KITSAP COUNTY PLANNING COMMISSION
PUBLIC HEARING
September 22, 2005

The Kitsap County Planning Commission met on the above-stated
date at the Presidents Hall, Fairgrounds Rd, Bremerton, Washington
98311. Members Present: Monty Mahan, Tom Nevins, Mike
Gustavson, John Ahl, Lary Coppola, Deborah Flynn, John Taylor and
Dean Jenniges. Staff Present: Eric Baker, Jim Bolger, Dave
Greetham, Patty Charnas, Arnica MacCarthy and Planning
Commission Secretary Holly Anderson. 146 citizens signed in at the
hearing.

3:00 PM

A. Chair Monty Mahan called the meeting to Order and
introduced the Planning Commission members present.

3:05 PM

Approval of Minutes

Minutes of August 2, 2005

A motion was made by Deborah Flynn and seconded by Dean
Jenniges that the minutes of August 2, 2005, be approved. Motion
carried unanimously.

Minutes of August 23, 2005

A motion was made by John Ahl and seconded by Tom Nevins
that the minutes of August 23, 2005 be approved.

• Frank Mahaffay objected and asked for clarification on RCW
  36.70.040 relative to the Department of Community
  Development staff being obligated to present the Planning
  Commission’s recommendations to the Board of County
  Commissioners prior to moving forward, when in fact this
  was not done. He asked that that the minutes be corrected
to indicate this omission. Page 203, line 24, shows the discussion that does not indicate the RCW and therefore believes the minutes are incomplete.

- Michael Gustavson – Asked that not only the RCW but also the WAC referencing Best Available Science be made available to the Planning Commission. While this task was completed the WAC is also not referenced in the minutes.

- Chair Mahan suggested these minutes be held over for approval until the next meeting.

- John Ahl – Commented that draft copies of the minutes were made available to the Planning Commission members quite some time ago. It is preferable to forward changes to the Secretary ahead of time to avoid lengthy discussions at meetings.

PUBLIC HEARING on Critical Areas Ordinance
Second Draft

- Chair Mahan – Prior to accepting testimony staff and the Department of Community Development Director Cindy Baker will address the staff.

Cindy Baker – Today’s task for the Planning Commission is to consider testimony on the Critical Areas Ordinance second draft, that has been extensively reviewed both legally and scientifically and that the Department of Community Development believes meets all statutory requirements for adoption by the Board of County Commissioners. Therefore the Planning Commission’s roll as an advisory body to the Department is to make recommendations to the Board and in the process hold deliberations and produce findings of fact. The recommendations should focus on the goals, policies, standards and procedures contained in this draft. From the beginning, staff has recognized the controversy inherent to this ordinance and while personal opinions are understood and respected, the duties today are clearly to consider oral and written testimony and to recommend for approval possibly with conditions or denial of the ordinance. The Planning Commission’s efforts to this
point are appreciated and it is now time to move the ordinance forward to the Board of County Commissioners for a final decision.

Jim Bolger – Today Dave Greetham and himself will present a brief summary and overview of the Critical Areas Ordinance. Bolger will briefly describe the process undertaken and Greetham will following by describing the substantive changes in the proposed revised ordinance relative to the existing ordinance. The staff’s presentation will be conclude by Bolger formally entered into the record a list of all materials, documents and comments generated thus far in the revision process for the Planning Commission’s consideration during deliberations. Via a PowerPoint presentation, Bolger showed that State law requires local jurisdictions to adopt laws, plans and policies to achieve GMA goals, including the protection of critical areas. These laws, plans and policies should be periodically reviewed. In addition, the Act requires that Best Available Science be included in developing policies and development regulations to protect the functions and values of critical areas. If this review reveals that the ordinance does not meet Best Available Science or the goals of the GMA, it must be revised. Critical areas are defined in the GMA as wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas and critical aquifer recharge areas. Protection of the functions and values of critical areas is a statewide and local goal as well as relates to the environmental sensitivity, public health, safety and welfare conditions involved in the five critical area titles. The protection is from avoidable losses that cost public dollars. It is widely recognized that it is less costly to protect than to restore. In addition to legal review, the ordinance has been drafted with primary consideration for scientific information. Bolger listed the three primary publications available this evening for the public relating to Best Available Science process. Scientific information looked at for this draft was considered Best Available Science and was examined for applicability to Kitsap County critical areas. In addition, technical representatives throughout Kitsap County were convened for five months during this process. Beginning in November of 2003 to present, public involvement has been a major factor in the process. It will continue on through the Board of County Commissioners public hearing prior to adoption.
Dave Greetham – Using the same PowerPoint presentation, gave a brief recap of major changes.

~ Recommending inclusion of the Department Of Ecology’s rating system. This will provide for all counties to be based on the same system; it is based on Best Available Science and the difference between old and new is a wider variety of buffer options in the new draft. This is an amended system from that used since 1993.

~ Increases or decreases in buffer widths along stream, wetlands and shorelines.

~ Language clarifications, definitions added, obsolete language deletion.

~ Habitat management plan that could provide up to a 50% buffer reduction.

~ Shorelines and some lakes currently have a 35-foot buffer. The proposed draft is to continue this on shorelines and all lakes, with the only change to saltwater shorelines being on the Conservancy designated shorelines. These would be the very steep, unstable areas and more sensitive shoreline areas. These would increase from 35 to 50 foot buffers.

~ Class II Wildlife Habitat Conservation areas, where Bald Eagles would now fall under Class I, Blue Herron, under Class II. In summary, no substantive changes are proposed to development regulations, Geologically hazardous areas and steep slopes. Only change is to some clarifying language. Here too, no substantive changes to development regulations.

~ Frequently flooded areas, flood zones. Again this is already in affect. The Board of County Commissioners adopted an updated flood ordinance in 2003 and this was imported into the new draft. Language was added regarding anadromous fish as required by law and no substantive changes are proposed to development regulations.

~ Critical Aquifer Recharge Areas. There is new mapping available provided by Kitsap County PUD, Health District and other agencies. Zone of influence for high-risk activities have been expanded. These include gas stations, dry cleaners, etc. This includes activities with potential threat to groundwater. These would still be covered under hydro-geological reports. If a report states it is safe to locate in an area, then approval is given. If not safe, the use would be prohibited there. No significant regulatory changes to this chapter.
Special report section in back of draft was edited. These include wetland, geological, habitat management plans. Greetham clarified the language in these reports.

In summary, the major points are stream, shoreline and wetland buffers.

Bolger – Formally entered into the record all materials, information, documents on submitted listed including documentation of extensive public input received on both drafts of the ordinance, reports and documentation of public outreach activities including the two BKAT video tapes from the August 10, 2005 public workshop held in Bremerton. Also, scientific information reviewed along with State laws and rules, the RCWs and WACs followed by Kitsap County review of draft ordinance.

- Lary Coppola – The Planning Commission has asked a number of specific and direct questions of staff that have yet to be answered. Are these questions and the answers included in the material submitted by Bolger?

Bolger – The questions included in this material include the list available. A question may have been asked but the answer not available. Bolger would need to have the list of questions in front of him to know specifics. This means he does not know what questions Coppola is referring to.

- Coppola – All questions the Planning Commission has asked staff in the last six months.

Bolger – Probably most answers to the questions can be found in the information provided for the record. Believes most questions have been answered.

- Coppola – Does not believe all questions have been answered. Some have been non-answers and some ignored.

Bolger – The satisfaction with the answers does not negate the fact that the questions have been answered.
• Coppola – One question is needing answered is the specific value of the land that will become unusable if this ordinance is enacted as written.

Bolger – This is a difficult question to answer because, first of all the land is not necessarily completely unusable.

• Chair Mahan – Requested that this discussion be moved to next Tuesday’s deliberations.

• Coppola – Does not want the material entered into the record until that question has been answered. He feels the record is incomplete.

Cindy Baker – There have been questions asked as well as support from legal counsel, that staff is not able to answer. The Department was able to get the number of acres based on GIS information. To get the property value would be a one to two year process at this time. Even real estate agents at this time are having trouble estimating the value of land. It would have taken an assessment on every parcel.

• Coppola – That is what the Assessor does.

Baker – Using the Assessor’s numbers does not reflect total accuracy. The Department believed acreage was the best answer. There may have been other questions staff was unable to answer but have, to this point, responded to questions to the best of their ability. This is all we are planning to present.

• Chair Mahan – Reminded the Planning Commission members that this was a public hearing to take testimony from the citizens present.

• Coppola – Made a motion that the material be excluded from the record until the question is answered.

Baker – Not sure that is an allowable motion. The staff has the right to make its presentation. She will check with legal staff while the public hearing proceeds.
• Chair Mahan - Have some 40 people signed up to speak, does not think the Planning Commission purpose is served by trying to hold up the process. This is the public’s opportunity to speak. This is not the Planning Commission’s time to make political statements.

• Coppola – Withdrew his motion.

• Chair Mahan – Purpose of this meeting is to take public testimony on the Critical Areas Ordinance second draft. Copies are available. Because of the number of people prepared to speak, he believed it best to limit testimony to a three-minute time frame.

• Jenniges – Asked how long people would have to submit written testimony following tonight’s hearing.

• Chair Mahan – Thinks this should be decided before testimony begins. Therefore, if someone cannot stay to the end, they will know what the deadline is. He personally thinks it should be two weeks, but discussion has been held regarding deliberations being held next week on two consecutive days. He asked for Planning Commission members’ opinions.

• Mahaffay – Favors two weeks.

• Gustavson – Although he appreciates two week deadline, but thinks need the written comments to go into deliberations with all the facts.

A motion was made by Dean Jenniges and seconded by Michael Gustavson that the record for written public testimony is left open until Thursday, September 29, 2005 at end of business day.

• Mahaffay – Doesn’t think it is enough time.

• Jenniges – Amended his motion to September 30, 2005 at end of business day.

• Deborah Flynn – With a meeting scheduled next week, Tuesday, September 27, to begin deliberations. This will not be possible without all of the comments available.
Ahl – Thinks a work/study session can be held without all information. It would be work/study without a conclusion. Suggested that rather than two back-to-back days the second date could be moved out further.

THE VOTE: For-9; Against-0. Motion carried unanimously.

Chair Mahan – First explained the responsibility of the Planning Commission and then asked that speakers sign in and that speakers state their name and home address for the record. He reiterated that each speaker limit testimony to three minutes, after which he will decide if they are speaking to the issue or getting off track. If he asks the speaker to sum up after the first three minutes, he hopes this will happen. He asked for a respectful speaking process. He referenced the public hearing rules on the back of the agendas.

Jenniges – Asked that people not repeat what someone else has already said but rather to agree with that person.

Mahaffay – Asked that everyone state his or her name and address for the record.

Chair Mahan – Called three names at a time to line up to speak.

Gustavson – Made a motion that only Kitsap County residents are allowed to speak first.

Chair Mahan – On the list, there is only one person who lists his residence as not being in Kitsap County.

