there has been no demonstrable need for County review. Yet, there are some in County government who think there are situations when Boundary Line Adjustments are creating problems that could be avoided by some sort of County administrative review.

Attorneys, surveyors, engineers and private sector planners who have used the Boundary Line Adjustment for years have consistently opposed county review the last three times the County has considered establishing local controls. Opposition has been sustained because County staff has not been able to sufficiently document the need for a new ordinance.

There is reason now to continue to oppose a new ordinance on the following grounds: 1) while there are some instances when Boundary Line Adjustments create problems, no comprehensive

analysis has been completed to determine whether the abuse is pertinent to just a few properties or whether it is a wide spread problem; 2) Kitsap County has severe budget constraints and each new requirement for County oversight requires additional staff time to perform the review – a process the County cannot afford; 3) One of the problems the County staff has documented – creation of additional building lots in rural areas, is traceable to a practice the County itself uses to dispose of “tax title” property; and 4) this is one of the few remaining tools available to citizens and professionals alike that can be employed without a bureaucratic process.

Kitsap County has not yet established a time for public review of the issue. However there is some possibility the Department of Community Development staff may send a draft ordinance for Planning Commission review in July or August of this year, Following the recommendation of Planning Commission the Board of County Commissioners would hold their own public hearing in early fall.

Kitsap County Planning Commission Activity Report

Mike Gustavson

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Planning Commission report of April 7, 2009

Jeff Rowe Hornbacker reported for the Director of Community Development the department revenue is off 68% from last year. The staff has volunteered for furloughs or reduced working hours. It is possible the department may close one day per week. These decisions were made in order to retain 100% of employee health insurance benefits. The benefit will be to retain talent in order to speed re-staffing when construction picks back up.

Title 12, “Stormwater”, has been forwarded to the Board of County Commissioners (BoCC) for public hearing and approval.

The Greater Hansville Community Plan will receive reduced staff involvement. Much of the public hearing process is complete. In June the final format will be available for public comment and the plan is expected to be before the Planning Commission in August.

Scott Diener continued the Planning Commission briefing.

After many years of trying to resolve a plan for downtown Kingston, Commissioner Bauer gave staff direction to “Make a plan happen”. Re-routing the ferry traffic, design standards, resolving parking issues and establishing a boundary for “old town” are all issues to be resolved.

The moratorium on Rural Wooded Incentive program is set to expire July 21st. Clustering homes at an effective ratio of one house per five acres was approved by the Growth Management Hearings Board. Clustering homes would leave 75% of the property in open space, while allowing forest practices to continue in the open space.

The current debate among the BoCC members is currently “who should own the 75%”, since the property owners would be getting the benefit of the out year logging profits. A case was made that the county should gain ownership of the 75% portion as a regard for allowing increased density due to the clustering of homes. John Taylor pointed out the U.S. Supreme Court

“Tigard” case prohibits this kind of action. Planning Commission asked for Legal to provide an opinion for us.

May 18, 9:00 A.M. to 1:00 P.M., the BoCC will discuss whether to repeal the Rural Wooded Incentive Program or to go ahead with a variety of options.

Staff will shortly be asking for comments on updates to Title 16 “Subdivision” regarding legacy lots, boundary line adjustments and Accessory Dwelling Units and for Title 21 “Land Use Administration”.

Rural Commercial Local Areas of More Intense Rural Development (LAMIRDs) will be addressed this year. Whether to address these commercial areas that existed prior to 1990 individually or as a group will be addressed.

Kitsap County has decided that Transfer of Development Rights (TDRs) trades from our county into another county would not be appropriate. Any TDR development land trades would be within Kitsap County. There have been 16 site specific zoning requests this year, two of which required TDRs to justify increased development intensities.

A Citizen Advisory Committee (CAC) has been established to recommend design standards for Suquamish.

Manchester may form a CAC.

Central Kitsap Council has not asked for staff support in their efforts.

