

The Sentry

Kitsap Alliance of Property Owners

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Notes From The President's desk,

President Tim Matthes timcm@wavecable.com

On February 25, we hosted a Shorelines Master Plan (SMP) update meeting at the Naval Undersea Museum in Keyport. We received an update and report from Kitsap County Community Development Director Larry Keaton and Environmental Projects Manager Patty Charnes. We want to thank them both for their presentation, as well as taking the time to answer several of our questions. We were able to use the Naval Undersea Museum Auditorium and had 55 property owners in attendance.

Also on February 25, KAPO held its annual dinner at the AA China Buffet. We elected our 2010 board of directors and our officers for this year. I am happy to announce our 2010 directors are Bob Benze, Faye Henden, Ron Ross, Rob Daugherty, John Taylor, Bill Palmer, Mike Gustavson, Jackie Rossworn, and new to the board this year Dan Defenbaugh and Bill Henderson.

Our new board's first official act was to elect our officers for this year. We did not receive any nominations for any of the offices from the nominations committee, and received none from the floor. The President initiated the general consent vote and hearing no objections from the directors, announced that Executive Director Vivian Henderson, President Tim Matthes, Vice President Chuck Shank, Treasurer Dave Henden, and Secretary Fran Nelson are the 2010 officers for KAPO.

Bob Williams of the Evergreen Freedom Foundation gave us a great presentation. He talked about what a dangerous state of affairs our state and country is in. Bob had some good advice on how we can be more effective at defending our constitutional freedoms and rights.

We were introduced to the new Evergreen Freedom Foundation Property Rights Director, Scott Roberts. It was great to meet Scott. He is the man that coordinates the various property rights groups around the state and helps them work more effectively with each other on statewide issues. Scott is more than up to that job, and we all pledge him our support and wish him the best of luck.

January 30, 2010

The Heck With Utopia 2040

Vice President Chuck Shank

I'm writing about a concern of mine that has been developing since 1992 when I was hired as Senior Transportation Planner for Kitsap County.

There is a completely false and unnecessary initiative moving forward in our state, and particularly in the Puget Sound Region, to convert our highway system funding from gas tax to ubiquitous electronic tolls.

This is being done, and locally required by the Puget Sound Regional Council (PSRC), in order to accommodate the switch over from privately owned gas powered vehicles to electric vehicles and a colossal mass transit/pedestrian trail system.

This based upon the now discredited notion that “excess” carbon dioxide is a greenhouse gas that is affecting the Earth’s climate, and manmade production must be curtailed in order to prevent supposed environmental disaster.

This false assertion was derived from the United Nations International Panel on Climate Change, whose various scientists collaborated to force conclusion that manmade CO2 was causing catastrophic global warming. We now know they cooked the books, and per all computer models, garbage in yields garbage out.

The supposed environmental movement pushing this agenda is in reality an arm of the progressive movement, whose attack on American liberty can best be served by preventing private auto and public highway ownership. Vilifying the corporate oil and gas industry is a constant theme – why?

The PSRC plans that electric vehicles and electronic tollgates replace our existing gas powered vehicles and gas-tax funded public highway system. Although their plan suggests electronic tolls will not be in place until the year 2030, environmentalists commenting on the plan, and sitting on the Transportation Policy Board, want them active quickly - by 2020.

They plan on introducing them to the public through the High Occupancy Toll (HOT) lane charade coupled with a public information campaign. Firstly, you already paid for the High Occupancy Vehicle (HOV) lanes that you are unable to use most of the time, but you will be required to pay again for using them as HOT lanes. Secondly, the public information campaign is quite simply, propaganda designed to get you to be a ‘true believer’.

You will see well-organized environmental rallies in Olympia while the struggling taxpayers are busy trying to earn livings, unaware of the campaign against their liberty.

Please do not support any legislation that changes our highway funding from gas tax to electronic tolls. The PSRC is requiring this change in various corridors in the Puget Sound Region with the intent to have it become the norm on all principal arterials – state and interstate freeways, within a few short years. Additionally, the PSRC is using Federal funding to increase public support for the tolls and transit/tracking program through a massive “education” campaign – all based on false premises and ruinous to our economy and liberty.

