

# *The Sentry*

**Kitsap Alliance of Property Owners**

[www.kapo.org](http://www.kapo.org)

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**October 2009**

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## **KAPO President’s comments**

**Tim Matthes**

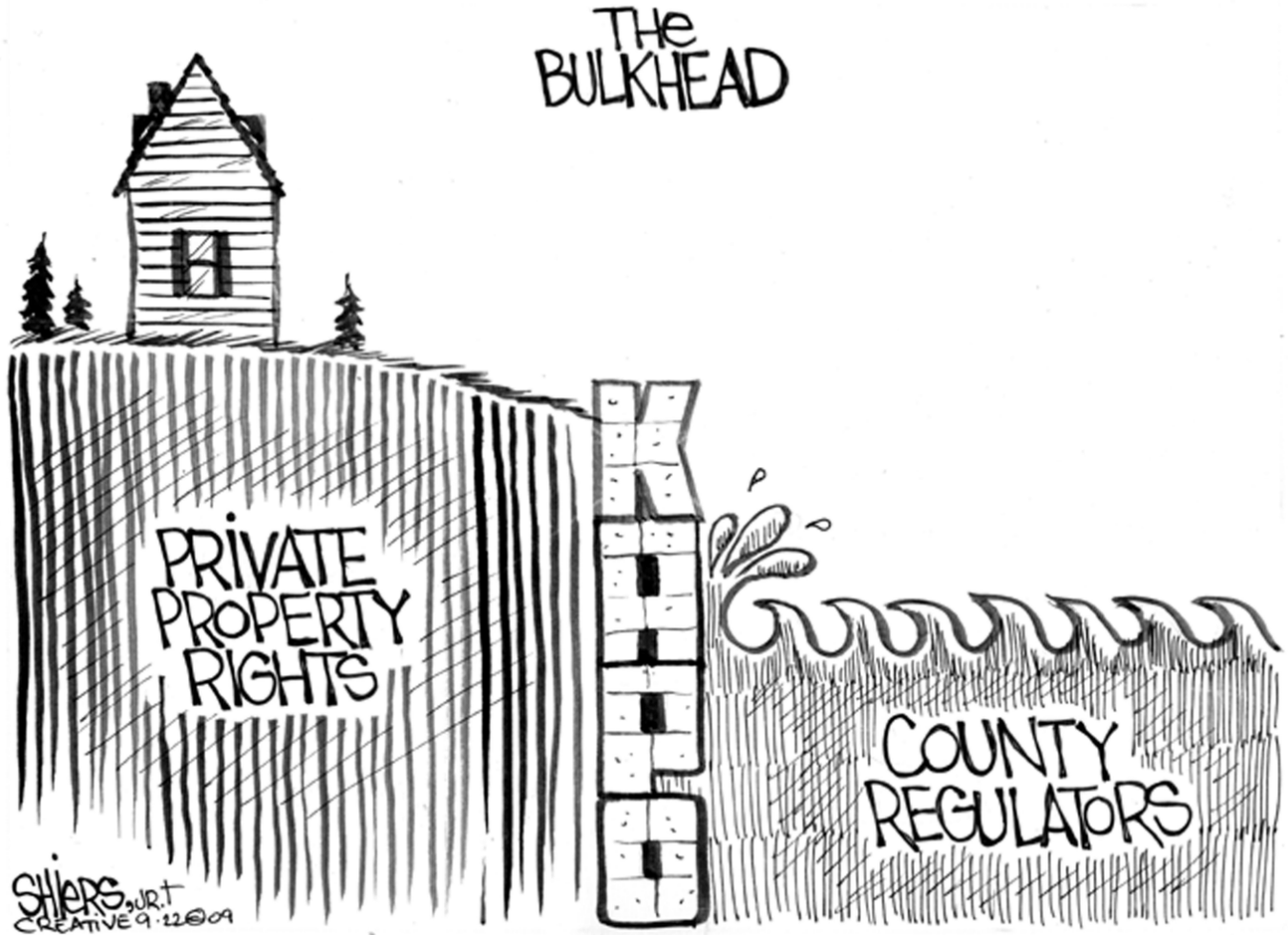
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President’s Report,

This cartoon says it all. KAPO is the bulkhead that has been protecting rights of property owners throughout Kitsap County for over 9 years. KAPO is, no question, the leader in defending property rights from unwarranted laws and regulations.

KAPO has just won our case against the Critical Areas Ordinance here in Kitsap County. The State Court of Appeals returned Kitsap County’s CAO back to the county and the Growth Management Hearings Board for rework. Remember that KAPO pointed out many of these deficiencies in our CAO four years ago. KAPO tried to tell the county where and how the CAO could be fixed, but sadly, our efforts were ignored. Think of the thousands of hours of work, and close to a half million dollars in legal fees that could have been saved.

Now Kitsap County is starting its Shorelines Master Plan update. KAPO has the knowledge and information that should be utilized to make this update better. We must have a SMP update that will stand up to all legal challenges. The only way for our SMP to stand the legal test is if we incorporate up to date science and use an honest public process. I hope that this time the county will incorporate KAPO's knowledge and ideas from the start. KAPO, as always, stands ready and willing to help complete this update in a way that is fair to the property owners of our county.



***Moving Right Along with Vivian ~***  
***Executive Director Vivian Henderson***  
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I finally found somebody who's doing something about cleaning up Puget Sound. The Northwest Straits Commission has been clearing Puget Sound of derelict commercial fishing nets and gear since 2002. Crews made up of 78 divers have cleared more than 10,000 pounds of nets that trap and kill untold numbers of salmon, bottom fish, crab, diving birds, seals and porpoises. Old crab pots littering the sea floor continue to trap sea life decades after they have been abandoned or lost. Through the Northwest Straits Initiative, the Commission's goal is to clear 90% of derelict fishing nets from Puget Sound by 2012 – one net at the time; one crab pot at the time. Read about their work at [www.nwstraits.org](http://www.nwstraits.org) click on "Derelict Gear".