Planning Commission requested Patty Charnas provide a briefing on the results of the four recent meetings between Department of Ecology and DCD and the current status of the Shoreline Management Plan update.

There was no Planning Commission meeting April 21st.

Environmental Insight With a Touch of Real Science **Don Flora (a real scientist)**

[This month Don deals with the impervious surface that we know as grass]

Red Fescue
Alice Wentworth

**When I was young there next door lay
A meadow cut each year for hay
A magic place with waving grass
That hid small creatures and, alas,
Had hawks and other birds of prey
That circled high through the day
But through that meadow I could walk
And with my secret self I'd talk
And run and play.**

**In time there was instead a clutch
Of houses, I resented much
And yet, and yet, my wife and I
Came there a yarded house to buy
Set close above a tiny pond
Of which we grew exceedingly fond.
Around that pond, well into marriage,
We pushed a two seat baby carriage,
And later walked with kids to see
The waters dappled merrily And frogs and such.**

**Directly came from government
A self-important booted gent
Who's studied at Controller's School
And found a most important rule
To save the earth and several birds
And thereupon unfurled the words:
First, the ponds a wetland place
Next, wide buffers will embrace
Pond edges and most of our yard
Conscription that we would find hard
On children's space to romp and run
(Have forts and tree houses ever done
Harm to the environment?)**

**Instead we'll native vegetation sow
With trees and shrubs lined row on row
Our lawn will have to go the way
Of noxious weed and broom astray.
But wait! Fescue is common here.
Red fescue's bringing rescue near
We may escape the rules morass:
Our lawn is native fescue grass
May yours be so?**

The following footnote is added by Don:

The point to all of this, as verified by the reference below, is that lawns may qualify as native vegetation buffer areas. Which will startle some shoreline planners.

Red fescue (*Festuca rubra*) and several other *Festucas* are native to this region including the Puget Lowland, as are at least three ryegrass species. Fescues apparently preceded conifers into the lowland. Red fescue is included in several local grass seed mixtures.

Hitchcock, C. Leo and Arthur Cronquist. 1973. *Flora of the Pacific Northwest*,
University of Washington Press. 730 p

An Island Perspective
Bainbridge Shoreline Homeowners
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(I selected this one from the BI newsletter just to let you know we are not alone. Jefferson County Property owners are also carrying the fight to the enemies of freedom. Editor)

The proposed Jefferson County Shoreline Master Program (SMP) update, as currently drafted, is a huge expansion of the shoreline regulatory system. Funded by the Department of Ecology (DOE) and heavily influenced by government, tribal, and environmental organization representatives, it unnecessarily limits future construction of single-family homes — a preferred use under the Shoreline Management Act (SMA) — and reduces existing uses to a disfavored status.

If you are a shoreline or riverfront property owner or a taxpayer in Jefferson County you should be very concerned about these proposed changes to shoreline use! Even in the best of times, yet more so during a severe budget crisis, the SMP will have negative economic consequences with no corresponding environmental benefit.

Note: We have published this analysis of the proposed Jefferson County SMP update because the draft document on which it was based was provided to the county by the DOE. We expect ours to be very similar in form and content. The deadline for submission of the Jefferson County update is September of this year. Bainbridge Island, and all jurisdictions within Kitsap County, must submit SMP updates by December 31, 2011.

The Olympic Stewardship Foundation (OSF)(*Jefferson County; ed.*) retained attorney [Dennis Reynolds](#), an expert in environmental and land use law, to conduct a thorough review of the December 3, 2008 SMP draft. His conclusions, summarized as follows, were submitted to the County for consideration.

- There is no evidence the current protection standards are not preserving Jefferson County shorelines.
- The draft ignores Jefferson County's unique local circumstances.
- The draft SMP does not reflect the SMA intent to balance protection and use of the shoreline.
- Many policies and regulations in the proposed changes exceed the legal requirements of the SMA.
- The new SMP delegates too much local control to DOE.
- By incorporating the Growth Management Act (GMA)-based Critical Areas Ordinance into the SMP, the draft clashes with a state Supreme Court decision that shorelines are to be regulated exclusively under the SMA.
- The draft SMP designates every inch of shoreline as a critical area, an action which is over-inclusive and not supported by the record.
- The shoreline protection standards are based on biased state agency science which has not been independently reviewed.