Please educate your elected representatives to this process and exhort them to get back to the State Constitution’s provisions for gas tax funding of all publicly owned highways. Tolls have always been and should always be used to pay off specific projects like Bridges – let’s keep it that way!

When electronic tolls replace the constitutionally protected gas tax revenue, the Legislature will have unrestricted access to highways funds, since the system-wide electronic tolls will not be project specific. It would be entirely possible to deposit these monies into the general fund, a long coveted objective of the Legislature, truly the icing on the cake.

Once established in the four PSRC counties, it will become the norm for the entire state via the Washington State Department of Transportation (WSDOT) collaboration with the other Regional Transportation Planning Organizations (RTPO’s) in Counties along the I-5 corridor or I-90 through Spokane, as examples.

The net effect of this trend is to completely wreck our mobility based economy under the guise of “environmental protection”.

If persons want to purchase electric vehicles that’s up to them, but their contribution to highway funding can easily come from an annual certified odometer check and commensurate mileage fee when they renew their vehicle tabs. There is absolutely no need to force all other vehicle owners to begin paying tolls when the gas tax works perfectly well.

We have the liberty still to let our purchases determine what products are successful and what are not. God forbid that the Puget Sound Regional Council can dictate transportation choices based on an elaborate international lie.

WHERE WILL THE WILD THINGS BE?

By Dr. Don Flora

About where they are now, perhaps. Which is just about everywhere. With and without shoreline wildlife buffers, the **point of this note**.

Kitsap County's byways, backyards and open spaces provide creature comforts to wildlife from birds to bears. Day and/or night the four-legged kinds sally near, as do the aviators. From where? From hideouts in holes and cavities, under boards and beneath bushes and brambles. From treetops, grassy clumps, fence corner, yard burrows and shrub lands.

If these be habitat, how do we justify wider wildlife habitat buffers along shorelines, or even the critter buffers we already impose?

Presumably (1) we know which species we want to favor with living space; (2) we know how many of each species we have; (3) we've decided how many wild things we want; (4) we've accounted for their prey needs and the welfare of those species, (5) we've adjusted for losses to predators, (6) we're sure that habitat is the limiting factor affecting wildlife welfare; (7) we know how much habitat we have already reserved and expect to emerge from other planning; (8) we understand the alternative uses and costs of candidate habitats; with (9) opportunities to choose those less pricey in private and social terms.

That's a lot. We seem to know little about them, nor do we discuss them. Though research along the I-90 corridor shows that advancing suburbs increase the variety of species while changing the mix.ⁱ Kitsap shores are already well advanced, yet waterfront real estate ads brag about wildlife there.

There are lots of interesting marine birds and mammals, and we might well consider their need for upland comforts.

Washington's wildlife management agency has selected "priority" species for special attention. Among the fifty-plus priority marine birds, herons, waterfowl, shorebirds, hawks and falcons there are 17 that visit Puget Sound. Most are passers-through, nesting in prairie country, Alaska and Canada, where they typically don't use trees.

Four are nesters on Bainbridge Island and probably elsewhere in Kitsap County; of those one is a 'maybe' and two are orientated to fresh water.ⁱⁱ

Is habitat really a limiting factor for these birds? The County has maturing woodland cover, some is already "late-succession", around a hundred years old. Elsewhere, cavity-nesting birds seek out old trees whose branch stubs have decayed on into the

trees. Here too, but apparently only non-marine wood ducks and (maybe) hooded Mergansers.

So perhaps the only two marine-related priority birds that nest here are bald eagles and great blue herons. Do these birds need nesting sites within 200 feet of tidewater shores (the inland reach of the Shoreline Management Act)? Presumably not. However eagles do appreciate high perches close along the shore.

The amphibious marine mammals come ashore, some (otters, sea lions) to the point of nuisance. Otters are great burrowers above the beach and beyond, as well as favoring boat houses and spaces beneath decks and porches. Using them as an example, the earlier questions come into play: Do we know how many there are, how many we want? And if we don't know those things, how on earth shall we decide how many acres of upland habitat we should conscript for their use, how many suitable acres we've already set aside in open space and buffers, how many miles of shore we should commit, and from that how wide the otter-oriented wildlife habitat buffer should be?