Baker – Advised by legal counsel that the motion made by Lary Coppola was out of order and that it is the responsibility of the Planning Commission to move forward their recommendation to the Board of County Commissioners through the Department of Community Development. Further, that the Planning Commission has the option to make the changes and recommendations it wants to make, the Department of Community Development can choose to move the Planning Commission’s recommendation forward to the Board or to show differences between the Planning Commission’s
recommendation and the Department’s. That being said, if the Planning Commission has differing opinions, it can show a minority and/or majority vote as it moves forward. Ultimately a recommendation must be moved forward to the Board of County Commissioners. It also has to meet the State statutes and the County Code.

SPEAKERS

John Cambalik – Regional liaison for the Puget Sound Action Team and as such, he covers all of Clallam, Jefferson and Kitsap. In comment letter to staff dated August 10, 2005, Cambalik highlighted some of the key points. For Chapter 19.300: Fish And Wildlife Habitat Conservation Areas, the PSAT recommends: Explicitly designate primary association areas along the marine shoreline for anadromous fish such as juvenile salmon, as critical Fish and Wildlife Habitat Conservation Areas, within Section 19.300.310, item A. He then listed the primary association areas included. Next, asked that Section 19.300.15, the development standard section, protects marine riparian areas and feeder bluffs in recognition of their roll in creating and sustaining primary association habitat areas. Important also that ESA listed and sensitive fish species have forged fish spawning areas. Feeder bluffs and migratory corridors are important for protecting marine riparian areas. Effective marine shoreline bluffers can protect critical near shore processes, functions and values at risk throughout the marine shoreline. He highlighted specifics for protections along marine shorelines. The proposed standard buffer widths for all urban, semi-rural and rural shorelines may put critical near shore processes, functions and values at risk. Buffers should, following a precautionary approach, be as protective as those the County has proposed for fish rearing fresh water shorelines. Guidance material is attached with his complete presentation. Aquatic habitat fish and wildlife conservation areas should be protected from the impact of stormwater. Aquatic habitat Fish and Wildlife Habitat Conservation Areas should be protected from the impacted stormwater. He suggested specific measures for critical areas protection such as adoption of updated 2005 Stormwater Manual for western Washington, the Department Of Ecology manual or equivalent manual; provisions for areas draining into critical fish and wildlife habitat areas that limit and disconnect impervious surfaces, retaining native forest cover and encourage or
require the use of low impact development stormwater management
techniques to treat and infiltrate stormwater on-site as allowed by
site conditions. In conclusion, he added, the importance of adopting
and implementing effective critical areas ordinances is well pointed
out in the habitat section in the 2004 State of the Sound report. The
conclusion section of that report state, “The accumulative pressures
on Puget Sound are driving a silent and slow motion crisis. While the
Sound still appears beautiful, its diverse web of life is at risk.” It
goes on to state that while the goal of a healthy Puget Sound now
and for future generations is still within reach, we need to redouble
our effort and expand the scale of our work. One important way
among others to do that is to adopt and implement strong and
effective regulations at the local level such as this Critical Areas
Ordinance. The PSAT appreciates the Planning Commission and
staff’s diligence in this area and encourages consideration of the
above recommendations to further protect the Puget Sound eco-
system. (Letter, addendum and State of the South Report submitted
for the record).

Jack Hamilton – A Silverdale resident, responded to the question
from the Planning Commission concerning acreage and cost. He
asked the County Assessor this question and was given an acreage
number of 295,423 acres (unincorporated private lands) and an
assessed dollar amount of $9,354,922,963. This would be an
underestimate, as the Assessor does not assess at market value.
Translated into the 3o thousand acres that would be given up as
buffers, a number given by County staff at the last hearing, that is
10% of the area or approximately $935 million dollars worth of
property. He received response to his question in one day. Hamilton
then presented his detailed review of the Critical Areas Ordinance,
Second Draft, for the record. Areas he claimed inability to comment
on included: comparison of the existing Critical Areas Ordinance to
the Second Draft. He claimed this was due to the differences in
content and organization; there are no meaningful cross-references
between the two documents; and no scientific basis for existing
ordinance and draft. Both document lack citation required in WAC
365.195.915. Hamilton’s comments (detailed in his complete
presentation presented for the file at this hearing) included: Areas
Hamilton did comment on included: overall logic and content
supported in the draft ordinance; frequent reference to RCW 36.78
(Growth Management Act (GMA)). His written presentation included
section 140 – Comprehensive plans—Ensure public participation.
This section contains two key words: participation and discussion.
There is no priority, one over the other, of any of the twelve goals of
GMA. Ownership of private property and associated rights are
afforded specific protection by the constitution and have solid basis
in law. The environment as such, is provided no specific protection
under the constitution. Therefore, GMA goals 6-Property Rights and
11-Public Participation have equal priority with all other goals. A
primary understanding of regulations is that a regulation imposes
behavior control either to prevent a condition not acceptable to
society or to correct such a situation. The creation of a regulation is
a classic problem-solving exercise. The first of is to define the
problem. Hamilton does not believe this has occurred with the
Critical Areas Ordinance. Rather the assumption is made that critical
areas exist and because they exist, they must be protected. Does not
think that in reading 98 pages of the Second Draft, there is a single
instance of identification of a specific problem that requires
restrictive regulations. He also believes that the public process
review mandated by the GMA has not taken place and further that the
public has been excluded from conducting any review and that it is
apparent to him that the intent of the County is to define success by
enacting legislation. Prior to any regulations restricting the
enjoyment of use at highest utility of any property are implemented,
the County needs to demonstrate that a specific problem exists.
Also, because of the requirement to consider Best Available Science,
the specific problems identified must be defined in scientific context.
Does not think the draft proposal defines local problems but does
assert problems globally by assumption. The second step in
effective problem solving is to identify all possible actions or
solutions that could prevent or correct the problem. This is one of
the GMA’s requirements under Section 140. One action available but
not considered, is to “do nothing.” He asked that if staff is so
expert, why it is necessary to revise the regulations and specifically
to make them more restrictive. After potential solutions are identified
they must be tested for credibility and applicability and that every
possible solution must satisfy a common standard science criteria.
This step also needs to begin with public participation. Does not
think that staff has identified any possible alternative solutions but
has provided only the proposed regulations. With this approach, one
could think that no other solution exists or that all other solutions
failed the science criteria. This allows staff to control the outcome.
Without having science criteria properly identified, it is most difficult to understand the process used by staff. Through open discussion, the public can become part of the answer rather than a body to regulate. Problems are rarely singular in nature, as he believes is applicable in the current Critical Areas Ordinance draft, then seldom will a single action or option result in the practical solution of the original problem. Combining options and searching for the best fit, Hamilton thinks must invariably impact a number of GMA goal areas and the final selection of a course of action will be a political decision. Again, he believes that public participation was lacking. As defined in the Viking Properties decision, active public participation is essential. He pointed out that after five years of the current Critical Areas Ordinance, there still is no valid means to determine the effectiveness of the regulations. An effective element in the creation of options and the final solution is the identification of the associated metrics or the means to measure the effectiveness of the solution to achieve its stated objectives. Hamilton said that the current Critical Areas Ordinance and Draft Two are abject failures from the perspective of problem identification and implementation of metrics and monitoring. He believes that the current Critical Areas Ordinance and the draft proposal are no more than thinly veiled attempts to exercise ever-increasing public interest and control over private property. In his testimony, he has used the terms credible and applicable when talking to scientific basis for decision-making. He said the earth is healthier today than 40 years ago when Silent Spring was published. Rachel Carson was wrong in her predictions. Merely publishing a scientific opinion does not make it creditable. Creditable scientific data is significant in the Critical Areas Ordinance since it will impact use of both private and public property and will involve significant financial burdens both public and private. Applicability is also essential. The body of science regarding the environment is vast with most of it paid for by public funds. Hamilton believes it is essential to recognize that scientific research or study, especially from academia or otherwise publicly funded, is conducted to prove that a problem exists. He thinks that studies involving water flow from mountain snow pack or glacier fed streams are not applicable to Kitsap County. Broad scientific studies are not applicable to site-specific problems. Additionally, the Second Draft not only failed the public participation requirement, science citation, stated Hamilton, it also fails the test related to arbitrary and discriminatory regulation. GMA Goal 6 supports this statement. He
believes that the draft ordinance is filled with instances of assigning
authority for determination of specific application of provisions of the
ordinance to County staff. He thinks this is arbitrary by definition.
The one size fits all solutions of the draft ordinance can only be
defined as arbitrary. Also, the draft ordinance, by way of its own
wording, he thinks identifies itself as discriminatory as it clearly
attempts to define all “critical areas” in the County. However the
wording states that the County does not have a finite inventory of the
critical areas and that it does not know where the critical areas are.
Hamilton feels that the County has no intent and no vehicle to extend
the restrictions and regulations regarding critical areas to existing
conditions of developed properties. He then asked what problems is
the County trying to solve. Hamilton’s testimony to this point
concentrated on the specifics of the GMA, the requirements establish
in the Washington Administrative Code (WAC) and proven problem
solving practices. Next, he addressed perceptions and charges
about anyone who would oppose the Critical Areas Ordinance,
respecting and protecting property rights, GMA goals not focused on
unlimited and unrestricted assault on the environment. He then
made references to how important the environment is to people’s
livelihood. Next Hamilton discussed responsible use of property by
the owner and that this does not necessarily constitute harm to the
environment.

Gentleman in the Audience – Objected to Hamilton’s length of time
used to make his presentation.

Hamilton then reiterated his presentation by summarizing his key
points. In closing, he thought that no testimony presented this
evening would be able to identify all deficiencies and failures of the
draft ordinance. It was Hamilton’s belief that more public
participation could have avoided these failures. He strongly
recommended that the Planning Commission present to the Board of
County Commissioners findings that include rejection of the Critical
Areas Ordinance Second Draft and recommend to the Board to re-
commence the process in the manner specified by law. (Hamilton
presented a complete written copy of his presentation for the record).

Bob Benze - Environmental Engineer from Silverdale, has experience
in protection of streams and marine environment. He addressed Best
Available Science. He attended a meeting last year about buffers and
protection of habitat. The size of the buffers depended on a number
of variables, the most important being the variety of species being
protected. The draft ordinance under Section 19.300.15.a.1, states
that the buffer should be maintained along the perimeter of fish and
wildlife habitat conservation areas as listed in Table 4. The question
here is what are these conservation areas noting that the County
defines these as areas established to protect all fish; other listed
aquatic species and listed terrestrial species. The buffers are to be
designated and defined by Best Available Science but Benze believes
there is a disconnect on the definition of Best Available Science. The
County’s December, 2004 Best Available Science Review Summary
document states, it is repeated throughout the sources of Best
Available Science that site specific analysis is the best way to
approach critical areas. Therefore by the County’s own definition, it
is site specific. Further based on the County’s own science
presentations, it is clear that the Best Available Science is also
species specific. It is important to know which species is being
protected so that the scientific knowledge is used pertaining to that
species. However, the wording in the draft ordinance is neither
species nor site specific. He urged the Planning Commission not to
recommend approval of this ordinance until Best Available Science is
employed.