OSF has asked if the County has performed or requested a similar legal appraisal of the draft SMP, but they have not responded.

The most consequential change in regulation of our shoreline is a five-fold increase in buffers, from 30 feet to 160 feet. This change means 80% of the shoreline jurisdiction is now a buffer zone. By comparison, Port Townsend setbacks for residential use are 50 feet. It also means:

- Construction of new homes will be subject to the new buffers. Options to reduce the buffers to (112' maximum) are costly and time-consuming.
- Despite assurances that existing uses are generally not affected, alterations to existing homes are subject to numerous conditions, including compliance with strict GMA critical area buffers. This particular requirement flouts the *Futurewise v. WWGMHB* Supreme Court decision to regulate critical areas within the shoreline only under the more balanced SMA.
- Likely devaluation of shoreline properties will result in a county-wide shifting of the tax burden to include all property owners.
- By limiting the opportunity to thin trees and vegetation for view enhancement, the County is attempting to legislate aesthetics.
- Roughly 70% of the shoreline will be made a non-conforming use. Some legal opinions advise these otherwise legitimate uses are meant to be restricted and eventually phased out.
- Residential development on non-conforming lots is subject to eleven conditions, including size restrictions.
- Replacement of an old cabin or mobile with a new home may be subject to new 160' buffers.
- Replacement of a home destroyed by fire or other catastrophe may mean the landowner is not able to rebuild within the same footprint. There is no law to support this restriction.

The increased percentage of the shoreline designated "Natural" from 11% to 41% is another dramatic change. The shoreline designations are the heart of the SMP, as they determine which uses are allowed and at what intensities. Most uses in the Natural designation are prohibited or require a conditional use permit that must be approved by DOE, including single-family residences. There is no scientific justification for this increase beyond aerial photographs that do not account for currently existing uses.

Permitting of common accessories to single-family residential use — beach access, docks, armoring, etc. — are made more difficult or even prohibited under the proposed changes. Although these shoreline "modifications" are currently a minor presence, the county is predicting they will increase significantly above historic trends as the remaining 30% of the shoreline is developed, resulting in unrealistic, exponential ecological harm. The County presents no data supporting these assertions. Lawfully allowed armoring to protect homes from erosion is discouraged or prohibited in the new SMP.

The science used by the County and DOE to justify extreme buffers on modest development is selectively cherry-picked from preferred sources and ignores other reputable science that concludes much smaller buffers can achieve the same purpose. Environmental science is meaningless unless it also measures what it is protecting against. For all the attention paid to protecting the shoreline environment, the draft SMP contains no corresponding evaluation of the extent of development which needs to be regulated.

In reality, Jefferson County is sparsely populated and developed. Predictions of future increased "development pressures" must be verified with the same scrutiny as the ecological science. Single family homes are the primary use and those most affected by the new SMP. The mere

presumption that this activity will proliferate into a harmful domino effect is prejudice, not science.

The science is also arbitrarily applied. It allows 30 foot buffers for non-conforming lots and 50 foot buffers for exceptions called “common line setbacks,” but insist 160 foot buffers are necessary for those parcels that don’t fall into either category. The 160 foot buffers are either environmentally necessary or they aren’t.

While the SMP contains options for relief from standard buffers, the process will be expensive and time-consuming for the permit applicant. As it currently stands, the County is already having difficulty processing permits in a timely manner. The administration of a complex regulatory scheme like the SMP will cause further delays, making the feasibility of buffer options untenable for homeowners or prospective buyers. Allowances for variances and conditional use permits require DOE approval, creating more delay and uncertainty.