Financing for their very important work has been catch as catch can, a small grant here, a few dollars there. Funding has been a struggle. Earlier this year the Northwest Straits Foundation, the fund raising and education arm of the Commission, was awarded a \$4.6 million grant from the National Oceanic and Atmospheric Administration. Over the next 18 months, the grant will provide resources to remove from Puget Sound an estimated 3,000 derelict nets and fund other very important work of the Commission.

That's what I call cleaning up Puget Sound. The work the Northwest Straits Commission is doing will do a lot more to protect Puget Sound and our precious sea life than denying a property owner the right to enjoy his beach or requiring a 100 foot no touch buffer.

There has been a lot of "talk" about cleaning up Puget Sound. And a lot of taxpayer money spent "talking" about cleaning up Puget Sound. As I remember, it started with the Puget Sound Water Quality Action Team (PSWQAT). A taxpayer funded boondoggle\* that lasted for about 15 years.

Then there was "Shared Strategy for Puget Sound". Shared Strategy lasted about 6 years; produced a "plan" that was 5,000 pages. I don't think anybody has ever read it. Where would you get a copy of it? 5,000 pages! If you could read it where would you put it when you finished it? You'd need a library. I think the Feds adopted the plan – but, like I said, I don't think anybody has read it. It might be sitting on a few shelves some place. Who knows how much it has cost taxpayers? It's a painful figure, I'm sure.

And now we've got the Puget Sound Partnership (PSP) which is just more of the same. Lots of talk, more studies, hand wringing – more folly. If you notice the roster of PSP staff you'll see many of the same names that worked for the PSWQAT and Shared Strategy. Cleaning up Puget Sound has turned into a full time job and retirement plan for these folks. What would happen to them if we ever cleaned up Puget Sound? (Get it?). Don't look for any rosy reports about the health of Puget Sound from PSP.

The State might kick us old people out of our senior centers but they'll keep funding this daftness.

In the meantime the Northwest Straits Commission is cleaning up Puget Sound. Thank you Northwest Straits Commission.

Call me sometime ~

## **Environmental Insight With a Touch of Real Science**

### **"The Strange Case of the Missing Eureka"**

**Don Flora (a real scientist)**

This mystery is about shoreline buffers.

Kitsap and some other Puget Sound Counties have relied on buffers for decades, around wetlands and along the tidewater. The number of buffers has grown steadily. Yet nobody has come rushing up from the shore shouting "Eureka! Buffers work!"

This is strange indeed. Of scientists we seem to have scads. Years have passed in which measurements might have occurred. There are many places where “with buffer” could reasonably be compared with “no buffer”, or “wide buffer” with “narrow buffer.” Yet at no time, from no place has come “Eureka!”

Why not?

Maybe it's because some benefits are invisible. One has to be barefooted to sense high temperatures of beach sediments that may be harmful to surf smelt eggs or organisms below the surface. Wetland salamanders can be hard to spot, as are nocturnal creatures. Yet means are available to observe and measure such things.

Maybe it's because the benefits are indirect. This is an issue in habitat surveys: counting trees isn't the same as counting creature comforts, nor creatures themselves.

Or maybe it's because there is no benefit to find. I made a list of 25 nice things that wider buffers will not do. Here are a few.

Adding water to aquifers would be nice. But a charming tree-laden, woodsy buffer is devilish hard on groundwater during the growing season. A maturing tree can use 100-150 gallons per day. That's per tree. And there is no way to turn off the valves on those great conduits to the sky.

Weel, trees drawing up excess storm water would be nice. That's in winter, of course, when vegetation, even evergreens go dormant. Brass, shrubs, trees all mean nothing to passing surface and ground water as storms rage.

It's nice, though, that tree roots knit tightly the soil above banks and bluffs, forestalling slope failure. But do they? Even the Department of Ecology, which likes sediment on beaches, warns against trees at the edge. In soggy, windy weather they're apt to go over (trees, not the Department), roots and all. Wider buffers won't change that risk.

It's nice that wider buffers will stop more sediment that flows along with storm water, carrying phosphorous and some actually bad chemicals. But have you lost some sediment lately? Perhaps you have a critical feedlot or rows of berries descending the backland close to shore. No? So much for sediment.

But, if yes, don't draw a sylvan buffer around your place. Research has shown that grass works better at stopping sediment and other stuff. And grass is nice.

As a place to play, woods can be nice too. But buffers are no-touch. Try getting permission to install a tree house or even a flagpole (for pirate flag of course).

Want twenty more reasons to beware planners bearing wider buffers? Call me. 206-842-0709. The code word is “Eureka”.

# Kitsap County Planning Commission Activity Report

Mike Gustavson

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## September 1, 2009:

We held a public hearing in Hansville on the Greater Hansville Community Plan about thirty people were in the audience, some speaking favorably and some against. Repeatedly, I asked both Pete Sullivan, Kitsap County Planner, and the public presenters if they would describe the problem the plan is attempting to solve and none could. I tried to explain we could adjust the zoning map, the zoning use table or implement design standards and none of this drew traction. Pope Resources owns 2,000 acres of timber they would like to sell or develop and I pointed out Cascade Land Conservancy in the previous week had completed a purchase from Pope of 2,000 acres of forest south of Green Mountain and they are looking for more tracts in the Hood Canal drainage to purchase.

There were strong feelings among some the opposition that they had been excluded from the process or that they lived in Driftwood Keys or Eglon and this plan did not reflect their communities.

At the end of the evening, I left confused about the purpose. Obviously, if preservation of Pope's woods is important, buyer and seller are readily available and the purchase merely needs to be facilitated.

Obviously, Hansville has done a wonderful job in developing their community with trails and the forest is important to them, but I'm not convinced there is need to involve the County uniquely in their community. All work accomplished so far has been done as a strictly local effort.

## September 15, 2009

We continued the public hearing and deliberated on the Staff's proposal to remove the Board of County Commissioners from the decision making process in land use issues and replace it with mandatory mediation. The Board of County Commissioners had directed Staff to investigate this potential change in process.