Jeannette Franks – A Gerontologist (a specialist in aging and the
elderly), Thanked the Planning Commission for the opportunity to
speak. As a scientist and teacher on waterfront property, she
believes in research and did homework regarding living on a
shoreline or slope. Thinks the County has good science, that
Shoreline Management, stabilization of slopes and protecting
wetlands is very, very important to everyone. People should want to
protect the salmon, habitats and properties for the children of today
and for generations to come. Franks supports a strong and fair
Critical Areas Ordinance. Thinks it should be regulated. Draft looks
good to her but won’t know until a lot of technical details have been
completed. Two things stood out to her. 1) Should drop science for
isolated wetlands. Kitsap County has a mandate to achieve no net
loss of wetlands. It is difficult to get wetlands back once gone. 2)
Important to maintain connections between habitat areas, something
that is not in second draft. 3) Important to establish limits on
clearing land and maintaining natural vegetation. Does not only
disagree with some people’s opinion that a Critical Areas Ordinance
decreases property values but believes it actually increases
Protection of species and property. Want to protect for future
generations. Supports a strong ordinance that should be enforced.
There is an inherent responsibility to the children of today and the
grandchildren of tomorrow plus future generations.

Faye Henden- A Poulsbo resident, said she is not a biologist and has
no scientific background. She does however have firsthand
experience what the Critical Areas Ordinance because she has lost
the use of six acres of land along a creek. She believed the proposed
update would further restrict her family’s enjoyment of their land.
Henden attended public forums and after reading the Second Draft,
she concluded that it took 6-8 County staff with technical or scientific
backgrounds to prepare the document. She saw errors as follows: 1) need source goal statement on page 2. The stated one is
inappropriate; 2) on page 3, there is no a specific definition for
quality of life. She asked for location of the definition and
environmental factors for protection are located. The definition
section does not begin until page 16 but it is required to be in the
front of the document. Henden then offered specific examples of
insufficient definitions, i.e. the word “Buffers” is listed with several
definitions that she did not believe to be accurate. She asked that
the Planning Commission recommend that the Board of County
Commissioners direct staff to re-draft the Critical Areas Ordinance.

NEW TAPE

Dorothy Guice – Poulsbo, speaking for herself. Needs evidence that
the original Critical Areas Ordinance has inadequate protections. If
not, then she questioned why the County needs to revise the original.
If there is evidence that it needs to be revised, then the public has a
right to see the need. She asked why a large buffer be taken from a
property owner if a smaller one will work. She referred to this as a
land grab. She quoted specific titles from the draft and addressed
each relative to buffers. She said that human life should always take
precedence over anything else. She foresees lawsuits against the
County. She mentioned the removal of dangerous trees to assure
habitat protection. She asked what would happen during the
fulfillment of specified requirements, a dangerous tree should fall
injuring or killing a human being. She then expressed concern
regarding a statement in the draft granting the Department of
Community Development Director the right to enter a person’s property without permission. She cited sections that contradicted this provision. She asked several questions, one stating that if a situation is only a substantial danger, not an emergency, why is immediate action required. She also asked why environment given equality with human health and welfare. Title 19 is a control/power grab and she is opposed to it. Duty of a democratic government is to protect people, not control them.

Rod Reid – Alpine Evergreen Co., owner of approximately 4 thousand acres in Kitsap County, most of it in South Kitsap. He works with stream buffers on the land, which mostly requires a forest practice application. He now sees that the County is adopting the Department Of Ecology’s guidelines for stream classifications with adjustment to the buffer widths, and he is opposed to this. The DNR module is new and still does not work well, in particular on gradient lands. He went on to explain the rationale behind his objection to this module. He understands that the module does well on more hilly lands but not on the lowlands. He explained what his firm now has to do to practice its business. DNR does not require any buffer. Now Kitsap County is proposing to increase buffers from 25 to 50 on streams. He noted that Kitsap County is covered with NS streams. These are seasonal streams. He asked that this class of stream not be given any more importance than they deserve. 25 feet is more than adequate to protect them. 50 feet is overkill. Kitsap County has fish bearing streams that are dry most of the year. He gave an example of how fish will spawn where there is sufficient water. However a particular stream in south Kitsap County has not had fish spawning for several years because it is too dry. Okay but watch the module. Looked at stream map and will see new DNR module map, but old map is on wall. Consider inconsistencies.”

Richard Rumane by Vivian Henderson – Will not comment on Best Available Science as others have already discredited it but said that past practices were better. However, it is impossible to return to the past so we must look to the future utilizing data that looks into the future. Listed future problems, included depletion of oil supply and provided statistics. Namely that 90% of all known reserves in production, 80% in the depletion phase with 80% of those being old fields discovered over 35 years ago. Oil demand over past two years has grown at twice the pace for past decade according to the
International Energy Agency. It estimates world demands will increase up to 47%. She listed supply and demand statistics stating that peak demands will be reached in this decade. It will take decades to develop the infrastructure to utilize alternatives to oil. Henderson also referenced the steady decline in other valuable resources such as water and the possible integration of boarders between Canada, the United States and Mexico. This would encourage low paid workers from any place in North America. Finally, Congress is sure to amend the federal Endangered Species Act (ESA) that would provide for landowners to receive compensation but the level of compensation will cause heated debates. (Complete written testimony on file)

Starla DeLorey – Resident of Poulsbo, Agreed with Hamilton and Benze that one size fits all is not the answer but doubts feasibility of anything other than a generalized system. DeLorey was in favor of strong but flexible buffers and regulation because the ecological and long-term public health value outweighs the commercial value. DeLorey was

BREAK

• Chair Mahan – Reiterated need to contain testimony to a three-minute limit.

Vivian Henderson – With Kitsap Alliance of Property Owners (KAPO), registered a protest to Chair Mahan regarding the opportunity for the public to speak and did not believe that three minutes to talk was reasonable. She presented a packet for consideration and the record that included: 1) KAPO’s September 22, 2005 critique of the May 27, 2005 Second Draft of the Critical Areas Ordinance; 2) Additional references of Kitsap County’s Critical Areas Ordinance by Dr. Robert Crittenden dated August 205 with CD listing areas; 3) Letter to the Board of County Commissioners dated December 20, 2004, critiquing the County’s roundtable process on the first draft of the Critical Areas Ordinance and appealing to the Board for an honest effort toward a public participation process; 4) Letter dated December 29, 2004, transmitting suggested comprehensive plan for public participation, no response or acknowledgement received; 5) Letter dated December 29, 2004, from KAPO to the Board of County Commissioners with a paper by James W. Buell, PhD, titled Best
Scientific Commercial Information - Getting Back to the Garden.

KAPO believes this is a common sense approach to be considered by law and policy makers; 6) Letter to the Board of County Commissioners dated May 10, 2005, expressing concern relative to the County’s process for revising the Critical Areas Ordinance without lawful participation pursuant to RCW 36.70a.140; 7) Letter dated May 25, 2005 to the Board of County Commissioners inquiring about public process planned for education and participation in updating the Critical Areas Ordinance; 8) Letter dated June 13, 2005 to the Board of County Commissioners asking again for a public education process plan; 9) Letter to the Board of County Commissioners dated June 17, 2005, transmitting Dr. Robert Crittenden’s nine page review of the Critical Areas Ordinance Second Draft dated May 17, 2005; and 9) Letter dated June 28, 2005 to the Kitsap County Planning Commission, appealing to the members to support a public participation and education plan which includes the public in the process as required by law. In addition, Henderson submitted a letter dated May 22, 2005, from the Pacific Legal Foundation, addressed to the Board of County Commissioners addressing what it perceives to be very restrictive regulations found in Kitsap County’s proposed Critical Areas Ordinance update relative to private property. The Foundation suggested that the County’s Critical Areas Ordinance may contain significant constitutional and statutory flaws that should be remedied prior to the Board’s vote on final approval. If adopted as written, affected parties will most likely ask the Foundation to file a suit challenging it. Finally, the proposed Critical Areas Ordinance as applied to significant landowners may contain significant, constitutional flaws that include takings and due process claims. The most recent draft of the County’s Critical Areas Ordinance may also include statutory flaws including adequate consideration of Best Available Science. In conclusion and in response to a comment from Jenniges about Kitsap County Prosecutor’s legal opinion that the Second Draft is well within the legal statutes of the County’s requirements, Henderson thinks that legal counsel tells the Board whatever it wants to hear. KAPO’s main concern has always been provision of time for public comments. Henderson does not know what is happening to their property and this she thinks is because there has been no effort on the County’s part to include explanations for the public. Testimony is not the same as open and free discussions. KAPO wants open, free discussions. Also, she does not believe that staff has provided
honest responses to what the updated Critical Areas Ordinance represents. Henderson called the roundtable discussions provided by the County, the Delphi Process where people in attendance are carefully controlled. It was not conducted in an open and free discussion. Lastly, Henderson complained about the legal notification process carried out by County staff. KAPO continues to assert that the County has not followed proper processes regarding preparation for consideration of the Critical Areas Ordinance, Second Draft. It’s the law that the public be involved in this process. Not acknowledged by County staff was an outline submitted by KAPO spelling out preferred method for including public processes obtained from the State’s website. She emphasized the lack of provisions for public participation. As to a proposal to modify wetland buffers, KAPO recognizes there are fewer than four options: Increase, decrease, no change or eliminate buffers. KAPO calls then “Big Dumb Buffers.” The definition of Best Available Science and other related terms have also been modified in the Second Draft with no alternatives listed. (Complete written testimony and submittals on file).

Gentleman in the Audience objected to the amount of time allowed for Henderson’s testimony.

- Chair Mahan – Asked that she be allowed to continue.

Over the past four years, KAPO has attempted to work within the system and process established by the County, while continuing to spread the word that it is believed by KAPO there are shortfalls in active and meaningful participation. She asked that a proper public participation process be enacted immediately. Additionally, KAPO asks that because the ongoing CAO process has not provided for proper public participation and that the current process is terminated until such time as an effective process can be implemented. She requested that the Planning Commission recommend to the Board of County Commissioners that the Critical Areas Ordinance be redrafted consistent with comments provided in testimony. Further that this include the actual requirements of the GMA and not what is made up by staff. Also, that the opinions expressed by the Washington Supreme Court in its August 16, 2005 decision on Viking Properties, Inc. vs. Home and other pertinent court decisions be considered. Personally, a very good article in The Kitsap Sun had a headline that
annoyed her. It read “Your Land or Our Land.” Henderson said the land is not yours or ours, it is “My” land. Environmentalists want the Government to take away her ability to use her land. Also, unhappy with Robbyn Myers statement that the goal of the Critical Areas Ordinance is to maintain a semblance of nature as the County’s population doubles and doubles again. Questioned the rationale behind this goal and said that Ms Myers should be fired. Henderson thought the way the Critical Areas Ordinance update has been manipulated by staff is criminal. She then entered the following emails into the record: 1) Dated September 19, 2005, to Commissioner Patty Lent from Henderson and copied to the other two commissioners and some Planning Commission members regarding the totally incompetent manner in which advertising for this meeting was handled by County staff; and 2) a replay from Gustavson expressing is own frustration. Either this is deliberate or total incompetence on the part of the staff. Housecleaning is warranted in the Department of Community Development.