Finally, the burden of proof is placed on the applicant throughout the draft SMP to demonstrate no harm is occurring as a result of a proposed permit for development. This improperly contradicts the time-honored principle of presumption of innocence unless proven guilty. In some cases, such as measuring the cumulative impacts related to an individual permit, the county is asking the permit applicant to supply information the County itself is unable to produce.

A fundamental principle of the [Olympic Stewardship Foundation](#) is that it is the responsibility of the regulating agency to demonstrate a showing of harm before imposing restrictions.

Legislative Update

Jack Hamilton

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The Legislature was still in session working the budget (The one that only one party was allowed to read) when this was composed. The majority appears happy with their effort so far. They have managed to take about \$4 billion away from groups who have no ability to fight back and use about \$5 billion in federal “stimulus” funds to pay for some of those great programs we all know we just have to have. I still favor the budget that eliminates DOE and most of CTED, rescinds the GMA, and redirects transportation funding to roads and bridges and away from light rail and buses. I guess that’s what dreams are made of.....

There were a number of issues we were tracking through the legislature that had impact on property rights. Some we did OK on while other will come back to haunt all of us in the future.

First and foremost, almost the entire “Climate Change” related package of legislation was successful. Cap and Trade is having some problems and may not make it but we will have all the trappings of the “greenest state in the country”. California and Oregon are now distant challengers for honor. We do have a state Clean Energy Initiative that essentially puts us on track to be without greenhouse gas emission in 25 years and fully reliant on renewable clean energy. How it to be accomplished and at what price does not seem to be important at this time. Each and every state agency will also be a “climate leader”. The details are a bit sketchy but the reporting requirements are in place. All of the buildings in the state, current and future, will become the models of energy efficiency. Once again where the technology comes from and

who pays the bill is not necessarily part of the plan. I do know that technological advances normally outstrip government's ability to appreciate and accommodate those changes. By the time all of the government mandates are implemented we should only be about ten years behind the power curve.

Here is some of the more important legislation that made it to the Governor's desk and that we will have to cope with.

SSHB 1491 Electric Vehicles. This one requires certain higher population areas of the state (that includes PSRC) to plan for, seek funding and install and operate infrastructure that will support electric cars. The first targets are government facilities followed by commercial and residential areas. Roads starting with I-5, I-90, I-405 and 520 and the towns and cities along those routes will fall under the requirements. The State fleet will have to complete a rather rapid turnover to electric or bio-fuel vehicles. Where the technology comes from, who produces the equipment required, and how this is all paid for is not addressed.

2SSB 5045 Community Revitalization Financing. In reality this is a GMA band-aid that permits the diversion of property taxes to "special" revitalization area developments. In essence the program uses local property taxes and state grants to provide incentives to develop a specific area as desired by the local government. Once again we attempt to replace market forces with government action. Another "slum of the future" project brought to you by your local government. (As an aside – if you have not visited downtown Bremerton recently, please do so. Cities and towns with so little actual occupancy in buildings and storefronts are normally classified as "ghost towns." I do not know what it will take to get Bremerton turned around but they have not found the answer yet.)

SSB 6088 State Trip Reduction Program. - This is an effort to join all of the state agencies and other government activities in the Olympia area into a single plan. We encouraged the effort but asked for specific metrics to assess success and then data collection to determine the actual performance. Those measures have been included but the actual compliance and data collection and analysis remain to be seen.

SB 5989 Greenhouse Gas Emissions Performance Standard – the purpose of the bill is to not allow an emission producing energy creator from entering into .long term financial arrangements unless specific emission standards are met. In reality, the law will effectively eliminate the expansion of coal fired plants in the state. This is not helpful because non-traditional sources provide only a small portion of existing energy for the state and there is no demonstrated capability to expand that capacity to satisfy future growth needs in a timely manner.

SSB 5921 Clean Energy Leadership Initiative – This law declares by simple statement that Washington is the leader in clean energy and then establishes a "commission" to make that "fact" reality. The population of the Governor's commission is such that the intrusion of opposing viewpoints is improbable.

