



The Sentry News Letter

[insideKAPO](#) | May 2, 2011 | [kapo.org](#)

### KAPO's Mission Statement

1. To free private property from unreasonable government regulation
2. To work for responsible wildlife habitat protection and for conservation of natural resources
3. To support those who defend the rights guaranteed to owners of private property by the United States and Washington State Constitutions

[All About Shorelines](#)

[Bainbridge Island Non-conforming](#)

[Kitsap County-Home Owner Letter](#)

[Kitsap County Hostile to Public](#)

[San Juan Island-Best Available Science](#)

[San Juan Island-Position Statement](#)

[Kitsap County-Home Owner Letter](#)

["The Big Oil Spill"](#)

[How to Join KAPO](#)

This month's Sentry is all about Shorelines.

I have tried to select different correspondence to various arms of the Shoreline Up-dates in different areas. Many shoreline owners feel they are not being heard by their county or city or even their electeds, certainly not the Dept of Ecology. People living on the shorelines could become non-conforming, unable to use their homes in the manner of normal family activities. They will be deprived of the use of their property guaranteed by our Constitution. They could be financially devastated. Is this the start of things to come?

Please read the following. You decide for yourself. Are you comfortable with these events? Do you have a voice? Can you help? What can you do? Contact KAPO.

Jackie Rossworn

Executive Director, Kitsap Alliance of Property Owners

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Comments on Non-conforming status in draft on SMP Policies

From [Bainbridge Shoreline Homeowners](#)

The following was submitted to the City by the Board of Directors of Bainbridge Shoreline Homeowners on April 25.

We are writing in reference to the following section of the Goals and Policies: (emphasis added)

### **Section III GENERAL POLICIES AND REGULATIONS**

#### **L. Nonconforming Development**

Applicability

This section applies to shoreline uses or structures which were **lawfully constructed** or established prior to the effective date of the Master Program, but which **do not conform** to present regulations or standards of the Master Program or the policies of the Shoreline Management Act.

Goal: It is the purpose of this program to ultimately, over time, have structures and uses conform to the provisions of this program. **Uses and structures that do not conform** to the standards of this program **should be eventually phased out or brought into conformity** as completely as possible, with due regard to unique site conditions and property rights.

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Now that the Legislature has passed SB 5451, local jurisdictions have the express authority to declare existing, lawfully built structures as "conforming," even if they do not meet standards for setbacks, buffers, or yards, area, bulk, height, or density, under new or amended master programs approved by the department of Ecology on or after September 1, 2011.

The bill, as approved, also says that updated shoreline master programs must include provisions to ensure that expansion, redevelopment, and replacement of existing structures will result in no net loss of the ecological function of the shoreline, and that classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources.

It is clear that the legislative intent is not to "...ultimately, over time, have structures and uses conform to the provisions of this program," or to "be eventually phased out or brought into conformity as completely as possible."

It is our opinion that Section III, L. should be deleted or rewritten to conform to the legislative intent.

If it is not, we believe that our city will cause unnecessary harm to its shoreline residents and be burdened with lawsuits brought by individuals or a class of affected homeowners.

This is a preventable situation since the Shoreline Management Act is clear: single family residences are a preferred use on the shoreline (90.58.020) and existing, lawfully built structures do not contribute to a loss of ecological functions as of the date the updated SMP is approved (SB 5451 PL).

**SMP Letter to Kitsap County  
From a Private Property Owner  
April 14, 2011**

Mr. Dave Greetham  
Kitsap County  
Dept. of Community Development  
614 Division Street MS - 36  
Port Orchard, WA 98366 . 4682

Dear Mr. Greetham:

Re: Shoreline Management Plan

My husband and I have attended two of the Shoreline Management Plan meetings and I now regret that we have not attended all of them. I spoke at the ones we attended, to give you some idea of the thoughts of the citizens you intend to regulate so stringently and thereby jeopardize the value of their precious property, both monetarily and spiritually. I realize that we are only temporary stewards of our property, but believe me when I say this property is deeply cared for by us with the greatest of respect and concern. No government entity can do a better or more thoughtful job of this ownership.