Now, what about other tidewater birds and amphibians? And how do we allocate near shore space between wildlife and, say, children?
A grand mixture of technical and policy questions?

ⁱ Marzluff, John. 2003. Data presented at a seminar on urban ecology, November 7, University of Washington, College of Forest Resources, Seattle, WA

ⁱⁱ Paulson, Ian and George Gerdt. 1996. Bainbridge Island Birds: Species List. Bainbridge Island Park and Recreation District.

**Testimony of Bob Benze (Representing KAPO)
On Engrossed House Bill 1653
Given to Senate Environment, Water and Energy Committee**

Chairman Rockefeller and distinguished members:

My name is Bob Benze and I am here today representing the Kitsap Alliance of Property Owners, one of the largest and oldest property rights organizations in the State of Washington.

There is a fundamental question that needs to be answered when considering legislation such as Engrossed House Bill 1653. That is: Who actually owns the shoreline property in the State of Washington? Is it the state? Is it the private property owner? Or is it some combination thereof?”

I contend that both the federal and the state constitutions are clear on this – that the ownership of private property, with minimal government interference, is a fundamental right of the people. Indeed, the Bill of Rights, where the right to property is guaranteed, was intended to protect citizens and their property from abuse by an overzealous government.

Here in Washington State, overzealous may be an understatement when it comes to property rights. Over time, a citizen’s right to use his property as he desires has been steadily eroded by legislation – which appears to imply that the government believes it owns significant attributes of our private land.

Much of this government control of private property is supposedly intended to protect the environment. Smart growth legislation desires to preserve large rural areas, forcing population into the cities. A more recent thrust at both the state and federal level is to stop development of shorelines and start on the path to restore them to more “natural” conditions. All impose the government’s will on private land use.

A 2007 Department of Ecology briefing on Nonconforming Uses and Structures (included for the record) leaves little doubt about the government’s intentions in this regard. But Ecology isn’t alone in spearheading aggressive initiatives to restore shorelines – these are rampant, ranging from the federally funded Nearshore Restoration Project, to the Puget Sound Partnership’s initiatives, to the Puget Sound Regional Council’s Vision 2040.

My organization vigorously opposes this government overreach, recognizing that private citizens are far better motivated and equipped to take care of their property and its environment than is the government.

Which brings me to the present dilemma. The Growth Management Act and the Shorelines Management Act have both been applied to shorelines, with an

unprecedented impact on property owners. In Kitsap County, the GMA was used to establish 100 ft. buffers, declaring en-bloc that the entire shoreline is a Critical Area. But the courts, in both the Anacortes Supreme Court decision, and the KAPO Appeals Court decision (which my organization fought for and won) have clearly said that *only* the SMA applies to the shorelines. This would appear to have black and white clarity. Yet, the bill before you today, while acknowledging these decisions, has decided to ignore them – justifying that it is only on an interim basis -- which everyone knows may actually last for years in some counties. This is just plain wrong.

And the retroactive to 2003 provision of the bill appears to run counter to Article I, Section 23 of the State Constitution, which says: “No... ex post facto law...shall ever be passed.”

Some will argue that the “sweeteners” added to the bill, such as the protection of existing shoreline structures and uses, make it imperative that this bill be passed. I would argue that these should have been passed on their own merits and that there will be future opportunity to do so. While compromise is the name of the game here in Olympia, there comes a time to stand on principle. We oppose this bill because, at its core, it continues to violate a clear, mandated GMA/SMA separation.

Furthermore, we observe that continued compromise on property rights legislation over the years, is a one way ratchet toward already determined environmental activist goals. It is time to reverse this trend.

Let me mention science. Much of the science being used to promote agency and activist goals lacks true scientific integrity. It is not peer-reviewed in the traditional sense and it is often developed with the goal of supporting a specific agenda. Let me give you two examples.

One involves Senate Bill 6557 to reduce copper in automotive brake pads. No one thought to ask if the copper in question is actually bioavailable to salmon – something carefully ignored by the supporting agency science. A more complete scientific review shows that that it isn't.