During public testimony, the likely lack of success in the deliberation process, both due to potential inexperience in land use law on the part of the mediator, and likely problems of dealing with a potentially diverse, intransigent, agenda driven group of neighbors and the potential lost time and cost of litigation (up to one year and \$10,000 to \$15,000), we voted to recommend to the County Commissioners that they retain the current format. Eliminating the Board of County Commissioners from the post-Hearing Examiner appeal process would insulate them from involvement in county land use policy and only serve to drive up the cost of home building.

The scheduled public hearing on commercial and rural industrial zoning modifications was continued to a future date. This issue hinges on resolving Rule RL-8 in the County Comprehensive Plan. RL-8 prohibits expansion of these uses outside Urban Growth Areas and without relief, certain existing business may have difficulty meeting their business needs in their current locations.

We heard in this session and a previous session, public hearings on about 17 rural land use changes, most of which fall into the above category, so resolution of RL-8 is central to our recommendations.

We deliberated our recommendation on the Greater Hansville Community Plan and, over my objections, the Planning Commission voted (8-1) to forward it to the Board of County Commissioner with a favorable recommendation.

The County Commissioners may have to decide if they will entertain potential separate Eglon or Driftwood Shores Community Plans if the citizens feel strongly enough to pursue them. With about 100 distinct communities in Kitsap County, this theme could spread, as it already has from Illahee. Each building permit would need to first be evaluated against the community plan and then against County Code prior to approval, again increasing the cost of home construction.

### **Report on Shoreline Management Plan Update in Jefferson County** **Mike Gustavson**

Much can be learned from the experience in our neighboring county, as our SMA review builds steam. Tuesday evening September 8, 2009 six KAPO members attended the Jefferson County Commissioners public hearing on their Shoreline Management Plan update. Several of us spoke. Here are my comments.

It was soon evident, from public testimony, that the community had worked three years to help develop the Planning Commission draft. Department of Ecology reviewed it and, in a letter to the County, rejected it out of hand, before it had come to the Board of County Commissioners. County staff then drafted a shoreline plan that apparently would pass muster with DOE. The Staff plan, with uniform buffers, often of 150 feet, was addressed Tuesday night.

A cursory review of the plan showed no proof of harm to the waterways in question, and chose instead to apply fixed width buffers as a function of the use of various "reaches" of beach.

There was no acknowledgement of a relationship between regulation and proven harm, as required in landmark U.S. Supreme Court cases Nolan vs. California Coastal Commission and Dolan vs. the City of Tigard.

Neither addressed were Washington State Supreme Court Case Isla Verde vs. City of Camas, prohibiting an environmental tax through land use restriction nor Engrossed Senate and House Bill 1933, which specifically prohibits uniform buffers on salt water and instead requires each parcel of property stand on it's own merits when measuring harm to the shore and attendant regulation.

On page 8-26, paragraph 8.B.2, construction of bulkheads that could cause harm during the next 100 years was prohibited. I asked how a planner was to know if the sea would rise 20 feet as Al Gore has suggested, or 6 inches as we have seen in the past 100 years.

I suggested storm water is recognized as the single greatest harm to Puget Sound and most of it comes from hardscape. Ninety percent of our hardscape is roads and the remainder is from buildings and parking lots, yet the impact of storm water from roads is not mentioned in this document. Another serious impediment to marine animal reproduction is endocrine disruptors, which are found in many human medicines. These pass through the human body and are not removed from any of the sewage treatment systems currently in use. They directly enter the bay.

I find it curious that the two recognized sources of damage to our water environment are not recognized, while, with no proven harm being shown, private property is to be severely regulated at great cost to the tax rolls and to homeowners.

No one has quantified the amount or impact of fecal material from animals in the woods or from creatures in the bay.

A thorough review of the Jefferson County document will provide much more opportunity for comment. It will be a good benchmark for us.

## **INDUSTRIAL & COMMERCIAL IN RURAL AREAS OF KITSAP COUNTY**

**Bill Palmer**

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### **Preface:**

Prior to the advent of the Growth Management Act (GMA) counties and cities planned for industrial and commercial development taking into consideration historic patterns of development, special considerations, access to transportation networks, strategic infrastructure support and for the changing needs of their constituent population. New technology often played a role in how communities planned for industrial and commercial development. Some jurisdictions even offered incentives to attract new industry and/or commercial development as a way of enhancing their tax base and to promote the general growth of their communities.

Some incentives came in the form of the willingness to commit large land areas that were easy to develop to industrial commercial development. Tukwila, Kent and Auburn took that approach in the early to mid-1960s. Other communities sought government funding in the form of federal and state economic development grants to extend water and sewer lines or new roads into areas set aside for commercial and industrial development. The City of Everett took that approach to encourage the Boeing Company to locate their 747 plant in their community and later to facilitate its expansion. Kitsap County in concert with the U.S. Navy utilized "Trident Impact Funds" to accomplish similar goals benefiting all jurisdictions within the County.

Other jurisdictions adopted expedited permit processes and build-to-suit programs to entice new business to locate within their jurisdiction. Snohomish County employed these incentives in the

early to mid-1970s as did jurisdictions like the Ports of Seattle, Tacoma and Bremerton. In fact Port Districts have quite a bit of latitude within their taxing districts to raise funds for economic development activities.

Sadly, with the advent of the Growth Management Act (GMA) counties, cities and even the State of Washington's options to provide incentives for economic development became much more limited. A surface analysis might lead to the conclusion that the same set of incentives is available to jurisdictions as was the case prior to 1990-1991. However, the "requirement" to focus development primarily in Urban areas restricts the ability of counties and cities to respond to the location requirements of many industrial users. For example, a large manufacturing company such as Boeing, Bayliner Boat manufacturers or a Hewlett Packard company may need 80 -100 acres of relatively flat land for their facilities. Seldom does one find such large tracts of land within an urban area.