Another facet of this procedure that greatly concerns me is the fact that one day, as we get older, we may need to sell our property and move to another, more easily managed place.

Who will be willing to buy this property when they can't make any changes whatsoever due to unreasonable regulations?

What you are contemplating will seriously affect our property values and I consider that a, "taking".

It appeared to me that most of the people on this panel were talking about the properties as if they were their own properties, which just happens to not be the case. And some of them didn't know what they thought and some even laughed as they were making these profound decisions as to the future of our properties. Needless to say, the impression left with me was not a good one.

After reading the letters from KAPO, Bob Benze and Attorney Dennis Reynolds, I must add my concern for our limited and not always respected input. Following our nearly three hour meeting a week ago, to give the citizens a mere ten minutes for input is not only non-inclusive, but may even be illegal.

We must be heard and we will be heard one way or another.

Your comment to me that we can make statements later, after this panel is done, is not true as it will be too late at that point.

I find these meetings most stressful due to the attitudes of most of the people on the panel, their presumption of ownership and regulation, without any scientific background, but appearing to make decisions on their, "feelings". I am really in disbelief as to the entire procedure.

I would like to have this letter be a part of the record, since the citizens' comments at the meetings are not and are not even duly noted by the facilitator.

We suggest serious consideration of our Property Rights, which are a most important part of this country.

Very sincerely,  
Mary Geraldine Taylor  
Seabeck, WA

Jan 4, 2011

To: Members of the Kitsap County Planning Commission  
Members of the Shoreline Management Program Update Task Force  
Larry Keeton, Director, Dept. of Community Development  
County Commissioners:  
Steve Bauer, District 1  
Charlotte Garrido, District 2  
Josh Brown, District 3

Subject: Public Hearing Dec. 7, 2010  
SMP Inventory and Characterization Report vs Public Participation

In our honest opinion we believe the public hearing on this report is a **hostile and deliberate attempt to exclude the public** from the shoreline update process and is intended to establish a procedure that will minimize and gradually eliminate public involvement (except for a chosen few) in the development of county government regulations and policies.

The Draft Report is 600+ pages. It is on the county's website and citizens can also buy an electronic copy (CD) for \$5. It is hard to read this document on a computer screen. There is one hard copy available for review at DCD during business hours ~ 10am-5pm Monday through Thursday. DCD is closed Fridays so the hard copy is not available evenings, Fridays, Saturdays or Sundays.

It is hard to peruse such a lengthy document on line and how does one prepare thoughtful type written comment to correspond with draft elements that are contained in the document without making extensive hand written notes from the computer screen?

Making a hard copy is out of the question for most of us. My small home use printer would choke on the task. Expecting a private citizen to have a commercial printer make a copy with its colored graphs and charts is not reasonable.

How can the public participate in a meaningful way when government buries them in volumes and volumes of material? Draft ordinances that are much too long to read and understand by the average person. And that is not the end of it. After these ordinances and policies are passed, they are enhanced, expanded, reinterpreted and complicated by staff who is expected to apply them.

James Madison, the father of our U.S. Constitution foresaw this happening:

***"It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?"***

The county must find a way to simplify this process so that the public can participate as partners with their government in establishing the rules we all must live by.

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Executive Director, Kitsap Alliance of Property Owners  
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Port Orchard, WA 98366 Ph: 360-710-8560 Email: [viviankapo@wavecable.com](mailto:viviankapo@wavecable.com)

**From Common Sense Alliance**

Dear San Juan Island Neighbors and Friends,  
The following is from Todd Myers, Environmental Director of the Washington Policy Center, writing, to the San Juan County Council on April 27, 2011:

"I recently received the county's "Best Available Science" document on flooding areas that is part of the Critical Areas Ordinance discussion. There are some pretty significant errors in the scientific citations presented in the piece. I've included the short piece I wrote on the issue.