BREAK

Don Flora – Bainbridge Island resident. (Flora submitted his complete written testimony and attached packet of referenced material for the record). In it, he expressed concern over the County’s wetlands, stream banks and designated habitat and related corridors that all need to be saved or at least administered. He asked that the Planning Commission address the five following questions:

1. What will happen on the ground if Kitsap County doesn’t update its Critical Areas Ordinance?
2. Will this action make a measurable difference?
3. In how many places must the Critical Areas Ordinance be applied?
4. What is foregone when Kitsap County does this ? and
5. Are thee reasonable alternatives?

Flora has been very interested in the buffer situation in the past few years and has researched the subject extensively. Double the width does not equal double the benefit. He does not believe buffers are required under GMA. Some reading he has done indicates buffers cause more damage that good. He suggested the Planning Commission recommend to the Board of County Commissioners not
to implement buffers. If buffers are located on land that continues to
grow in value, Flora thinks the property owner is entitled to the same
benefits. He referenced Low Impact Development activities. He did
not think buffers work for holding back earth in the Pacific Northwest
where it rains heavily in the winter months. Whatever problems exist
today, Flora thinks will still exist 5-10 years from now. Buffers
become saturated. He mentioned the following alternatives:

1. Low impact development
2. Selective exclusion
3. Moving incentives
4. Remove offending nuisance
5. Plant grass

He asked if residential development was such a problem that it cries
out for solutions. Flora thought not.

Doug Lions – Keyport resident, reviewed entire Critical Areas
Ordinance and presented a petition signed by 26 residents in the
Liberty Bay area who all agreed with a list of recommended changes
to specific sections of the draft ordinance. The recommended
changes are proposed to the following sections:

1. Page 6: 19.100.125 Exemptions Paragraph H;
2. Page 73: 19.700.705 Special Reports and Paragraph C.
   Special Reports-Responsibility for Completion. Payment
   for special reports. Lions believed this to be an opening
   for Government waste, fraud and abuse. Need to put a
   limit on government spending;
3. Page 81: 19.700.720 Habitat Management Plan, paragraph
   E;
4. Pages 81 and 82, Paragraph B: Geotechnical Report and
   Geological Report;
5. Pages 52 and 53: 19.300.325 Development Standards,
   Paragraph A, item 2 – Buffers and Setbacks – Buffer
   Measurement Table 4; and

Lions said he may have missed other issues and problems with this
document but did his best wading through volume of information.
Carl Duff – South Kitsap resident, was present to addressed three topics. But first he noted that interpretation or meaning of the word environment has undergone a not so subtle change in the last few years. It now means wildlife habitat. The State Attorney General has strict guidance on takings. The last advisory was signed by Christine Gregoire with clear guidance on avoidance of unconstitutional takings. The three words the public should be aware of are health, safety and welfare. Duff’s three points. 1) Scientific reports pertaining to Pacific Northwest streams but not included in Kitsap County’s Best Available Science study. He reviewed highlights and submitted for the record, a complete package of all scientific papers he has. These scientific papers were submitted to staff yet are not reflected in staff’s report on an update to the Best Available Science report. These reports all support small buffers. He specifically referenced a paper by a man named Desbonnet. It is probably the broadest summary of scientific papers that exists. More importantly, he sticks to public heath and safety, nitrogen, pollution, suspended solids and sediments. In the area of pollution, what Desmond comes up with most often are buffers. Another man often referred to is Christopher May who Duff believes to be an eco-extremist and he calls for restoration of hundred-year-old forests under what Duff believes to be a false assumption that first growth forests produce the best salmon habitat. Scientific papers contradict this. Some papers show to the contrary. They show that twice the biomass of fish, higher insect populations and better habitat exist where buffers are narrow. 2) Source distances for coarse woody debris. Duff thinks this is the current buzz word amongst environmentalist. Mathematic models have been used to predict how close the stumps and logs have to be to get into the streams. Papers will show that the actual measurements are half of what the models produce and anything within ten meters of steams determines whether or not it will get into the streams as large woody debris. 3) Evidence showing that narrow buffers’ open canopies produce much higher feed rate, growth rate and bio-mass and salmon productivity, and with cutthroat also in fisheries than first-growth forests. There are papers on logging, fish and wildlife relationships and old growth forests (a ten-year study on selective streams in Oregon). The study, with respect to fisheries, indicates that it is essentially irrelevant.
whether the adjoining acreage was logged or un-logged. The
Department of Fisheries is the interference behind wildlife habitat
that he feels is an ideology. His packet contains a three-page
summary and a one-page summary of what staff did issue relative to
Best Available Science. Duff thought that what staff did issue was
biased so strongly in favor of wildlife habitat that it almost ignores
public safety. For example, under Goals and Policies, 60% of the
policy discussion addresses environment and wildlife habitat. Only
15% addresses public health or safety. Also in the staff report is a
bar chart published by Dr. Chris May who he again considers to be
an eco-extremist. Next Duff addressed legalities. Four points in legal
foundation that constitutes risk are:

1. Taking of private property without just compensation in
   contradiction of the Federal Constitution
2. Taking of private property in contradiction of the more stringent
   Washington Constitution
3. Violation of Washington’s due process doctrine
4. Compliance with the Growth Management Act’s doctrine
   relative to Best Available Science requirements

He read other opinions, judgments and questions regarding
mandating of public property for public usage. One quote states that
Wildlife, fish and shellfish are the property of the state. Also,
Nothing . . . shall be construed to impinge on the right of a private
property owner to control the owner’s private property. Another,
“Wildlife means all species of the animal kingdom whose members
exist in Washington in the wild state.” He asked that since all wildlife
is determined by public law of this state to be the property of the
State of Washington, how could the County legally impose a Critical
Areas Ordinance mandating private property for public use by
wildlife. Next, he read from Nolan vs. California Coastal Commission,
the US Supreme Court ruled that no municipal government has
authority to place conditions of development permit approval except
for conditions for which it has the right to impose unilaterally. This
means, stated Duff, that only Emanate Domain and Just
Compensation appear to be the only means in which Kitsap County
can impose the type of deed encumbrances called for in the Critical
Areas Ordinance as a contractual condition for issuance of permits.
He quoted the Nolan case and the City of Tigard that stated
governments cannot ignore the Best Available Science in favor of the
science it prefers simply because the later supports the decision it wants to make. Another, states placing a fixed set-aside in order to mitigate the impact of development is therefore illegal. It also states that development conditions must be tied to an identified development impact. He mentioned other case law to substantiate his point. Lastly he addressed the question of how much acreage is being taken in this, in his opinion, land grab. He believes staff failed to answer this question and more. The County finally attempted to answer this at the August 23, 2005 Planning Commission hearing. The answer was only ten thousand acres for streams, only 15 square miles. Not believing the answer, he obtained maps from PUD #1 which shows the buffered areas on the streams. The maps showed approximately 66% buffered areas. Having been involved in three different environmental groups, the County’s comments addressed controlling development. He currently is on the Parks and Recreation Open Space Committee. Here the County states it will use regulatory protection for government use of buffers to link environmentally critically areas currently protected by land use regulations and to establish a defacto network of habitat across the County and natural networks of connectivity across the landscape. Duff refers to this as policy within the Department of Community Development and pervades all they do.

Joan Gorner – Poulsbo resident, agreed with several others who spoke before her. If the Planning Commission had not insisted on answers from staff, this ordinance would most likely have been forwarded to the Board of County Commissioners for approval without questioning the staff. She attended the Critical Areas Ordinance meeting in Poulsbo where questions went unanswered by staff. Gorner was grateful for the Planning Commission for taking the time to understand the impact of the proposed ordinance. Have notes of a meeting on August 28, 2000. Bob Turner from National Marine Fisheries Service was present, setting on the criteria for the County pertaining to the 4D rule. She remembers Commissioner Botkin asking Turner to define terms because the terms were so nebulous. The same problem occurs in the Critical Areas Ordinance draft, many terms are nebulous and subjective. Gorner also remembers a Department of Community Development staff member holding meetings throughout the county, telling citizens they could not replace their bulkhead unless a house was going to collapse. She also remembers a consultant saying that all of North Kitsap
should be a wildlife refusia. Kitsap County has dedicated citizens with the skills and commitment to help the County. Asked the Planning Commission to recommend denial of this draft of the Critical Areas Ordinance.

John Holmberg – Family bought property in Tracyton in 1946. Have been good stewards of his land. He listed all of the wildlife to be found on his land. Holmberg asked that the Planning Commission review the entire document.

DINNER BREAK

- Chair Mahan – reviewed the rules for length of time for speaking noting that there is not enough time if everyone takes 25-30 minutes. From this point on, he will evaluate anything after 3 minutes. He noted that oral testimony could always be backed up by written testimony.

- Michael Gustavson – Expressed concern about time allowed, and suggested the hearing be continued to an additional hearing if time does not allow everyone to talk.

- Dean Jenniges – Suggested the negative remarks against staff be discontinued if the speakers wanted him to consider their remarks. It is very offensive and personal attacks do not work.

Cindy Baker – If the Planning Commission decides to continue this public hearing, she asked if it was only for those unable to speak today.

- Chair Mahan – This will be discussed at the end of the hearing.

- John Taylor – Asked that the speakers refrain from using personal names and that comments be respectful. This hearing is not for the purpose of insulting individual people but instead to review and comment on a document.