Besides available land area, there are a variety of location factors business owners utilize in making decisions of where to place their industrial plants. An educated labor force is vital to many industries. Some may need a rail spur; some have great demands for public water and sanitary sewer. Others need very little public water and sewer facilities and can function quite well with a well and septic disposal. Most of the larger business enterprises need access to major roads and freeways for shipping and receiving of products and component parts.

When the objective is to promote industrial growth, communities need to gather this information and examine the places within their jurisdiction where industry can best be accommodated. The "hamstring" of overly restrictive rules and regulation should not outweigh decisions about what is needed to support the community.

Kitsap County has both the need to promote more economic development while providing support for the industry that it does have. In this county the South Kitsap Industrial Area represents the principal place where large acreage land assemblies are possible for the industrial user who has those needs. Much of that 2,000 acre plus land will be annexed by the City of Bremerton over time. In other parts of the County there are a number of places where industrial activities and businesses are located where the expectation of annexation to one of the Counties cities is not anticipated within the next twenty years and maybe longer. Yet businesses in these County areas appear to provide employment for some 2,000 people.

One way to provide for support for these existing businesses and promote opportunities for new industry is to make allowances for growth and expansion of existing industrial areas and the creation of new sites where manufacturing or manufacturing and commercial development can occur with minimal disruption to existing developed residential areas. A key factor in the planning / regulatory function employed by the County will be the need to both recognize the needs of the businesses and the functional environment in the location the business owner wishes to locate. For example, a business developed in connection with a home, employing family members and a few others may find a relatively remote location very suitable. Employers with many employees, frequent shipping needs and plant facilities in excess of 20,000 square feet will need ready access to a major arterial and sufficient site area for on-site waste disposal.

Commercial businesses, respond to the market place somewhat differently than is true of industry. Where industry's market place is county wide or multi-county serving, commercial enterprise is more population dependent within a relatively small radius around a focal center. Almost universally, business owners make decisions about where to locate based first on

population density and/or service market area. Also, household income is a factor that is important for business owners in their location decisions.

A market analysis is a critical element in a business owner's assessment of where to locate. For example, a small convenience store will not go into a remote area where there are few people and virtually no traffic. However, if there are about 1,200 people within a mile radius of an intersection. There are convenience stores owners that will consider placing a small store in that location.

Larger convenience centers with 3,000 to 10,000 square feet of store area will need between 1,200 and 5,000 people within a 1 – 3 mile radius and traffic passing thru and intersection of 15,000 to 20,000 vehicles per day. Note the traffic in all directions is additive, meaning that all the vehicles arriving at each leg of the intersection is totaled. In some instances traffic counts are more determinate than the rings of population. Highway serving commercial facilities such as those found at or close to freeway interchanges is case in point.

A larger "neighborhood" serving commercial facility will require a larger population base with an inner and outer ring. The inner ring would desirably encompass approximately 3,000 people within a mile radius of an intersection and the outer ring being either three or five miles would have to have an additional 5,000 to 10,000 people depending on the business and/or businesses to be located in the center. Traffic passing by the neighborhood commercial center is important as is the household income of the people in the vicinity of the center.

More community serving scale commercial centers will require 60,000 – 100,000 people within a five mile radius of their store. Multiple stores will be accommodated in such centers taking advantage of the same population base. The next step up is the "Regional" serving commercial area and it requires a population base in excess of 100,000 people and serves a radius of between 10 and 20 miles depending on the type of business located therein.

Large neighborhood centers, community serving commercial developments and regional facilities are not found typically in rural areas. Rather they are common to cities and suburban developments with concentrated residential development.

Based on the premise that Kitsap County wishes to encourage business and industrial development it is incumbent on the legislators to enact policy and regulatory measures with the least impediments to growth and expansion of the economy. Such measures need to recognize Kitsap County's particular jurisdictional needs. A first step in that process will call for a revision to policy or policies that might work to force commercial and industrial growth and development in the County's urban areas. Second regulatory measures that would implement such restrictive policies need to be amended to take away those impediments.

### **Assumptions And Guiding Principals For New Policy:**

Prior to setting new policy direction it is both necessary and desirable to set forth the factors that underpin the policies the County wishes to establish. They are as follows:

1. Kitsap County is in need of a private sector tax base to provide the funding for County services.
2. The portion of the tax base that best supports the functions of County government comes from the businesses and industry sectors of the economy.

3. Kitsap County is not a “rural county.” Rather it is a county with some environments that some residents recognize as having “rural” characteristics.
4. Some areas of the County have what are judged to be “urban services” because of the presence of sanitary sewers, public water, fully manned fire stations, government centers and heavy concentrations of commercial development. Since under GMA there can only be two environments “urban” or “rural,” “rural” county areas are thus distinguished from “urban areas” by the lack of one or more of these services.
5. Unlike some counties like Pierce, King, Snohomish, Skagit or Whatcom Counties, Kitsap County is not functionally divided into “urban” or “rural” by the presence or lack thereof urban services. Rather the County is linked by several freeways and principal arterials such that all but a few areas in the southwestern portion are no more than three to five miles distant from any of these arterials.
6. These main arterials thus expand the connectivity within the county making the greater majority of the county a homogeneous community. Even though there are area specific communities within the county having identities such as Suquamish, Indianola, Seabeck, Port Gamble, Hansville, Keyport or Manchester, none of these areas are more than three miles from an east-west or north-south. Of these, only Hansville, Seabeck, and Indianola are more than five miles distant from a State Highway.
7. Industrial centers have developed in close proximity to one of these major arterials or at the junction of the arterials with a state highway in concert with comprehensive plans and regulations in effect prior to the enactment of GMA. Thus, these industrial centers were created with County approval and as well have convenient access to a major transportation route within the County.
8. Unlike other counties Kitsap County’s growth and development patterns has been influenced by the presence of four major Naval Base installations found herein – Puget Sound Naval Station, Bangor, Keyport and the Manchester Fuel Depot. Of the four, Bangor is a self-contained community area. All four however have defined access links to other parts of the County.
9. Kitsap County is distinguished from other counties in the Puget Sound region as it has four Washington State Ferry Terminals. Two of the terminals are located in the Cities of Bainbridge Island and Bremerton. One terminal is found in Kingston’s Urban Area and the fourth is in Southworth a part of a so-called “rural” area. Each of these terminals is connected with a State Highway and provides access links to Seattle and the greater Seattle Metropolitan region. Also the ferry-link access routes serve as impetus for commerce to locate in close proximity to these terminals.
10. Kitsap County has three airport locations that serve as focal points of either industrial or commercial development or both. Each airport, Port Orchard, Bremerton National and Apex are linked to a major east-west or north-south arterial or a state highway.
11. Business and commerce in Kitsap County has many facets, those found in centers, concentrated commercial areas within urban areas, in nodes at intersections or in connection with a single-family residence. Some of the so-called “cottage industry” business are quite small involving only the principal business owner and confined to a room or two within a house. Others are a bit larger and involve outbuildings such as shops or barns. Still others, like a few of the commercial nurseries involve several acres of land. One the factors that distinguish the nature of the businesses are the scale of operation and another has to do with its access requirements. The smaller the size of the business, i.e. the ones with the fewest employees and occupy the least amount of land area the less need there is for major arterial road access. Therefore such “cottage industry” can be found in all parts of the County. Conversely business or business

