



PORT GAMBLE S'KLALLAM TRIBE

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RE: Kitsap County Critical Areas Ordinance Best Available Science Review

During our recent Kitsap critical areas ordinance (CAO) review meetings, I have commented on several aspects of the CAO that do not fit neatly into the scheduled meeting subject topics. I would like to take the opportunity to outline these concerns. Most of these comments are general, apply to all the individual sections of the ordinance, and relate more to how the CAO is implemented vs. what specific standards are required in the code.

Outside Review – One of the largest and most egregious faults of the State Environmental Protection Act (SEPA) is that single-family residential (SFR) development is exempt from environmental review. This means that there is little or no opportunity for non-County staff to comment on the most common and widespread form of development in the County. Though SFR development undergoes CAO review in-house, there is little opportunity for outside review of this most-common form of development by State and Tribal technical staff who have important local scientific knowledge. The County should consider mechanisms to enable outside public review where there are potential impacts to critical areas.

Monitoring and Adaptive Management – Currently, there are no feedback loops to better understand and improve on the CAO review system. Does the County have any data on compliance monitoring for the first ten years of implementation? How can this information be used in the formulation of a code that will facilitate compliance? By 'compliance monitoring', I am not referring to monitoring of violators to ensure they come into compliance. What is needed is systematic, random sampling of all permitted

development that undergoes CAO review – how well is the CAO complied with as these properties are developed? RCW 36.70A.215 specifically requires that certain cities and counties (including Kitsap) “establish review and evaluation programs that...provide for annual collection of data on urban and rural land uses, development, *critical areas*, and capital facilities...” Kitsap County policymakers have interpreted their Buildable Lands Analysis to satisfy this requirement, but this analysis does not address the adequacy of critical area protection rules.

In approaching this issue, basic data needs include: how many development applications undergo CAO review per year? How many variances (administrative and non-administrative) are granted? How many reasonable economic use exemptions are granted per year? Which CAO standards are being implemented consistent with the code and which are not? What factors are linked with compliance? With non-compliance?

Minimal Penalties and Law Enforcement – To my knowledge we have not discussed CAO enforcement issues and the penalties associated with violating the CAO. A CAO violation constitutes a class I civil infraction with maximum penalties of \$250. The newly-revised flood ordinance mentions maximum penalties of \$500, an apparent inconsistency that should be resolved. Regardless, these penalties are minimal and do not serve as an adequate deterrent for those who would be tempted to break the law for private gain at the public’s expense. Do we value our critical areas so little?

More troubling still is the sheer lack of enforcement. A recent case on Gamble Creek in North Kitsap serves as an interesting case study. Gamble Creek, a salmon stream, is the principal tributary to Port Gamble Bay. The Creek suffers from elevated summer water temperatures due to loss of riparian forest cover, and fecal coliform contamination of shellfish tidelands at its mouth has been linked to failing onsite septic systems, stormwater drainage, and animal waste run off from upstream hobby farms. Port Gamble Bay is the ancestral home of the Port Gamble S'Klallam Tribe, and given these conditions one would expect the County to be particularly concerned about additional harmful development practices.

In fall 2003 a local developer, without any permits, began clearing a parcel through which Gamble Creek flows. Only after repeated calls by the Tribe and a concerned neighbor to Kitsap DCD was there a response by the County, which belatedly issued a stop work order. A wetland delineation report was then prepared, detailing the unpermitted logging of a streamside forested wetland and prescribing an administrative buffer reduction. In a January 5, 2004 letter to the developer, the County concurred that an administrative buffer reduction was needed and included instructions for the individual to request this permit. Though the developer had knowingly acted with no permits and destroyed a public resource, the County issued no penalties but instead acted to assist the developer by issuing an administrative variance after the land-clearing was complete.

Definitions – ‘High intensity use’ and ‘low intensity use’ are not defined in the Kitsap CAO, though the terms are used throughout the document. In numerous places, ‘high