Jean Sherrard – Agate Pass in North Kitsap presented three brief comments and sited case law. He referenced case law from 1958 when he received his law degree. Believes there exists a tension created by the academic community versus remainder of property
owners. Developing land is quite detailed and involved. A general theme appears to exist and that is land use control. A concept in our culture brought forward from the Constitution stating land is our own and a person can do what he wants with it. Another concept perceived from the academic world is constraints on what people do with their land. This is what the draft Critical Areas Ordinance is about. Underneath this is land use control. Sherrard does not mind controls but wants to see them within reasonable bounds. The draft Critical Areas Ordinance, he believes, is neither enforceable nor practicably workable. Attempting to comply with the Growth Management Act, could create a document that is not enforceable and is not practical. The federal government (Corp of Engineers) does not have any buffers in its wetland regulations. When he obtained a permit from the federal government to deal with wetlands and a permit from the City of Poulsbo for the same wetlands, the federal government did no care about buffers. The Critical Areas Ordinance appears to be moving against people’s rights to own and operate their own property. A decision on August 18 titled by Sherrard, “It Changes the Law.” The Growth Management Act can no longer be used by the State or the Growth Management hearings boards to require any level of action by the County. Per case law, he believes a new land use world exists for County government in that each county and city can do as they wish. The 13 Growth Management Act goals are to guide, not direct, in developing the Comprehensive Plan and developmental regulations. Also, he referred to a broad range of discretion that may be exercised. It goes on to say it does not prescribe an approach to growth management. The Growth Management Act is not intended to regulate site-specific activities. He believes this clearly applies to the Critical Areas Ordinance. The courts say that the Growth Management Act’s non-prioritized goals have irreconcilable conflicts that must be resolved by local jurisdictions. In other words, all the goals in the Growth Management Act cannot be dealt with together. Some of them fight each other. Also, according to the courts, there are no bright lines in the Growth Management Act. As of now, the Growth Management Act regulations are consensual, not definitive, and often ambiguous. The Act grants jurisdictions a broad range of discretion. The State Supreme Court also said it will not tolerate Growth Management Hearing Boards making their own opinion on interpretation of the law. Their jurisdiction is very restrictive and will only apply to individual cases. He asked the Planning Commission to read this
Marian Berejikian – West Sound Conservation Council, submitted a three-page letter and verbal highlighted important points of the letter. For over 20 years, local jurisdictions in Puget Sound have required construction of stormwater management facilities to mitigate the impacts of development on our water resources. However, has shown that these facilities do not effectively mimic the natural hydrological cycle. Manmade wetlands fail to replace the functions of their natural counterparts. As one study reports, out of 38 mitigation sites, 37 failed. Because of the high rate of failure of manmade wetlands and their importance in hydrologic function, wetlands of all sizes should be protected. Wetlands provide benefits to the citizens of our state by protecting and preserving drinking water and by providing a natural means of flood and storm damage protection. It is estimated that the value of flood protection by wetlands was between $7,800 to $51,000 per acre. Estimates indicate that Washington State is losing 700 to 2000 wetlands every year. These numbers are already outdated. According to other county wetlands inventories, freshwater wetland losses are estimated at 55% for Thurston County, 82% for Pierce County and 70% for King County. Kitsap County’s loss is unknown because a comprehensive inventory has not been done. The Growth Management Act requires jurisdictions to identify, designate and protect Critical Areas, which includes wetlands. The sooner the County can complete a wetland inventory, the sooner a baseline can be established by which to measure what is left. The County cannot make well-informed decisions about its critical areas without this information. Because of this, Berejikian’s agency requested that Kitsap County inventory its wetlands to protect and designate the critical areas. She listed three points to her recommendation as specific changes to the Critical Areas Ordinance. These are as follows: 1) Do not allow wetland buffers to be reduced by more than 25%; 2) Restrict allowed uses in wetland buffers to those listed in Wetlands in Washington State Chapter 8 Volume 2 – Protecting and Managing Wetlands (April 2005); and 3) Protect all wetlands as required by the Growth Management Act. She will mail the study referenced in her complete written submittal for the record.
Cheryl Rawlins – A South Kitsap resident who loves the trees and land. Owns and paid for her land, planted more trees and removed some dangerous ones. Over last 20 years watched neighborhoods grow. She believes that careless land use development led to the need for the Growth Management Act. Wildlife, fish and shellfish are the property of the State. This is stated in the Growth Management Act that also states that nothing shall impinge on the rights of property owners. Therefore she feels the draft Critical Areas Ordinance is contradictory unless people are compensated for land required for buffers and unusable to the property owner.

Art Castle – Submitted the Kitsap County Home Builders Association review of the draft Critical Areas Ordinance. His comments were technical relative to Wetlands. He encouraged the Planning Commission to recommend staff include authorization for use of low impact development techniques. The current draft eliminates the prohibition of stormwater facilities in buffer areas but does not authorize any specific action. Additionally, the HBA has the following concerns: The Habitat Management Plan shows lack of criterion. He finally encouraged the Planning Commission to consider a recommendation that if a property has limited use due to critical areas and its buffers, that that amount of land should be deducted from the property tax base. The complete HBA review is part of the record.

William Palmer – land use consultant questioned the need for an updated Critical Areas Ordinance by a date certain. There seems to be a push to get the draft to the Board of County Commissioners by a specific date. Not certain where this mandate comes from because he could not find a requirement for enacting a new ordinance by a certain date, specifically by December of 2005. The Growth Management Act does however stipulate that Best Available Science must be consulted when developing the ordinance. He believes there are unnecessary regulations in the existing ordinance. Palmer thinks
County staff needs to take the time to research current regulations as to effectiveness or not. He does not think it is necessary to have an ordinance just for the sake of having an ordinance. The County needs to address specific problems that have not been identified. Palmer does not believe that staff has taken the time to research whether the current Critical Areas Ordinance does or does not cover specific needs. Studies are needed to demonstrate if a need exists. He believes such studies would show no problems exist. Palmer was concerned that the draft has no benchmark or sunset clause. Important not to add additional regulations without sun setting outdated regulations. Next, Palmer had a concern with process. He asked if the draft ordinance has been subjected to compliance with the Shoreline Environmental Protection Act (SEPA). Next he asked how this draft came to be because he does not see where any work was done by a stakeholder group. His concern stemmed from the Zoning Ordinance that was developed with very little technical review. Palmer said he works with County ordinances everyday and has a good prospective on what works and what doesn’t. His final point relates to the Best Available Science issue. The Growth Management Act states in Section 36.70.a.172, that Best Available Science is to be consulted. He said that literally volumes of Best Available Science have been presented to County staff, to the Planning Commission and ultimately to the Board of County Commissioners. Since he cannot find where any technical review committee was asked to make a Best Available Science determination for reference, he questioned which Best Available Science the County intends to reference and who on staff or what consultant has the credentials to review the draft document to determine which Best Available Science should be used to construct the Critical Areas Ordinance. He asked who could make that final judgment. Palmer did not think the County knows what the Critical Areas Ordinance needs to do. Until someone makes that kind of assessment, the County is wrong to try and enact an ordinance that may or may not be affective.

George Warrington – A South Kitsap resident, agrees with Jack Hamilton that the existing Critical Areas Ordinance draft needs revising. He said there is a healthy abundance of wildlife in Kitsap County. He listed several specific creatures to be found countywide. Next he addressed the definitions of riparian areas. He takes exception to definition found in Section 19.150.595. It states that
Riparian Area means an area of land that supports riparian vegetation and “may” include some upland areas, depending on site conditions. He researched this and found a definition in a biotech dictionary that defines a “riparian area” as an area “between” a stream or other body of water, and the adjacent upland, identified by soil and distinctive vegetation. The latter definition is also in agreement with Webster’s and with no reference of inclusion of upland areas. The subject of a riparian habitat is also discussed in the Executive Summary of Washington Department of Fish and Wildlife/Priority Habitat and Species Management Recommendation for Washington Priority Habitats: Riparian. He found this on the Internet that also stated, Riparian habitat is discussed as being a relationship with “adjacent” aquatic and upland ecosystems. Warrington thinks that the definition given in 19.150.595 is saying that for instance, Oregon is between Washington and California but a portion of Oregon is in California, including uplands. In conclusion, he requested that the Planning Commission recommend disapproval of this Critical Areas Ordinance to the Board of County Commissioners. Further, that the Planning Commission recommend to the Board of County Commissioners that the Critical Areas Ordinance be redrafted, relative to Riparian Areas to be consistent with the testimony stated above. Next, he discussed the Habitat Management Plan that has multiple definitions depending on where you look in the Critical Areas Ordinance. The first one he referenced was section 19.150.400 that defines the Plan to be for use by a professional wildlife biologist or fisheries biologist to evaluate critical wildlife and fish habitat functions. They also evaluate for measures necessary to maintain, enhance and improve habitat conservation on a proposed development site. Section 19.3000.315, defines the Plan as a site investigation to evaluate for potential presence or absence of a regulated fish or wildlife habitat affecting a subject property and proposed development site. Based on these definitions, the proposed Critical Areas Ordinance does not provide the County Department of Community Development finite knowledge or direction for processing a permit for property development. If a Plan is created and attached to a property for development, what is to prevent conditions of the habitat changing due to uncontrolled environmental changes and/or the regulated fish or wildlife species present at the time the Plan was implemented, no longer existing. If a permit were not initiated for property development, a Plan would most likely not be created for a specific property because habitat was...
not documented. This is due to a citizen’s “right to exclusion.” It is also unlikely that the County has the resources to effectively apply or monitor enforcement of the proposed Chapter 19.300.315. The above statements also apply to Chapter 19.700.720 that goes into the permitting process. Based on the concerns listed above, Warrington requested that the Planning Commission recommend disapproval of the draft Critical Areas Ordinance to the Board of County Commissioners and also requested that it recommend the Critical Areas Ordinance be redrafted consistent with the above-stated issues. Finally, he discussed buffers. In section 19.300.315, buildings and buffer setbacks impose buffers without an explanation or a scientific justification. This section effectively permits government to first define the boundaries of a wildlife conservation area. This is followed up by imposing a buffer around that area without justification. Wildlife Conservation Area is not found in the definition section. Section 19.300.315A, inclusion of the enhancement of buffers is clearly in excess of the Growth Management Act requirements and is not supported by the Growth Management Act. Warrington recommends the Planning Commission recommend revising Section 19.300.315A to fully document the scientific justification for buffers. The revision should include the scientific process by which wildlife conservation areas are to be established. Further, the revision should include the process by which monitoring and evaluation of buffers is to be effective. Warrington requested the Planning Commission recommend to the Board of County Commissioners that the Critical Areas Ordinance be redrafted to be consistent with above-stated concerns. (Complete written testimony on file).

Lois McMahan – South Kitsap resident, thanked the Planning Commission for the opportunity to express concerns about the Critical Areas Ordinance. She counted decision concerning private property in the second draft of the Critical Areas Ordinance. In the first 35 pages of the document, the Department, the Director or the Director’s designee are responsible for 511 judgment decisions concerning private property. If that trend continues through the entire document, the number will mostly likely be over 1,000. To multiply this number by the number of individual parcels in Kitsap County indicates that enforcement is impossible. Decisions regarding property bought and paid for are being turned over to unelected officials. She said this is taxation without representation.
At the roundtables of the first draft, the public made it clear that the current Critical Areas Ordinance is too restrictive yet nothing changed in second draft. She also asked what problems is the current draft solving. She requested that the Planning Commission look at a draft that addresses specific problems. The authors of the current draft have bragged that more flexibility is built in, however this flexibility occurs at a high price to the property owners in the form of consultants, experts and permit fees. Last year she door belled a gentleman who was the director of the EPA in a previous administration. He said that buffers in east coast states are no greater than 25 feet and most only 15 feet. As attested to tonight, there is no need for buffers over 30 for filtration, etc. Asked the Planning Commission to look at any problems and address those problems only in a new draft.