complexes with many employees and requirements for large buildings will need to be situated in close proximity to major arterials and intersections.

12. Business growth and expansion whether small in scale or large should be as much as possible market driven with the least possible regulatory interference.
13. Where it is necessary to limit the scale of development, those decisions should be made in concert with business needs, prior planning commitments, historic patterns of growth and development within the county to include prior platting activity and access considerations with respect to distance from main arterials.
14. Limitations on scale of development may be appropriate also depending on demand for public services. Those businesses such as found a Twelve Trees in North Kitsap or at the Mullenix Interchange with SR-16 that have minimal public service needs need not be constrained by scale. Conversely shopping centers or large manufacturing complexes with heavy water and sanitary sewer demands will need sites with such available facilities.
15. Where zoned areas include area for further development or expansion, it is not necessary to amend the County's Comprehensive Plan.
16. Where existing centers of development have a component of public services such as is characteristic of a Limited Area of More Intense Rural Development (LAMIRD) such centers should be allowed to expand within the provisions for LAMIRDs as outlined in the Growth Management Act.

### **Recommendation For Policy:**

Currently County Policy RL – 8 seems to prohibit expansion of commercial and industrial development if the business or potential business are or would be located in the “rural” classified areas of the County. Assuming the Kitsap County is committed to the expansion of the private sector portion of the County's economic base, this policy has to be modified. The factors discussed in the set of sixteen assumptions are material to the proposed language for how this policy should be modified.

Revised language for this policy would read as follows:

RL-8 – Expansion/redevelopment of existing commercial and industrial complexes found in the rural classified portions of the county or by the creation of new such centers need not be restricted in area or scale where such centers are located within a half mile of a major arterial and where such development is self-contained with no need for sanitary sewer or other public services normally found within an urban area.

RL-8A – Cottage industry to include small convenience and neighborhood serving commercial\* shall be encouraged to be created in any area of the county. Expansion of such business will be dependent on prior planning/zoning allowances, location and access considerations as well as the provisions made by the business owners to limit adverse impacts on neighboring properties and developed residential areas.

\* Neighborhood serving scale is distinguished in the preface section of this paper.

### **Ordinance Recommendations:**

In as much as “cottage industry” and convenience commercial stores are found to exist by reason of prior (to GMA) zoning allocations, Unclassified Use/Conditional Use approval or

through the “home occupation” provisions of the Zoning Ordinance, that type of industry is appropriately occurring in all areas of the County. Typically those uses and/or zoned areas are limited in scale and have limited need for expanded operations or site usage. The provisions of the current County Zoning Ordinance are at least adequate to address scale of development and neighborhood impact issues. While not imperative, if there is a need to amend the Zoning Ordinance it is to fix the problem with the County’s commercial zones. Industrial Zoning does not require adjustment except as will be explained shortly.

The first problem with the commercial zones is the nomenclature of these zones. They are all entitled “urban.” That title is completely out of order. Commercial zoning is best distinguished by the “intent” or “purpose” section of the zone. Where the various commercial zones can be applied can and should be described in this section of the zone and in the comprehensive plan.

The second issue that is problematic is that the zones are mis-labeled as in the case of the Highway Tourist Commercial Zone and there is at least one missing Zone category.

The missing zone is the one that provides for “convenience commercial.” An argument could be made also that there is a need for a commercial zone that provides for the tourist commercial needs of the County residents. Leaving that discussion for another time, the commercial zones should be structured as follows:

1. Convenience Commercial
2. Neighborhood Center
3. Business General Commercial (This would be the new name for HTC)
4. Mixed-Use Commercial
5. Regional Center

The current purpose descriptions for these zones can work except for the Neighborhood Center Zone. The current description better fits the Convenience Commercial and a new purpose would be needed for the Neighborhood Center. Suggested wording is as follows:

*The purpose of this zone is to provide for business and commercial uses serving a neighborhood area adjacent or nearby the zoned area. The uses and building masses within the zone are intended to be of a smaller scale to maintain compatibility with surrounding residential uses. Also a Neighborhood Center commercial district would have characteristically less activity than would be true in a Business Commercial Zone. Residential uses would be allowed in this zone.*

Additional work is necessary to flesh out the proposed commercial zone array including a comprehensive plan amendment to discuss the location parameters for where such zones might be applied within the County’s jurisdiction.

Unlike the commercial zones, the industrial zoning is not as problematic as is the commercial zone applications. Some jurisdictions like Pierce County go to great lengths to provide for “Cottage Industry.” However, with the provisions of Kitsap County’s Ordinance for home occupations and conditional Use allowances in Rural and Residential Zones that need seems to be less of a problem at this time.