Another involves two SMP shoreline studies that purported to show that man-made alterations to the shoreline adversely affected nearshore ecosystem habitat functions. Dr. Don Flora showed that there was no correlation – using a statistical analysis of the report's own data. An attack by 14 technical people failed to dent Dr. Flora's report's credibility (see the attached).

A final note. For a long time the environmental activist organizations have had their way here in Olympia. These days are numbered. It isn't just that their science is crumbling with exposures such as Climategate. It is because property rights organizations are forming in counties across the state -- and we are getting organized. Our numbers are growing because we are dedicated to restoring the constitutional rights of every property owner in the state. We will fast become a force to be reckoned with.

Bob Benze
18 February 2010

Testimony of Jack Hamilton

Dear Senator Pridemore,

I write in strong opposition to ESB 1653 related to clarification of Shorelines Management Act and Growth Management Act as applies to the shorelines of the state.

The act, as adopted by the House, purports to clarify a misunderstanding of prior legislative action. In reality, the act adds to that confusion, makes more uncertain which rules apply to shoreline areas and serves to undo or overturn the results of legal actions by adoption of an ex post facto law.

Constitution Article I, section 23 disallows the passage of ex post facto law. Because adoption of EHB 1653 will have direct impact on permits issued but not completed before bill passage, permits currently in progress, and legal cases decided or pending of the law as it currently exists, you may not make the retro active. In particular, a case currently in appeal before the State Supreme Court (KAPO et al vs, Kitsap County) would be directly harmed because the act would establish a legal position for the county that did not exist in 2005 when the Kitsap County Critical Area Ordinance (CAO) was adopted or in 2006 when the original appeal was made to the Growth Management Hearings Board. Not only would EHB 1653 release Kitsap County from current litigation, but it would also mean that over \$100,000 in legal fees paid by KAPO and other plaintiffs would simply be wasted money without opportunity for redress of wrongs.

ESB 1653 does not recognize the implicit requirement of SMA to address each shoreline property on a site specific basis, because that requirement is not spelled out in GMA. The Kitsap County CAO, which would have precedence to address shoreline critical areas, takes a broad brush approach and simply identifies all shoreline areas as “critical”. In addition the Kitsap CAO requires that properties containing “critical areas”, that includes all shoreline properties, will post notice to title of those critical areas. There is no provision in CAO for the assessor to consider the CAO impacts in determining assessed value of property, a requirement that is specific in SMA. The end result will be high value property encumbered with a notice to title impacting the resale value of the property with no appropriate recognition in assessed value.

In addition to the assessment issue, the declaration of all shorelines as critical areas, a fact under Kitsap CAO and codified with EHB 1653, there will be direct impact on the ability of owners to use their property. Although “enjoyment of use” is a specific right of property ownership and “highest and best use” is the criteria for tax assessment of property, CAO restriction can and do prevent owners from even entering into property identified as a “buffer” for certain critical areas”. While the current state of EHB 1653 appears to have some compromise that prevents existing use from being non-conforming, there is nothing in the bill that prevents any pending or future use to be denied based on CAO restrictions. The actual supporters of the original bill are not “confused property owners” trying to establish which rule is applicable but rather, those who would prefer that all shoreline growth be terminated and that shoreline property be returned to some prior natural state. Unfortunately those individuals do not own the shoreline property that will be impacted and have no right to the use of that property. The responsibility of the legislature is to the individual property owner and not some disassociated group, no matter how ultraistic their goals might be.

I most strongly recommend that EHB 1653 be defeated in committee and not allowed to pass to the floor of the Senate for action.

Jack Hamilton, Silverdale, WA

How to Join KAPO Membership Information

Membership in Kitsap Alliance of Property Owners is available at three 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 member, is available for a single payment of \$1000.

The list of KAPO members is not released to the public. Individual member information is not used for any other purpose than the specific business of KAPO.

For more information or to receive a membership application visit the KAPO web site, www.kapo.org or contact Executive Director Vivian Henderson, viviankapo@wavecable.com or Phone: 360-710-8560