Tom Donnelly – A South Kitsap resident speaking for himself and Kitsap Citizens for Responsible Planning (KCRP). He and members of KCRP have already submitted extensive written testimony for the record. This ordinance is one of the most important tools for responsible planning in Kitsap County. It defines a large part of the County’s vision for the future to protect quality of life over the long term. It is not necessary to establish the one true path for all time, only that we do the best with what means are available. Successes must be able to correct the course to correspond with other’s vision. The only absolute in this process is that activities are not sanctioned that could impede achievement of either’s vision. KCRP has a major stake in this Ordinance. KCRP commends County staff for their dedication and confidence to prepare the draft before the Planning Commission tonight. Donnelly’s group likes to think of it as a living document. It builds on its predecessor with changes learned by experience and application of contemporary science. This is a good document but it can be better. When one thinks of the devastation left by Hurricane Katrina reveals that even the best laid plans can go awry. A flood plain that can be used for extensive development, can be disastrous when the river undermines or overflows the channel. Flood planes and wetlands, fish and wildlife habitat and aquifers, all function to provide vital services. It would be folly to disable those functions. KCRP strongly advocates countywide expansion of the Planning by Watershed concept, demonstrated by the Chico Creek Watershed Project. This will identify habitat and species of local importance. Flood plains, wetlands and aquifers. Watershed by
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1. watershed, this information can be incorporated into the Critical
2. Areas Ordinance and a determination made to designate them for
3. particular levels of protection. A linked trail network to enable
4. wildlife travel within and between watersheds could also be
5. designated. 2) A comprehensive strategy for stormwater
6. management that protects streams, lakes and aquifers from
7. contamination and protects downhill property from unmanaged
8. runoff. In many cases this is the function of small wetlands and
9. should not be exempt from protection. Thus the Critical Areas
10. Ordinance should incorporate low impact development. 3) A marine
11. shoreline buffer of 150 feet to protect Puget Sound and Hood Canal
12. from contamination and to provide fish-rearing habitat. 4) Donnelly
13. recommended limiting buffering averaging to avoid any more than
14. 25% reduction.  5) The ordinance should include a plan for
15. containing the migration of contamination into aquifers and wetlands
16. and using the mid range of buffer protections recommended by the
17. Department of Fish and Wildlife. The KCRP does not envy the
18. Planning Commission’s task. KCRP thinks staff has presented a
19. good product and asks the Planning Commission to recommend
20. approval to the Board of County Commissioners.

Ladeva McMahan – A resident of Olalla, said she is not a scientist but
loves nature, this country and the rights it is built upon. She is an
abstract thinker and from this perspective, she referenced an
example of a dream that related back to one purchasing land, subject
to certain conditions to regulate yet regulations that are too
restrictive. She then specifically compared this hypothetical dream
to the current draft of the Critical Areas Ordinance. She believes that
if she is a good steward of her land, she does not restrictive
regulations or breaks the law, she is hurting no one. The
environment is important but so are the people who are stewards of
the land. She asked that the Planning Commission ask all the
questions necessary to make the right recommendation. There is a
long history of why people are allowed to own their own property.
She asked if this ordinance is constitutional. She referenced a
situation where her brother has been trying for a long time to get a
permit to clear some trees from his own property that he saved for to
buy. She believes that if a person is irresponsible and builds on an
unsafe piece of land, and the bank gives way, then he should be
punished, after a crime is committed. In other words, if a property
owner wants to build on unsafe land, it is his responsibility.
Irresponsibility should be punished but they need to break the law first. She also felt that enforcement of this ordinance would be a problem. She questioned if a Sheriff’s deputy would be asked to go out with a gun and enforce the regulations in this ordinance. Finally, if enforcement is not intended, then why have a law in the first place.

Mike Shardleman – A Poulsbo resident, said he attended 80 years of the school of hard knocks. He is a veteran of WWII and one of the few remaining citizens who gave people the right to sit here tonight and speak English, not German or Japanese. He did not believe this to be the constitution he defended. Believes the United States is no longer a constitutional nation, a nation of laws, and that the laws are God given, rights, not given by man. He said he does not remember giving his property rights away and does not remember voting to give away his grandchildren’s future. He also does not remember voting on the Growth Management Act. He did not vote to give his property to the government for their benefit. Most of governmental functions today are by committee or by commission. The Russians called it commissars. Tonight the citizens are disagreeing over a point with no basis in the Constitution. He cannot find anything in the Washington State law giving government the right to legally take people’s land. He suggests that government return back to we the people as a government. Tonight he heard the idea of best science. Around 1400, best science at that time said the earth was square and flat. He again suggested that the Planning Commission listen to what is said then verify that what is said, is true. So far tonight, he has heard very little fact.

David Grellier – Is an architect in Kitsap County and involved with environmental reclamation projects. He has heard a lot of talk as to whether all Critical Areas Ordinance regulations are actually working. Maybe yes, maybe no. He sees eagles, salmon in clear creek, walks a trail in the middle of Silverdale because someone had the wisdom to create buffers on either side of Clear Creek. His main reason for speaking tonight is to address specifics of the draft ordinance. His work is more on the receiving end than the creative end of these legal issues. His job is to enable his clients to accommodate houses on their properties. He has been working with the existing ordinance for years and has found the County staff helpful, attentive, and receptive and to this point has had no problem with enabling a project to proceed. He said that probably no one likes buffers but they are a
place to start and it is good to see flexibility in application. He
requested to take the flexibility further and to consider the nature of a
proposed development, or site specifics. You can have good or bad
development on property. He felt that if a proposal is put forward
that is sensitive to the environment around it, then that should be
given equal consideration. Sees no difference between placing a
home within 5 feet of a stream than having a lawn that is 50 feet back
and saturated with fertilizer. Actually there is a big difference, one is
obviously better than the other. He asked that something be stated
in the ordinance to enable development that may not technically
adhere to the buffer requirements but is sufficiently environmentally
sensitive, be given equal consideration.

Dave Dahlke – A South Kitsap resident, said that whenever an
ordinance is enacted, there is a purpose for it. In the case of the
Critical Areas Ordinance, the purpose has been established to
protect and identify critical areas as required by the Growth
Management Act. His questions are: 1) Why is the Critical Areas
Ordinance also being used to develop and expand critical areas. 2) If
the goal is to preserve beneficial functions and values of critical,
where can a person find beneficial functions and values of each
specific designated critical area. If this information exists, what
results have been documented as to the Critical Areas Ordinance
compliance. 3) Why is an expansion of controlled property under
the Critical Areas Ordinance only seen and not a reduction of control
of critical area. He has been led to believe that there really is no
justification required expanding critical areas but if critical area
control were lessened, justification would need to be made to the
State. In Dahlke’s opinion, Kitsap County does not want to deal with
justifying a decrease in critical areas to the State, but by expanding
or altering critical areas, the County will satisfy the State’s
requirement to update the Critical Areas Ordinance.

Bill Matchett – A resident of Central Kitsap and former Planning
Commissioner, said he understands what the Planning Commission
is going through. He has already written a letter that is in the record
and at this hearing he is representing the Hood Canal Environmental
Council (HCEC), a citizens group trying to preserve Hood Canal. He
thinks that at this time, there are problems with the Hood Canal and
that a 35-foot buffer along the Hood Canal is simply insufficient. If
the Canal is to get the protection it needs plus spending a lot of
money solving the dissolved oxygen problem. Also, the eel grass, hearing and smelts that the larger species depend on for food need to be kept safe. The Department of Fish and Wildlife states that the proper buffer for the Hood Canal needs to be 250 feet. He recognizes that politically this will not be achieved but his organization is asking for a 150 feet in lieu of the present 35 feet in the ordinance. Everyone agrees that there are property rights but there are also community rights. Part of the problem facing the Planning Commission and the Board of County Commissioners is to balance those against each other. Sometimes they come into conflict. For those who say if you are going to interfere with my future profits you should give me some money,” someone with an illegal meth lab could say that. The fact is there are laws that must be obeyed and his organization says that laws to preserve critical areas are laws that should be obeyed and that no one needs to be reimbursed if they are obeying the law.

Ron Rice – A South Kitsap resident, read a passage from an article regarding degradation and the many reasons for loss of amphibian decline. The article said we are living in a global soup of chemicals. One thing he emphasized was the cost to property owner. He presented references to the original Critical Areas Ordinance plus changes to the second draft. The 128 page second draft is too lengthy to comment on all of it. He referenced Section 19.100.110, Applicability-original Critical Areas Ordinance and 19.100.105..2.8.1 in the second draft and asked that this “catch all” authority statement be deleted. It is non-specific and would leave citizens with an unknown and unknowable requirement for complying with the Critical Areas Ordinance hanging over their heads. Next, he reference Section 19.100.140, original Critical Areas Ordinance and 19.150.190, second draft, Reasonable Use Exceptions. He asked that this entire chapter be deleted. He believes it is contrary to the Federal and State constitutions as well as contrary to the Growth Management Act and existing case law legal decisions. He said the County couldn’t assume control of private property and then leave it to the property owner to hire outside consultants to prove the County has no jurisdiction. In addition, the applicant first pas for a County mandated report to be written and then is faced with an additional fee for the County to review the report. Rice submitted four pages of written testimony referencing specific sections and requesting changes, revisions and deletions. He expressed concerns about: costs and fees requesting reimbursement, unnecessary burdens on
property owners, lack of qualified technical experts on the
Department of Community Development’s staff, an appeal process to
review staff decisions and specific scientifically justified
requirements, not opinions. In conclusion he requested that the
Planning Commission recommend disapproval of the draft Critical
Areas Ordinance and that the Planning Commission request that the
Board of County Commissioners redraft the Critical Areas Ordinance
to comply with the actual specific requirements of the Growth
Management Act and other legal findings which modify such Growth
Management Act requirements. (Complete written testimony on file).

- John Taylor – Some years ago the Planning Commission
reviewed zoning changes and he is trying to connect the name.
He asked if Rice is involved in a development project and if so
for how many years and does he have his permits yet.

Rice – Have not yet gotten the property back to the condition it was
eight years ago and it is still not up to standards to develop. The site
is near Blackjack creek. He does have some property that was
Commercial back in 1996, down zoned in 1998 and took until
December of last year to get the zoning back to Commercial. He
mentioned an article stated that salmon runs were back in Blackjack
Creek but he has not noticed any significant difference from years
ago. He does not see where the draft Critical Areas Ordinance will
solve any problems.

BREAK

- Chair Mahan – There is a possibility by 10 PM but this means
that people will need to limit their speaking time. If the list of
speakers is not completed, this hearing will be continued to
another hearing. Those who did not get a chance to speak
tonight, will be first on the list to speak at the next hearing.