The only question remaining is whether there is a need for another industrial zone to be applied outside of a UGA. Based on the discussion contained in this paper the answer is no. The

County has in fact established five types of industrial zones – Business Center, Business Park, Industrial, Industrial Park and Master Planned Industrial, which is applicable to the South Kitsap Industrial Area. Two of these zones are not manifest in the Allowable Use Table – Industrial Park and Master Planned Industrial. Also, one could postulate that the Mineral Resource and Airport Zones represent two other industrial and or business zones.

However, the answer to the above question about the need for additional industrial zones is no..... there is not a problem with the zone categories in the code. And there is not a problem with how they are currently applied. Never-the-less, a problem does exist in the Zoning Ordinance that would help to clarify some of the ambiguities between the Comprehensive Plan and applied zoning. There are no “purpose” or “intent” sections in the zoning ordinance to describe where these various zones are meant to be established.

The recommendation herein is that such purpose sections be developed and where necessary companion sections of the Comprehensive Plan need to be adjusted to better describe what Kitsap County needs in the way of a private sector industrial base. To underscore this point, Kitsap County needs a broad spectrum in its economic base not just a “rural” economy. Such concept ignores the proposition that Kitsap County has a homogeneous link between its so-called “rural” portions with the State Highways, main arterials, Naval Bases, Ferry Terminals and the urban areas surrounding its four cities.

**Other Code recommendations** – while there are still many areas of the current Zoning Ordinance that need to be fixed, the Nonconforming Use section found in 17.460 does need to be amended.

The first problem is with 17.460.020 it has the wrong title “Nonconforming uses of land.” The section should be titled “Application for change of nonconforming use” as that is what the current section describes. After changing the title, the section numbering needs to be reordered too. Thus this section would become “.030.” All other sections would be adjusted accordingly.

A new section .020 should be introduced entitled “Nonconforming uses.” The wording for this section would be as follows:

- A. *Any use of land, structure or other improvement, such as landscaping or signage or development standard which was legally established prior to May 7, 1998 but not addressed in paragraph B below shall be considered nonconforming if:*
  1. *The use is now not permitted or cannot meet use limitations applicable to the zone in which it is located, or*
  2. *The use does not comply with the density, dimensions, landscaping, parking, sign, or residential and commercial design standards of this title.*
- B. *Uses of property that have received land use approval through a home occupation permit process, Unclassified Use Permit process, Special Use Permit process, Conditional Use permit process, Variance Permit process are legal uses as defined within their approval; they are not considered non-conforming.*
- C. *A change in the required permit review process shall not create a nonconformance.*
- D. *Any nonconformance that is brought into conformance for any period of time shall forfeit status as a nonconforming use.*
- E. *Any nonconforming use that is discontinued for a period of two years (2) years may not be reestablished unless mitigating circumstances are presented to the Director demonstrating a illness of the user, estate transfer and/or sale, real estate sale,*

*earthquake/fire/flood settlement action delayed the reestablishment of the use. In this case the two year period may be extended by no more than three additional years.*

Reference: City of Port Orchard's Zoning Ordinance with modifications.

Old section 17.460.030 Nonconforming structures needs to be amended by the following additions:

*D. A nonconforming structure occupying a property made nonconforming by a change in zoning may be enlarged to occupy additional site area provided such enlargement would conform to the setbacks, landscaping and parking requirements of the zone in which the building was first permitted.*

*E. Any nonconforming structure that is destroyed for any reason or otherwise lies vacant for a period of two years (2) years may not be reconstructed unless mitigating circumstances are presented to the Director demonstrating a illness of the user, estate transfer and/or sale, real estate sale, earthquake/fire/flood settlement action delayed the reestablishment of the building. In this case the two year period may be extended by no more than three additional years.*

Old section 17.460.040 Nonconforming uses of structures is another section that needs to be revised.

Subsection C now reads as follows:

No Expansion of Nonconforming Use. A nonconforming use shall not be enlarged or expanded; provide, the structure containing the use may be structurally altered to adapt to new technologies or equipment.

**Proposed new subsection C:**

Expansion of Nonconforming Use of a Structure. . *A nonconforming use of a structure may be expanded if the use would occupy additional space within the structure or if the structure itself were enlarged in keeping with the provisions of 17.460.030.D.*

Subsection E now reads as follows:

Destruction of Nonconforming Use or Structure. If any nonconforming use or structure is destroyed by any cause, it shall be allowed to be reconstructed or reinstated as a nonconforming use in a similar size and appearance within a period of one year from the date the use or structure was destroyed.

**Proposed amendment to Subsection E.**

*Destruction of Nonconforming Use or Structure. If any nonconforming use or structure is destroyed by any cause, it shall be allowed to be reconstructed or reinstated as a nonconforming use in a similar size and appearance with a period of ~~one~~ two year(s) from the date the use or structure was destroyed. The two year date may be extended for up to three (3) more years if the owner, his or her heirs or assigns can demonstrate to the Director that*

*mitigating circumstances due to illness of the owner, estate transfer and/or sale, real estate sale, earthquake/fire/flood settlement action delayed the reestablishment of the structure or use.*

The foregoing change recommendations should be implemented as soon as possible as they will go along way to mitigate the concerns of those who have nonconforming uses or nonconforming structures.

**An Island Perspective**  
**Bainbridge Shoreline Homeowners**  
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Ed. – *This material was taken from the BSH web site with their permission.*

## **Judge rules against activists in San Juan County**

There are many players in the world of land use planning, regulation and governance. On one side you have property owners. On the other you have a wide range of people and groups who think they know better than anyone else how the property owner's land should be used. These groups — including activists, politicians, neighbors, local planners, state bureaucrats, scientists, engineers, and other “experts” — often disagree, but they always have an opinion.

On August 31, a Superior Court Judge in San Juan County overturned a ruling by the state's Shoreline Hearings Board that overturned San Juan County's issuance of a Shoreline Substantial Development Permit to build a private dock. In his ruling, Judge John Linde said that the “SHB decision overturning the permit issued by the County and disregarding the mitigation plan developed in conjunction with WDFW was arbitrary and capricious and failed to properly interpret and apply the law.”