ESSSB 5854 Reducing Climate Pollution in the Built Environment – The law will require construction of homes that use no energy related to fossil fuels by 2031. (That also seems to mean that energy produced from fossil fuel will also be eliminated by that date). CTED is charged with developing the strategy and implementing the program. This is going to be GMA on an individual structure basis.

ESSB 5480 Energy Independence Act – We did support this one because, in a reversal of prior policies, it recognized hydroelectric power generation as using water as a renewable resource.

EHB 1967 UGA Expansion into a 100 Year Flood Plains – This is another “revision/correction” to GMA. In this instance, the Legislature finds it necessary to tell jurisdictions to not place a UGA in a flood plain. The need for this act sort of indicates that common sense is not an integral part of the planning process.

SB 5735 Reducing Greenhouse Gas Emissions – This is the cap and trade bill that is little more than a “ponzi” scheme under which the state sets standards and then acts as the bank for the carbon trade. The primary issue is that under this bill there is no actual reduction in emissions, this is only a mandated revenue stream for government with the bill being passed to the consumers. In most cases the cost effect will be unavoidable (electric power generation, oil refinery) and the consumer will bear the direct cost of the program.

E2SSB 5649 Energy Efficiency in Buildings – This is the solution looking for a problem created by the federal stimulus package. Suddenly, because homes use electricity and oil heat (or coal fired electricity) things are really bad and we need to fix it. It probably comes as a big surprise top some in the legislature that during the 1960-1970 time period the big push was for all electric homes. No wonder homes use electricity. This act is a way to spend a large amount of federal dollars on an end use with little probable gain. We are broke so we are going to “weatherize” low income homes. (CTED says there are about 300,000 homes that need help) Using the average of 2.1 persons per home and a population of 5.6 million that means that after several years of an ongoing program about 11 percent of all homes in the state belong to low income families and need weatherization. Sure would like to see the demographic distribution for that one.

E2SSB 5560 Agency Climate Leadership – In this law, every state agency is tasked to demonstrate positive leadership in the climate change area. They are responsible for actions within the agency and for those areas under the agency responsibility. They need an action plan/strategy, monitoring and reporting. This of course will be completed at no additional cost.

SB 5548 Impact Fees – The legislature finally caught up with a prior omission. Local jurisdictions must make sure that mass transit gets its fair share of any impact fees collected.

SSB 5401 Riparian Open Space Program – This one goes all the way to mandate that the Forest Practices Board have a program and acquire as conservation easements any riparian open space as habitat for threatened or endangered species *as designated by the Board*. Katy, bar the door.

SSB 5368 Annual Property Valuation – This act mandates annual reevaluation of property with a six year physical examination requirement. One county will serve as a pilot program to help work out the procedures/process. This one might actually have some value although Kitsap normally does an annual evaluation now.

SSB 5136 Use of Solar Panels by Members of Homeowners Associations. The problem with this one is that first it is retroactive (that tends to violate the contract) that is a homeowners covenant/agreement) and that it forces the association to essentially prove the installation is a problem. Its not the concept that solar panels are bad but that the law is another violation of property rights in that the individual desiring to install panels is no longer subject to the restrictions to which he agreed.

HB 2129 Greenhouse Gas Emissions – This act reinforces the Utilities Commission role in approving development of electrical generation plants or purchase of generated electricity. The act reinforces the citizen actions of I-937 regarding definition of renewable energy sources. Goodbye coal.

HB 1997 Puget Sound Scientific Research. Gives the responsibility of selecting research projects to the Science Panel. Need to see where this actually goes.

HB 1055 Constructor Worker Documentation. This law requires construction workers to carry license documents and photo ID on site so a “dishonest contractor” does not hire unqualified personnel. Interesting that you need photo ID to lay shingles but not to vote.

E2SHB 1007 Creating a Sustainable Energy Trust – Another of the energy/climate bills that gives an agency more authority to finance loans and use other government/public funds for energy efficiency programs and projects. This is a proven conduit process to channel tax monies into projects that would otherwise not see the light of day and not succeed in the free market.