Joseph Bell – As a citizen he was honored to participate in this
process. Said it has become clear the current Critical Areas
Ordinance draft is not complete and has some significant problems.
He understands Kitsap County has the most shoreline and is the
second most densely populated county in the State and possibly the
nation. Bell asked the Planning Commission to recommend denial of
the second draft of the Critical Areas Ordinance.
Avon Card – A resident of Manchester in South Kitsap, referenced several sections from the draft Critical Areas Ordinance with a recommendation for revision to each. She highlighted some of these such as, 19.100.105.A, Statement of Purpose. She said this is supposed to be a supplement to an earlier zoning ordinance and it refers to several current critical areas regulations. She could not find anywhere what was wrong with the current Critical Areas Ordinance. She recommended the need be stated for this document and the problems solved by adding more regulations. She asked if time and money should be spent to fix an ordinance that already works. Next Card referenced Section 19.100.105.B, Policy Goals. This section uses terms such as quality of life, and functions and values that can be interpreted in many ways by future county authorities. Here she recommended that these terms be defined so that property owners know the real reason for the regulations and can recognize the whether their property falls under these terms or if their property already complies. In Section 19.100.115, Relationships to Other County Regulations, she thinks this section gives the Department the last word with the provision that in case of conflict with any other Kitsap County code the answer will be that that provides the most protection to the critical area. Since she feels the cost of appeal for this is so high, Card asked that this section be deleted. In the same section, second paragraph, finishes a list of state and county laws that apply. Card recommended that the Constitution of both the United States and the State of Washington be added to the top of the list. In Section 19.100.135.G, Variances, states that public utilities have the right to exceptions to restrictions. However this requires possibly the property owner to mitigate when feasible. If the preservation of critical areas is essential, how then is it possible to mitigate a violation and who pays for the mitigation to the property that the utility is crossing. She recommended the County provide specific information on this. Section 19.100.160, Inventory Provisions, paragraph two, states that Kitsap County is required to inventory critical areas four times a year. This would cost most of the County budget each year if this becomes a law. Card recommended this requirement be researched and rewritten. She also has problems with putting bike paths, easements and viewing points on her property. (Complete testimony in file).
Dave Card – A Manchester, South Kitsap resident, said that 95% of the people are good stewards of their land and intend to continue being such. The County is proposing to put too much into law with the Critical Areas Ordinance. He said that not only are there statements whose meaning is unclear but there are also unclear definitions. He wondered what other requirements will be implemented after this. There are a couple of items that stand out to him. These are: 1) The term “reasonable” has such a broad meaning that hardly any two people would come up with the same outcome; and 2) Who makes the determination and to what degree of enhancement applies to the phrase “restore to re-existing condition” or to “enhance” the condition. He also questioned the desire to protect fish and wildlife in Rich Passage where he lives, yet the State ferries, and people are now trying to get the Passenger Only Ferries back on the Bremerton run that destroy fish life in the narrow channel. He does not believe that the County government has the right to force a private property owner too give access to pedestrians bicyclists and view point use in order to repair or construct a private road on private property. He asked who would be responsible for any liability if this goes through and who will select the users. Card believes that private and public roads should be separate. If a public bike path is located on his property and who will clean up after users, who will police it. There is enough public land without requiring private property owners to give up part of their property for this use. This is taking of private property for public use. Other issue Card addressed is that utility crossings belong in rights of way but not on private property. The government should have to do condemnation and compensate the property owner. Card recommended that the words “etc.” and “and” be removed as they leave the requirements that private property owners must give up their rights for, open ended. He encouraged staff to make an item 3.a to address private roads. (Complete written testimony on file).

Tim Matthes – President of Kitsap Alliance of Property Owners KAPO, addressed property and individual rights. He sited specific sections in the Critical Areas Ordinance, commented on each and made a recommendation to the Planning Commission. First, Section 19.100.120 , Matthes said this paragraph addresses activities related to the adherence to an ordinance that does not address impact of such adherence to the rights of the property owners or the mandated protection of those rights. KAPO recommended that a new
subparagraph 5 be added relative to protecting the impact on the
rights associated with property ownership. Growth Management Act
requires that the rights of property owners be protected and the
existing paragraph he did not believe met this requirement. On
19.100.130 C, a paragraph Matthes said clearly establishes the
illogical basis for much of the regulation contained in the title. The
paragraph recognizes a threat to life or property and then discusses
in 10 lines a process that may resolve the condition. He believed that
in the instance of danger to human life or property, the property
owner’s insurance company might find reason to honor a claim. For
this paragraph, KAPO recommended the paragraph be deleted and if
not, be expanded to discuss and demonstrate how the County will
assume liability for any injury caused by a danger tree. Moving on to
40.19.100.135.A.1, Matthes said this paragraph makes provisions for
a variance to the regulation if a property owner applies and can
demonstrate that he/she/they is not enjoying the same rights and
privileges of other property in the vicinity. Unfortunately, he believes
that constitutionally protected property rights do not depend on what
others in the neighborhood may want to do or are allowed to do. In
addition, the concept of privilege associated with the right of
property ownership is inappropriate. KAPO recommended that this
paragraph be rewritten to require variance if a property owner
demonstrates violation of basic protected property rights. Next
Matthes addressed Section 19.100.135.a.2, that he said effectively
established a permanent prohibition on use of property by limiting
actions of future owners because of actions of prior owners. The
paragraph does not identify how those restrictions are to be
documented or reflect in the transfer of title to the property. Matthes
continued on to address Section 19.100.135.A.5 requesting deletion;
Section 19.100.135.D, requesting deletion of the entire paragraph and
any further references to “reasonable use” concept; Section
19.100.150, recommending deletion; Section 19.10.155.C,
recommending rewriting of the entire paragraph; Section
19.100.165.B, recommending rewriting to follow a proper lawful
process; Section 19.200.205.C, recommending deletion of the entire
section as being false and misleading; Section 19.200.255,
recommending deletion as this section is an insult to citizens; and
Section 19.300.315.A.10, recommending deletion of this provision as
being arbitrary in nature and constitutes a “taking.” (Complete
written testimony on file)
• Ahl – Asked if this testimony replaces the August 22, 2005 transmittal of KAPO’s comments and was told it does not replace it is in addition to the original document.

Ginger Sommerhauser – a Central Kitsap resident, commented about remarks about lack of public participation, noting she has had several opportunities to comment and disagrees with those who say otherwise. She proofread the May 17, 2005 version of the Critical Areas Ordinance. Sommerhauser made comments and questions and submitted these to the Department of Community Development on September 15, 2005.

Kerry Riplinger – Requested that all questions raised relative to the Long Lake study session be answered before the Planning Commission makes its recommendation to the Board of County Commissioners. Riplinger believes that buffers and setbacks constitute property robbery. When the public hearing was held on the first draft, roundtables were held but none of the County staff could answer questions that night. Asked if a study group reviewed the current draft. He said this is important because he believes it is a taking of land. The government says a person must be compensated for such action. The ordinance states the property restrictions must be written onto her deed and that she must pay for it. The County has no right to take her property. She believes the Growth Management Act requires that the County review not rewrite the current Critical Areas Ordinance. This proposed draft is one more reason why people mistrust their government. In conclusion Riplinger said the Planning Commission could rekindle trust by recommending denial.

Scott Henden – Kingston – Reflected on what he believed to be the loss of power on the part of the citizens. He believes the County should be helping to provide business opportunities instead of passing more restrictive regulations. He said this is not the first or the last round of County restrictions. This is just the latest one and he believes there will be more after this. Henden expressed frustration with regulations that continue to be passed with what he feels to be without justification. He compared this to the law of diminishing returns and questioned the County’s position on buffers. He asked what is known for sure or what can be said in court that is known for sure. He also wanted to know who is responsible for the,
in his opinion, unnecessary and unwarranted changes. His answer: No one is. However at this meeting, the Planning Commission is responsible. Henden asked that the Planning Commission tell the Board of County Commissioners that it does not recommend approval of this draft ordinance. He believes it does not matter whether the Planning Commission approves or disapproves. He addressed what, in his opinion, will happen if this ordinance is enacted by the Board as drafted. He said he will not give his property to the County and that it is about Reasonable Use. Henden said it matters to him about freedom and the America he knows. He asked the Planning Commission to tell the Department of Community Development not to approve the ordinance, it is not the right thing to do for the people of Kitsap County.

Harriet Norwood – A resident of South Kitsap presented a packet of Conservation District material. Her family was presented the Arbor Day award by the Governor. She presented a petition with names gathered of people opposing buffers. She noted that Norm Dicks felt 200 feet was way too much of a taking other counties have far less footage. She said her family farm, the Root Farm, has Ruby Creek running through the property and is dry from May to November. She invited Commissioner Endresen and the Department of Community Development Director, Cindy Baker, to come out to the farm before the final decision on the ordinance is made. Norwood noted that deer, raccoons and bats are prolific on the property. Also fish have returned to the creek. Norwood requested that the Planning Commission recommend denial and that the Critical Areas Ordinance be redrafted.

Jean Bradford – A Central Kitsap resident said there is no need for this ordinance. She said it was her opinion that the County is trying to track the wrong animal and that the Critical Areas Ordinance as drafted would compound problems and increase the cost of homes and property. Bradford did not think that the current Critical Areas Ordinance has been found to be out of compliance with the Growth Management Act. She did not think a new version was required and that this is what the County wants to do. Bradford thinks it is a staff project but not for the citizens. Bradford asked that the Planning Commission recommend denial of the ordinance to the Board of County Commissioners. She suggested there will be lawsuits over the takings issue and that the taxpayer will have to pay the cost.
Bradford said that staff admitted they have not considered what property owners will have to pay plus this will go to help create more government jobs for people to enforce the regulations in the ordinance.

Robert Crittenden – A resident of Sequim submitted previous comments relative to wetlands ratings. He said the new wetlands rating system is beyond repair. KAPO asked him to state that the County staff, he said, has failed to identify in the draft ordinance, the scientific studies on which it is based. When reviewing a particular section, there is no reference to any scientific studies. Crittenden feels this needs to be in the ordinance to know the scientific basis used for each section. Lastly, the ordinance, he feels, presents a general rule instead of specific to individual parcels. He referenced a court case that requires this. There is no “one size fits all” rule. In his own comments he submitted previously, he feels the science is not identified specifically in the ordinance. The County states the science is based on recommendations from the Department of Ecology. The referenced book does identify the science on which it is based. It is a 1999 study. The 2004 study is simply a modification of the 1999 study. Crittenden said that the 1999 study is a result of a committee meeting, not a scientific study. He had previously thought that a sensitivity study could be conducted and then changing ways in which particular elements of the wetland rating system. When he attempted to do this, he discovered what he believes in that the rating system is beyond repair.