**"It is very important to ensure the data used to make economic and environmental decisions are grounded in good science. Each of us may have different levels of risk tolerance regarding impacts to the environment or business, but it is important that we work from the same data. Further, with so few dollars available to address environmental concerns, we need to dedicate them to the areas where they will make the most positive impact. Spending money on exaggerated threats takes money away from those which are truly important."**

Published on *Washington Policy Center*  
<http://www.washingtonpolicy.org/blog/post/greens-vs-science-san-juan-countys-best-available-science-sea-level-pretty-bad>

**Common Sense Alliance  
Position Statement**

In preparation for the County's September 2010 Workshops on the Critical Area Ordinance "Hot Button" issues, our Board of Directors prepared some common sense questions and our positions on these issues. Common Sense Alliance believes that there is nothing in state or local law to require our County, without cause, to adopt regulations that restrict the use of private property. Accordingly, Common Sense Alliance urges County consideration of the "hot button" issues. Non-Conforming structures and developed area uses should become "Legally Conforming," at the time any "new" regulations are adopted and further new regulations should:

**Not render the many currently legal and conforming structures and uses "non-conforming."**

- Not insult the intelligence of our neighbors with euphemisms like "Grandfathered."
- Allow continued use and related development within currently developed areas of a parcel to remain Legally Conforming (assuming compliance with other applicable regulations).
- Reasonable Use: Property rights should not be impaired any more than necessary to protect critical areas from identified threats.
- Buffers and setbacks: Should not be increased, unless specific best available science (BAS) proves differently, and should potentially be reduced if supported by BAS.
- No net loss:" Acknowledge/give credit for the net gain realized from substantial investments made by County citizens, past and present, through the Land Bank, Preservation Trust and other conservation organizations, to preserve land and waterfront by removing it from potential development.

**Develop an advanced mitigation program for the allocation of the cumulative benefits of the net gain to future development.**

- It is evident that our current regulations appear to be working very well in protecting the San Juan County environment as witnessed by:
  - Largest Sockeye run in one hundred years.
  - Large "pink" run in 2009.
  - County Health Department having been denied a grant by DOE, which indicated that the waters in and around the San Juan Islands are pristine.

**Kitsap Waterfront Home Owner  
February 28, 2011**

Letter To: Kitsap County Board of Commissioners

In viewing the shoreline maps, the beach on which I live is designated "red", or most highly ecologically impacted. This stretch of "red" shoreline runs from the point north of the Southworth ferry dock to the estuary at Harper County Park. Virtually the entire section of beach is "armored", with several hundred feet of the armoring protecting Olympiad Drive, a county road.

Neither Department of Community Development nor Washington State Department of Ecology (DOE) has provided any measured science proving their hypothesis of "harm" to the salt water environment. It appears the designation of "red" is merely due to visual impact of armored shoreline.

Using Washington State Department of Fish and Wildlife data from shoreline assessment of Bainbridge Island, forage fish spawning and eel grass beds are found equally prevalent in front of armored beaches as in front of beaches not armored. No measured evidence of beach migration has been offered. No measured proof of harm has been offered by the County or State.

When 100 foot buffers were added to Kitsap County Shoreline by the Board of County Commissioners after the Growth Management Hearings Central Board Critical Areas Ordinance 2005 remand, it is public record that the Board of County Commissioners recognized no science had been presented to justify the buffers, but in five years, when the Shoreline Master Plan was to be updated, it was promised the scientific studies would be complete.

The initial position of Kitsap's Board of County Commissioners was 35 feet would provide adequate buffering of the shoreline and no science had been offered that would counter that position. In order to "Get the Growth Management Hearings Central Board off the County's back", the Board of County Commissioners, in their remand correction submitted to the Hearings Board, added 100 foot shoreline buffers. No further justification was offered. Kitsap County submitted to bullying by the Growth Management Hearings Board.

In February of this year, when I asked Mr. Joe Buchar, Department of Ecology's representative for the update of Kitsap County's Shoreline Master Plan, to provide shoreline science and identify the species being harmed and their locations, his response was DOE did not have funding to develop the science. Without this information, "environmental protections" based on potential, but un-identified harm, fails to pass muster with numerous Washington State and Federal court decisions.