In his summary the Judge said the following:

The SMA embodies a legislatively determined and voter approved balance between protection of state shorelines and development. Property owners are allowed to construct water-dependent facilities, such as single-family residences, bulkheads and docks. RCW 90.58.100 provides “The master programs provided for in this chapter, when adopted or approved by the department, shall constitute use regulations for the various shorelines of the state.” San Juan County adopted its SMP and the same was approved by the department and adopted as a state regulation. The area of the shoreline involved in this case has been designated as a shoreline of statewide significance. The SMA does not prohibit development of the state shorelines, but rather calls for coordinated planning, recognizing and protecting private property rights, consistent with public interest.

The Court concludes that the Shoreline Substantial Development Permit authorizing Petitioner to construct the residential dock on Pearl Island, subject to the construction and use provisions set forth in the permit issued by San Juan County and approved by the County Hearing Examiner, complies with the SMA and County SMP. The Petitioner has complied with the mitigation plan approved by the Department of Fish and Wildlife. The proposed dock, included as a part of the WDFW experimental program designed to develop information that will better protect eelgrass beds, was properly permitted by the County under existing ordinances. *The SHB decision overturning the permit issued by the County and*

*disregarding the mitigation plan developed in conjunction with WDFW was arbitrary and capricious and failed to properly interpret and apply the law.* The SHB order is not supported by evidence that is substantial when viewed in the light of the whole record before the Court. The Court is convinced that the Board acted in light of the policies of the SMP and SMA and has erroneously interpreted and/or applied the law.

The decision of the SHP is overturned and the permit, subject to all conditions, limitations, and mitigation is reinstated.

So, who were the “activists” mentioned in our headline? The Shoreline Hearings Board decision was made after an appeal was filed by Friends of the San Juans. They didn’t care that the property owner had worked for several years with county planners and state bureaucrats to make sure that the project complied with local ordinances and state law. They knew that everyone who wasn’t a Friend of the San Juans was wrong. Thank goodness for the rule of law.

## **Legislative Update**

**Jack Hamilton**

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### **In the other Washington**

Most of the recent attention has been directed toward the effort to nationalize health care. The apparent failure of the administration and the resulting drop in approval ratings of both Congress and the President are clearly the direct result of lies and misinformation being distributed by a vast right wing conspiracy of common citizens. How dare those know-nothing people who find solace in GOD, guns, and grits (well maybe not everyone likes grits) raise questions about the appropriateness of the government providing for them. How typical that a small group of ‘losers’ would try to disrupt and overpower the “will of the majority” by uncivil behavior at meeting supposed to be held to receive praise and acclamation for proposed government programs. And then to think that they might even listen to and agree with that well known group of conspirators in talk radio. How dare they??? **KEEP UP THE GOOD WORK YOU UNRULY DEVILS!!!!**

### **At Home in Kitsap – MY goodness we found more money**

Just when you thought it was safe to go to sleep at night thinking you might be able to pay your taxes this month (October is second installment month) the gang of three in Port Orchard has found more ways to spend your money. This past week that once again embarked on a program to serve as effective co-signers for a loan to a private business. The explanation is that the county is not at risk because in the event of default, the million dollar loan we have insured will simply be recovered by not sending us Block Grant monies we would normally get. I wonder if any of the Commissioners ask those who are normal recipients of Block Grant awards if they were willing to face the risk. I also wonder if they forgot (once again) that Block Grant monies are tax dollars and need to be treated with respect. Are there not enough existing government programs to offer loans and support to small businesses that the County does not have to become a financing partner with a venture? Where does this one end and what are the criteria for determining which businesses to support. I also wonder if this is such a good deal, why the County did not require the business to locate in SKIA to help the cash flow for that industrial

park. Could it be that the business actually told the county that location made a difference to success?

Not to be outdone, the Port of Bremerton, a taxing district that has yet to even approach a break even point as a fiscal operation, decided to issue bonds and spend another \$4 million on the Bremerton Marina. This time the money is for a parking lot. Just a couple of problems here. When the original marina design was being discussed a number of more savvy folk pointed out that a marina with out adequate parking is like a black hole in the water. (They also mentioned a lack of reason to pull into the marina because there is so little to do downtown). Boat owners like to be able to park close to the landing to load and off load the materials that support their pastime. A parking lot several block away is not going to encourage additional moorage rentals. The decision to buy the land and develop the lot simply adds another stack of unpaid tax bills on an already “deep red” operation. If the Port is unable to make the Port Orchard marina operate in the black how does throwing more money at Bremerton bring it any closer to that black condition. Who did the market analysis on this project in the first place???

## **Washington Property Owners**

**Jack Hamilton**

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I had a face top face meeting with the CAPR designated representative for working out a preliminary agreement on what the overall organization and structure should look like. As we move closer to an understanding and agreement some of the bigger sticking points are becoming more clearly defined. We are working hard to eliminate personality and emotion and to develop an organizational structure that can and will survive and prosper after the charter members are long gone.

## **CITIZENSHIP, RESPONSIBILITY, AND PROPERTY RIGHTS**

**Karl Duff**

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James Wilson, signer of the Declaration of Independence and United States Supreme Court Justice wrote in 1790: “Law and liberty cannot rationally become the objectives of our love, unless they first become the objectives of our knowledge.”

Events demonstrate that civic consciousness and defense of our Constitutional protections are being dulled with the result that lawlessness in government is increasing. Let’s take a look at an example:

Article I, Section 16 of the Washington State Constitution says that “... No private property shall be taken or damaged for public or private use without just compensation having been first made...” Yet the state’s Department of Ecology (DOE) is now on record that their long term goal is to “eliminate” all “non-conforming” structures and uses throughout the State. Since a Planning Commission member has recently estimated that as much as 70% of Kitsap County’s private property could become non-conforming under various environmental ordinances, you might well ask just what ‘non-conforming’ means, and could your property be affected?