James Sommerhauser – A resident of Central Kitsap said that based on information presented at this meeting on takings, he recommended that the Planning Commission constitutional lawyer to discover the difference between takings and land use limitations. Takings is covered by the Fifth Amendment of the Constitution and land use limitation has been used in this country since before the Constitution and is generally found to be constitutional and legal and does not require payment. Next, he congratulated the Planning Commission stating they were over half way done relative to the fact that at this meeting it has received testimony on three parts of the Critical Areas Ordinance but next to nothing on the other three parts. For Instance, Geological Hazardous areas, Frequently Flooded areas, Critical Aquifer Recharge areas except for the issue of permit fees, can be approved. To those people who said do not do anything with
the new draft and stay with the existing ordinance, he felt there is one problem. In the existing ordinance, one can only get prescribed buffers. In the proposed draft, one gets variable buffer based on-site specific information. He addressed a table on pages 36-38 that list 18 increased buffers based on type of wetland in use. There are 23 decreased buffers and five with no change. Also, the proposed draft allows for a 50% administrative reduction. Next Sommerhauser referenced the issue of property tax reduction. He would prefer the draft spelled it out better but in fact one is able to get a property tax reduction. He suggested that the language in 19.200.255 be added to for more information on how to achieve this goal, but if one is going to own parcels they cannot use as desired, they deserve to get a break on taxes. His last issue is process. This is the process of governmental legislation. He suggested staff obtain someone to research legislative history. He thinks they will discover that one thing the legislature looked at on the critical areas portion of the law is that they wanted citizens to create limitations based on Best Available Science. They realized that science and its interpretation changes and they want staff to periodically review its critical areas process. The law does not require the County to make changes but does say if the science has changed, the County needs to make changes. In this process, very seldom will occur a specific problem, a specific scientific study and a specific way to change the law. The County will get “sausage”, some good, some summarization of multiple studies and some of which are specifically applied to the Kitsap County area and some of which are not. Staff’s, the Planning Commission’s and the Board of County Commissioners’ job is to take all information presented and do the best possible. It is not to have a specific reference to a specific problem, a specific study and a specific change. This can be done but the property taxes will be more than most anyone can afford. On behalf of those names that have been announced since 9 PM and since they may have read one of two announcements read for the next meeting, he suggested they be given an opportunity to speak if there is another public hearing. Growth Management and critical areas is similar to every time you look at it, it is subject to different interpretation. It should be more finite but it is not. Sommerhauser said that there is enough benefit in the new draft that major portions of it should be enacted. He has worked with various staff members of this draft and he assured the audience that individual staff members do not have a personal agenda and are trying to give the people of Kitsap County the best
product possible. These people are working hard far beyond what the County pays them and he asked that the citizens give them some credit for all their hard work. Staff does need to be made accountable for their product but it can always be better.

Chris Danielson – A resident of South Kitsap reviewed the twelve policy goals. She recommended that these not be done step by step. She believes these twelve goals are not written in a clear and cogent manner. She believes they are ill defined, poorly written and have no actionable intent or realistic implementation. Ambiguous and subjective terms based on personal opinion should not be used. She gave examples such as the term “value” and questioned if these were monetary values, whose values, what monetary system are these based on. Protection is a word used frequently in the draft ordinance. If there is no basis that any protection is offered or provided, Danielson could not find where protection was offered by an actionable intent. Five of these policy goals, numbers 4, 5, 6, 7 and 12, have vague and arbitrary statements on proposed action that cannot be accomplished without violating Planning Goal 6 of RCW 36.70A.020. Geological Hazards, Goal 8, she questioned if this was already taken into account by building regulations. She questioned geological factors and potential hazards as being a condition of securing any building permits. She thought this sentence was added for the sole purpose of exerting more control. Policies 5 and 12 need to be addressed together because they are in complete contradiction with each other. Policy 5 addresses the preservation of the habitat etc. Preserve means to maintain in its original or existing state. term used in Goal 8 highlighted the one on quality of life. Yet Goal 12 deal with mitigation. If the County allows a critical area as stated in Goal 12 to be mitigated, she thinks it is a complete violation of Goal 5. In Danielson’s opinion, the only thing this policy goal does is allowing government to make arbitrary, capricious and selective decisions in controlling development. Danielson asked the Planning Commission members to question a policy that sets out to define critical areas, yet that same policy allows the destruction of that same critical area in the form of mitigation. She asked that the Planning Commission no only recommend that the Critical Areas Ordinance be redrafted but that the entire process be rewritten to be consistent with the actual requirements of the Growth Management Act and of RCW 36.70A.010 that states in part “. . . It is in the public interest those citizens, communities, local governments and the private sector...
cooperative and coordinate with one another in comprehensive land use planning. She attended the roundtables and staff was asked questions but could provide no answers. The Staff was asked questions but no answers were provided. She continued on with more questions and was assured her comments would be considered in the next draft. Here is the second draft yet none of her comments and suggestions have been taken into account. She attended the roundtables but was given no indication that her comments would be taken into consideration in the next draft. She believed the only thing this policy does is allow government to make arbitrary, capricious and selective decisions in controlling development. Again these are only comments on the first twelve policy goals. If these twelve goals cannot after two years to be comprehensible, she believed there was something wrong. At this meeting she has heard from attorneys, scientists, engineers, all who said they have provided their expertise yet it has not been considered or dismissed by staff. She did not feel this was an open process of dealing in a cooperative and coordinated manner with the citizens as is again required by RCW 36.70.A.010. She requested that the draft Critical Areas Ordinance not only be redrafted but scrapped. The entire process needs to start consistent with the Growth Management Act and the State of Washington.

- Chair Mahan – There are too many names left on the list to finish this public hearing at this time. He proposed considering continuing this public hearing at noon on September 27, 2005. Staff will be asked to notify everyone on the sign-in sheet who did not get a chance to speak.

- Coppola – Unable to make that meeting.

- Mahaffay – Wanted to make sure that every speaker still on the list be notified.

- Taylor – For consistency, recommended beginning at 3 PM, the same as this hearing.

- Chair Mahan – It depends on facility availability.

- Mahaffay – Why not set a different date.
• Taylor – What about the Silverdale Community Center.

• Mahaffay – Suggested another public hearing be set out two weeks ahead to allow for adequate public notice and to secure a facility.

• Jenniges – Agreed

• Ahl – Not sure the Planning Commission is ready to deliberate absent the remainder of public testimony. Therefore the two dates currently set for deliberation on September 26 and 27, need to be cancelled and a new date and time be scheduled following completion of the public hearing process.

• Chair Mahan – This public hearing will be continued to a date certain at the same times as today, 3-10 PM. Additionally, those people who signed up to speak but did no get their chance, will be notified and allowed to speak first.

• Ahl – Proposed that in fairness to those who did not get a chance to testify today, give them first priority under the same format used today. Following that, any additional people who sign up to speak, be held to a more stringent speaking time limit.

• Gustavson– Agreed that those who already signed up should have first priority but there still may be some who could not make this meeting but should have same right to express themselves time wise as those who spoke today. Beyond that, anyone signing up to speak for a second time, should certainly be allowed to speak, but at a stricter time limit.

• Jenniges – Concerned that this could be an ongoing debate. Therefore he concurs that those who did not get the opportunity to speak today be allowed the same lax time frame to speak as was used today. After that, any new ones be allowed to speak but that should be the last hearing.

• Mahaffay – Suggested it be made clear that the next public hearing before the Planning Commission is the last one, Dean’s
concern can be alleviated. Thinks that two public hearings covers the Planning Commission from a legal standpoint.

- Chair Mahan – Written testimony will be closed at the end of the second public hearing. He then thanked the remaining Planning Commission members and the audience for their patience and endurance.

E. Baker – Asked for clarification on the two meetings set up for next week, September 27 and 28. He asked if they were on or off.

- Chair Mahan – Suggested canceling those two meetings and reset following the second, and last, public hearing.

10:15 PM - No further business being heard, the meeting was adjourned.

APPROVED this ___ day of ____________, 2005.

Monty Mahan, Chair

Holly Anderson, Secretary

EXHIBITS:

A. Agenda for the September 22, 2005 Planning Commission meeting
B. Sign-in sheet for the September 22, 2005 Planning Commission meeting
C. Written testimony received from John Cambalik at the September 22, 2005 Planning Commission meeting
D. Written testimony received from Jack Hamilton at the September 22, 2005 Planning Commission meeting
E. Written testimony received from Robert Benze at the September 22, 2005 Planning Commission meeting
F. Written testimony received from Faye Henden at the September 22, 2005 Planning Commission meeting
G. Written testimony received from Dorothy Guice at the September 22, 2005 Planning Commission meeting
H. Written testimony received from Rod Reid at the September 22, 2005 Planning Commission meeting
I. Written testimony received from Richard Romane at the September 22, 2005 Planning Commission meeting
J. Written testimony received from Vivian Henderson at the September 22, 2005 Planning Commission meeting
K. Written testimony received from Don Flora at the September 22, 2005 Planning Commission meeting
L. Written testimony received from Doug Lions at the September 22, 2005 Planning Commission meeting
M. Written testimony received from Joan Gorner/Karl Duff at the September 22, 2005 Planning Commission meeting
N. Written testimony received from Gene Sherrard at the September 22, 2005 Planning Commission meeting
O. Written testimony received from Marian Berejikian at the September 22, 2005 Planning Commission meeting
P. Written testimony received from Cheryl Rawlins at the September 22, 2005 Planning Commission meeting
Q. Written testimony received from Art Castle at the September 22, 2005 Planning Commission meeting
R. Written testimony received from George Warrington at the September 22, 2005 Planning Commission meeting
S. Written testimony received from Ron Rice at the September 22, 2005 Planning Commission meeting
T. Written testimony received from Ayvon Card at the September 22, 2005 Planning Commission meeting
U. Written testimony received from Dave Card at the September 22, 2005 Planning Commission meeting
V. Written testimony received from Tim Matthes at the September 22, 2005 Planning Commission meeting
W. Written testimony received from Chris Danielson at the September 22, 2005 Planning Commission meeting
X. Written testimony received from Harriet Norwood at the September 22, 2005 Planning Commission meeting
Y. Written testimony received from Jean Bradford at the September 22, 2005 Planning Commission meeting
Z. Written testimony received from Martin Sebren, PUD #1, at the September 22, 2005 Planning Commission meeting with State of the Sound 2004 publication attached

AA. Written testimony received from Leslie Lewallen, Pacific Legal Foundation, at the September 22, 2005 Planning Commission meeting

BB. Brief prepared by Shelley Kneip dated October 4, 2003, Kitsap County vs. Central Puget Sound Growth Management Hearings Board, Kitsap County’s Opening Brief in Cause Numbers 04-2-02138-1 and 05-2-01564-8


DD. Letter from Holly Anderson, Planning Commission Secretary, to Planning Commission members, notification of hearing date

EE. Letter from Monty Mahan, Planning Commission Chair, to Planning Commission members regarding deliberations

FF. Sample ordinance, Fish and Wildlife Riparian Habitat Conservation Areas (Buffer Strips) Incursions and Openings

GG. Memorandum to Kitsap County Association of Realtors from J. W. Buell Ph. D, dated 21 January 2000, regarding Review of Kitsap County draft “Land Use & Development Policies”, “Critical Areas Ordinance” and supporting documentation

HH. Legal notice for the September 22, 2005 Planning Commission public hearing

II. Principles Governing State Agency Correspondence Under the GMA

JJ. PowerPoint presentation prepared by staff for public hearing overview

KK. Letter to Patty Charnas, Department of Community Development staff, dated August 10, 2005 regarding Kitsap County Critical Areas Ordinance, Second Draft, May 17, 2005