With no evidence of harm to the salt water environment, I contend designating the shoreline and beach in front of my home as "red" and subsequently establishing "environmental protection" buffers, becomes merely an unjustified regulatory taking, and thus an illegal taking.

I ask the Board of County Commissioners to not approve the use of the currently in vogue shoreline mapping exercise as the basis for shoreline protection, and that they approve a motion noting it is not based on independent peer reviewed science.

I ask the Board of County Commissioners to demand the Department of Ecology to establish independent peer reviewed science criteria for designating unique shoreline parcels that are in fact "critical", based of measurable criteria that can be used by County Planners when approving individual building permits.

Sincerely,  
Michael A. Gustavson

The 'Big Oil' Problem That Wasn't - 'Fundamentally Flawed' Department of Ecology Study Was Basis for Three-Year Stormwater Crusade  
Numbers Were Wildly Overstated, But Word Never Got to the Legislature  
**By Erik Smith**  
**Staff writer/ Washington State Wire**

[http://www.washingtonstatewire.com/home/9063-the\\_'big\\_oil'\\_problem\\_that\\_wasn't\\_-\\_mistaken\\_department\\_of\\_ecology\\_study\\_was\\_basis\\_for\\_three\\_year\\_stormwater\\_crusade.htm](http://www.washingtonstatewire.com/home/9063-the_'big_oil'_problem_that_wasn't_-_mistaken_department_of_ecology_study_was_basis_for_three_year_stormwater_crusade.htm)

OLYMPIA, April 29.-Not so long ago everyone knew oil was flooding Puget Sound. It was like one Exxon Valdez every two years, but it came one drop at a time. You could read about it in state-agency press releases and newspaper stories. You could hear about it on the TV news and in a slick video produced by the Puget Sound Partnership. Every year the rain washed millions of gallons of oil from roadways and parking lots, and it trickled into the sound and killed the fish.

Green groups stormed the Legislature and demanded a big new tax on oil refiners. Labor unions and local governments lined up right behind them, and alarmed legislators rushed to sign the bill. They said oil needed to pay its fair share, even if it meant the bill would actually go to every Washington resident who drives a car and buys gasoline. It was the right thing to do. Right?

Wrong. Turns out the Department of Ecology made embarrassing mistakes in preliminary studies back in 2007 and 2008, wildly overestimating the amount of oil that reaches the sound in stormwater. The biggest environmental cause of the last decade had only a nodding relationship to fact. And when you consider all the political hoopla over the issue, all the frantic lobbying in the hallways of the Capitol, all the angry phone calls and emails that poured into legislators' offices over the last couple of years - it becomes an astounding story. Ecology started owning up to the problems two years ago, but the Legislature never knew and the debate went on.

Next week Ecology is due to release the third phase of the ["toxics loadings" study](#) it began in 2007. It is expected to show that oil's contribution to the volume of toxic pollutants in Puget Sound is somewhere between one hundredth and one thousandth of what was estimated four years ago.

A final phase of the effort, due in June, will detail the relative harm of those pollutants. There oil is expected to take a back seat to PCBs, copper, lead, mercury, and perhaps even a few of the chemicals found in treated sewage.

Some see it as a triumph of the scientific process. Mistakes were made, people caught them, the studies were corrected, and now rational choices can be considered. "Science is dynamic and course corrections are made," explains Curt Hart, spokesman for the Department of Ecology.

But to the relative handful who know what happened, it is a cautionary tale - about a political cause that got so far ahead of the science that it nearly led the Legislature to do something very hinky.

It all started with an oceanographer who asked a basic question. If so much oil is being dumped into the sound, how come we can't see it?

## How to Join KAPO

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.

Dues are pro-rated quarterly. Contact Vivian Henderson for correct amount based on the date of your application.

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 at [www.kapo.org](http://www.kapo.org) or contact Executive Director Jackie Rossworn, at 360-992-1088 or via [email](#).