One instance of a non-conformance occurs when the county establishes buffer zones along saltwater and freshwater shorelines. The latest Kitsap county Critical Area Ordinance (CAO) set these buffers at 100 feet for rural areas. This means that if your house encroaches on this buffer it is non-conforming and likely, over time, to be subject to increasingly stringent repair, replacement and insurance policies that would become so difficult or impossible to comply with that you will eventually be forced to return the land to its natural pristine condition. You would receive no compensation.

And the crowning insult is that the state has virtually no scientific evidence to show that such buffer zones provide any meaningful protection to the affected environment.

In the local area, the Kitsap Alliance of Property Owners (KAPO) has been virtually alone in its fight to protect the constitutional rights of property owners against this kind of unwarranted government intrusion. In a lawsuit extending over three years, KAPO fought the county's efforts to impose these arbitrary buffers in their Critical Areas Ordinance (CAO), and was recently victorious in the state court of appeals.

This victory didn't come cheaply or easily. It cost KAPO approximately \$125,000 to bring the case to court – money from its own member's pockets. Additional costs borne by a Seattle law firm and the Pacific Legal Foundation added over another \$250,000 in costs. And then there were the tax dollars Kitsap County spent in their unsuccessful attempt to defend their case. As one of the plaintiffs, Ron Ross, said after the appeals court decision: "It is bizarre that we have to fight our own government to do the right thing."

The question is why? One of the reasons is that environmental activist organizations such as *Futurewise* have managed to insert themselves directly into county governance. In the cited case, *Futurewise* worked hand-in-glove with attorney Lisa Nickol of the Kitsap prosecutor's office to structure the county's defense. As events showed, this proved to be an extremely unfortunate partnership that subjected the county to some really bad legal advice and incurred major costs at a time of shrinking revenues.

But a more basic question is why would your government attempt to energetically exploit your property, presumably for other people's benefit, and refuse to pay you for it? Part of the answer lays in observations by French economist and statesman Frederic Bastiat, who nearly 200 years ago, in his classic book *The Law*, observed that government produces nothing independent from the resources and labor it diverts from private use. He referred to this as "legal plunder". He said that each of us has a natural right—from God—to defend his person, his liberty, and his property, and that the law cannot rationally be used for anything except for protecting the rights of everyone.

Today, except for labels, little has changed. In the name of environmental protection and the "common good" government is stripping people of their ability to use their land, not merely for business or profit, but of even reasonable ability to build and live on it.

But there is hope that the law upon which Bastiat rested his case may prevail. Washington courts have now overturned a series of decisions where local governments working with

*Futurewise* and other extremist groups have attempted to impose unconstitutional and illegal actions onto property owners – including the Kitsap County Critical Areas Ordinance.

However, these are only small victories in a larger battle. Having been told that they cannot use the Critical Areas Ordinance to establish shoreline buffers, Kitsap County is initiating a process to revise its shoreline master plan. It can only be hoped that they will not again be tempted to re-impose excessive buffer setbacks via this avenue. The fact that the Department of Ecology, who must approve the SMP plans, has already asked for 150 foot and larger buffers in other counties is not an encouraging sign. Plus, *Futurewise* has also publicly declared this is their goal in Kitsap County!

KAPO has been working with reputable scientists who understand the relationship between shorelines and marine ecology -- and has already met with county officials to ask that their extensive research and knowledge of the subject be integrated into the county's shoreline planning process. KAPO will continue to fight for what is right and scientifically defensible, in the courts if necessary.

But KAPO cannot do this alone. Unless citizens awaken and act responsibly to constrain their government from unreasonable actions, their right to liberty and property will continue to be plundered by a government who thinks it knows how to run our lives better than we do.

## Historical Almanac

October 2, 1967	Thurgood Marshall, first black US Supreme Court Justice sworn in
October 4, 1927	Carving commences on Mt. Rushmore
October 7, 2001	Operation Enduring Freedom (Afghanistan) commences
October 8, 1871	Great Chicago fire Peshtigo forest fire in Michigan and Wisconsin kills 1200.
October 9, 1936	Boulder (Hoover) Dam generates electricity for Los Angeles 266 miles away
October 10, 1865	US Naval Academy begins operations in Annapolis (personal favorite)
October 12, 1492	Columbus makes landfall on San Salvador (Bahamas)
October 13, 1792	Cornerstone of White House laid
October 14, 1774	Continental Congress adopts declaration of rights for colonists including "life, liberty, and property"
October 16, 1859	John Brown attacks armory at Harper's Ferry
October 18, 1767	Mason-Dixon line established

October 19, 1774	Annapolis colonists burn tea ship Peggy Stewart in Annapolis Tea Party
October 21, 1879	Edison invents first practical incandescent electric lamp
October 26, 1881	Gun fight at OK Coral
October 29, 1929	Stock Market plunge starts Great Depression
October 30, 1938	Orson Wells broadcasts " <i>War of the Worlds</i> "
October 31, 1941	Work on Mt. Rushmore completed

## **A GENTLE REMINDER ABOUT FLAG EDIQUITE**

An excerpt from the US Flag code and a verse from a song by Henry Holcomb Bennett

“when the flag is passing in a parade or in a review, those not in uniform should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. (A recent change to the code allows any veteran , covered or uncovered, to render a hand salute)

Hats Off!  
 Along the street there comes  
 A blare of bugles, a ruffle of drums,  
 A flash of color beneath the sky:  
 Hats off!  
 The flag is passing by.

## **KAPO Membership**

Membership in Kitsap Alliance of Property Owners is available at two levels

**Voting Membership** is open to applicants and includes voting rights. Membership dues are \$100 per year.

**Associate Membership** is also available. Associate Members do not enjoy voting rights. Associate Membership dues are \$25 per year

**Life Membership**, voting membership for the life of the members, is available for a single payment of \$1000.

The list of KAPO members is not released to the public and the individual member information is not available for or used for other than the specific business of KAPO.

For more information or to receive a membership application visit the KAPO web site at [www.kapo.org](http://www.kapo.org) or contact Executive Director Vivian Henderson at [viviankapo@wavecable.com](mailto:viviankapo@wavecable.com) or Phone: 360-710-8560