ESHB 1004 Adding Products to the Energy Efficiency Code The wine chiller in my home is now the subject of an energy efficiency rating. We are “falling behind” Oregon and California in our rush to over regulate the lives of our citizens. If I go out of state and purchase an item that does not meet state codes, can I be prosecuted for smuggling contraband materials into the state. How long before we have border inspection stations to check all trains, trucks, and moving vans to keep this harmful stuff out?

SSB 5273 Landscape Architects. Feel safe at last. That ruthless Landscape Architect you were afraid to hire now must be licensed. I wonder if that will cost more.

SB 5540 High Capacity Transportation Service PSRC wins on this one because it establishes authority for regional transit agencies with taxing power. All things considered, I do have some difficulty seeing how sound transit can waste more money. They must have a new project in the works.

ESHB 2289 Energy Freedom Program I really do like the catchy names the Democrats have come up with for their wealth distribution programs. This one uses money from all sources to provide additional funds for energy projects. How much money can we spend on windmills and solar panels?

HB 2199 Regulatory Relief from Shoreline Shifts. Another magical moment by the Legislature to defy all sense and reason. If, because of a government restoration or habitat project, you property would be placed under more restrictive rules or require that a buffer be created, the requirements of a CAO may be used in place of the SMP. I guess the guys never came across the concept of “takings” in their close study of our Constitution.

SHB 1825 Facilities Planning Requirements under GMA One more quick fix. The existing law is not clear enough that planners must include things like schools, fire houses, medical facilities service, retail and other non-residential uses when planning. Of course that might require involving junior tax districts in the planning process and using more realistic “buildable lands” estimates.

EHB 1464 Affordable Housing Incentives “He who giveth may taketh away” This one puts a few more restrictions on what you have to give back when you get an incentive consideration. If you are building a mix of “normal” and affordable housing, the affordable units have to have size comparable to the rest.

ESHB 1379 SMA Moratoria Somewhere in the Constitution the legislature found authority to declare moratoria. I need to find that. The unfortunate part of this law is that the public gets to comment after the fact. In the case here in Kitsap, moratoria (not necessarily SMA related) get imposed when government screws up so they have time to fix the error. Of course the citizens impacted pay the price and have no recourse. Another fine example of the “sue me if you don’t like it” method of protecting individual rights.

On the lighter side, elementary school kids will now be required to enjoy recess (of course dodge ball and any other possible contact activity will not be allowed). Those of you who frequent the steams and forests will be thrilled to know that Fish and Wildlife are now authorized a volunteer chaplain (I guess to give last rites to people who happen to meet a “friendly” bear). We have an official Center for Human Rights at UW (Isn’t that the school we can’t send our kids to because of the increased tuition?) And last but not least, when Vivian visits the Capitol in Olympia she can now buy a bottle of Made in Washington wine. Should make the trips home a lot more fun.

Historical Almanac

May 3, 1802	Washington, DC incorporated as a city
May 5, 1961	Alan Shepard is the first American to fly in space
May 6, 1941	Bob Hope performs his first show for US troops
May 10, 1869	Transcontinental railroad completed in Promontory Point, UT
May 13, 1607	Jamestown colony established
May 18, 1908	Congress requires motto “in god we trust” to appear on coins Mt St Helens erupts, 57 dead
May 29, 1765	Patrick Henry attacks the Stamp Act, in Virginia House of Burgesses

**HERE RESTS IN HONORED GLORY
AN AMERICAN SOLDIER
KNOWN BUT TO GOD**

Inscription on the Tomb of the Unknown, Arlington, VA

In this month of May, as we celebrate the lives and remember the sacrifices made by so many to preserve this Union and this unique country that is America, please take the time to rededicate your personal efforts to the protections of our unalienable rights and freedom so that their sacrifice may not have been in vain.

We shall remain a free people only so long as we refuse to let any person, group, or nation take that freedom from us. It took a revolution to make us free. It may take another to keep us free.