



**PORT GAMBLE S'KLALLAM TRIBE**

31912 Little Boston Road NE  
Kingston, WA 98346  
(360) 297-2646  
FAX (360) 297-7097

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Rick Kimball, Manager  
Environmental Review  
Kitsap County DCD  
614 Division Street  
Port Orchard, WA 98346

**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

intensity use' triggers more stringent development rules. The glossary defines 'low impact activities', 'major new development', and 'minor new development' but it is not clear how any of these terms relate to 'high intensity use' and 'low intensity use'. This needs clarification.

For wetlands, the critical area is defined as a regulated wetland *and its buffer*. However, for other critical area types the buffer is just treated as a development standard. This inconsistency is never justified or explained. There is a wealth of scientific literature on the critical functions and values of riparian vegetation for streams as well as marine shorelines. Dr. Chris May's review does a fine job for streams systems, but there are also resources available that highlight the importance of fringing riparian vegetation in estuaries and along marine shorelines. To fully protect these areas, these critical areas should be defined to include their associated buffers.

According to the current Kitsap CAO, all tidelands meet the definition of a class I wetland, as habitat for ESA-threatened Hood Canal summer chum and Puget Sound chinook. Though the former species has a primary association with eelgrass beds as feeding, migration, and refuge habitat, it is not limited to these environments and ranges up and down beaches with the tides, occupying the shallowest waters whether or not they are vegetated with eelgrass.

*Channel Migration Zones* – Recent changes to state forest practice rules and shoreline management guidelines now explicitly recognize and protect channel migration zones (CMZs). These areas are intimately connected to their respective stream systems and serve as critical flood refugia for fish and other aquatic organisms, important sites for organic matter processing and retention, as well as a host of other important ecological functions and values. The Kitsap CAO does not explicitly recognize or protect CMZs. In order to protect these important functions and values and to be consistent with recent changes in state law, measurement of riparian buffers should begin at the edge of the CMZ, not at the ordinary high water mark as the CAO is currently written. A new publication from Washington State Department of Ecology offers assistance with delineating CMZs (Rapp and Abbe 2003).

*Fish Passage* – In spite of continued efforts by the Tribes, WDFW, and other watershed stakeholders to remedy fish passage problems at road crossings, Kitsap County continues to permit road improvement projects that do not fully address the ecological impacts of roads on downstream aquatic resources. Instead, Kitsap County Department of Public Works has chosen to ignore long-standing fish passage problems as they upgrade and improve the County road network. In recent years, KCPW has proposed road resurfacing and widening for Little Boston Road, Newberry Hill Road, and Hood Canal Drive. Each of these road segments have well-documented fish passage problems that the County is responsible for. Instead of disconnecting road improvement projects from fish passage correction projects, the County should explicitly link these efforts under their capital facilities planning to build public support for needed fish passage improvements. The Kitsap CAO should explicitly require that road maintenance and improvement projects remedy documented fish passage problems.

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*New Mapping and Science Resources* – Two new state resources are available to County planners for their use in mapping and regulating critical areas. Washington State Department of Natural Resources has developed a new state-wide slope stability map, and is close to releasing a new water-type mapping system. County staff should contact the WDNR for more information on these map resources. The County should understand that this data (even the new water-type maps) should not replace field information. They are merely a starting point for mapping critical areas.

Dr. Chris May has prepared an excellent overview of the scientific needs for protecting stream-riparian systems in the Puget Sound lowland. Since the preparation of this work, additional resources have become available that the County will need to review as part of their best available science revisions. I am including pdf files of several recent reports as attachments to this letter including one on the scientific imperative of small stream and wetland protection (Meyer and others 2003) and another on impacts of impervious cover on aquatic ecosystems (CWP 2003).

In addition, there are local reports and data available specific to Kitsap County watersheds. The Port Gamble S'Klallam Tribe has been working together with the Skokomish Tribe to document small stream and estuary use by endangered salmon species (Hirschi et al. 2002, attached as a pdf file). And the Tribe has compiled recent summer stream temperature monitoring for Hood Canal tributaries in a report that was previously made available to County staff (Labbe et al. 2002, no pdf available). This latter report is important for the County to review, because certain County staff members have alleged publicly (based on infrequent KCHD spot sampling) that water quality conditions in streams like Gamble and Big Beef creeks are good. Tribal water quality data suggests otherwise. Finally, I would encourage you to refer to section 3.4 (and associated appendices) of the WDFW-PNPTT Summer Chum Salmon Conservation Initiative for more general as well as Hood Canal-specific scientific literature pertinent to protection of critical areas.

As you can see, there are a number of matters that cut across the tidy subject areas of wetland, geological hazardous areas, fish and wildlife habitat areas, etc. In addition to considering new science and standards for each of the CAO sections, I would suggest that the County consider the subject of CAO implementation generally. This cuts across the specific subject areas and relates to enforcement, penalties, outside review, and monitoring.

Sincerely,

Ted Labbe  
Habitat Biologist  
360-297-6289  
[tlabbe@pgst.nsn.us](mailto:tlabbe@pgst.nsn.us)

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