M I N U T E S

KITSAP COUNTY PLANNING COMMISSION

Public Hearing

Kitsap County Fairgrounds and Events Center

6:30 PM, January 9, 2007

These minutes are intended to provide a summary of the meeting flow and content and should not be relied upon for specific statements from individuals at the meeting.

The Kitsap County Planning Commission met on the above-stated date at the Kitsap County Fairgrounds and Events Center located at 1200 NW Fairgrounds Road, Bremerton, WA 98311. Members present: Dean Jenniges, Tom Nevins, Michael Gustavson, Lou Foritano, Fred Depee, John Taylor, Linda Paralez, and Brian Bekeny. Staff present: Scott Diener, Patty Charnas, Jim Bolger, Larry Keeton, Jeff Rowe-Hornbaker, Val Koehler, James Weaver, Dave Greetham, Lisa Lewis, Kathleen Barnhart, Dave Tucker, and Planning Commission Secretary, Christina Lindner.

6:40 PM

A. Commissioner Taylor calls the meeting to order and introduces the Planning Commission members present.

6:45 PM

B. Election of Officers

A motion was made by Commissioner Nevins and seconded by Commissioner Gustavson to elect John Taylor as Planning Commission Chair.

The VOTE:

Yes: Unanimous
No: 
Abstained: 
Motion carries

A motion was made by Commissioner Bekeny and seconded by Commissioner Gustavson to elect Lary Coppola as Planning Commission Vice Chair.

The VOTE:

Yes: Unanimous
No:
Abstained:
Motion carries

C. Approval of Planning Commission Meeting Minutes

A motion was made by Commissioner Nevins and seconded by Commissioner Bekeny to approve the minutes of December 19, 2006.
The VOTE:
Yes: 4
No: 1
Abstained: 1
Motion carries

D. Low Impact Development and Storm Water Drainage Code Change Deliberations - Dave Tucker, Public Works

A motion was made by Commissioner Gustavson and seconded by Commissioner Jenniges to move the LID presentation to the end of the meeting.
The VOTE:
Yes: 5
No: 1
Abstained: 1
Motion carries

Discussions held regarding the importance of the topic of Low Impact Development topic versus the Ordinance Remand topic.

E. Proposed Amendments to Critical Areas Ordinance Public Hearing, Patty Charnas, Manager, Natural Resources, DCD

Patty Charnas presents overview of the issues, background, and the proposed actions on the remand by the Growth Management Hearings Board of two sections of the Kitsap County Critical Areas Ordinance.

Gustavson requests a clarification on notice to title, buffer fencing or delineation, native vegetation requirements, trails in the buffer and how the additional small wetlands affects wetland sprawl.
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Charnas: Notice to title, buffer identification, native vegetation requirements, and trails in buffers are not part of the remand and remain in effect. The last topic would be best discussed during deliberations.

Harry Bechtel: This topic impacts waterfront property owners more than those that live downtown. In fact, the citizens along the shorelines sued the State of Washington to protect the property. We have steps in place to monitor sewage, shoreline protection, and run-off. The Enatai Beach community is also monitored. The Health Department stated they could not clean our stream because people upstream could not afford to make the repairs to their failing septic systems. With this ordinance I have undeveloped property that does not have sufficient space. I have no provision in my tax reduction but I must maintain that property. Fish and wildlife have told me salmon are spawning in front of my property. 86% of the Kitsap shoreline is now developed. The remaining 14% have plenty of restrictions in place at this point. I would like to eliminate the restriction.

Jacob Metcalf: I am with Young Democrats of Kitsap. I agree that affective marine buffers can protect critical near shore processes, functions, and values. I believe this is an excellent first step in adapting to massive environmental changes. In the Kitsap County Commissioner District 3 Election of 2006, 49,372 said “yes” to environmental protections. You have a broad mandate to protect the environment and greater good of Kitsap County.

Jean Rulette: I live at Lake Tahuyeh and I am a waterfront homeowner of three lots. We purchased the two lots next to us so our children could build. For 24 years we have been paying waterfront taxes on these lots. In the last three or four years we have been working with the county to build a bulkhead to protect the property. The lot my daughter wishes to build on is 119 feet deep. According to what I read here, it will be a 165 foot buffer. This lot is not buildable. For 24 years we’ve been paying taxes for nothing. I do not understand why it is jumping from 35 to 150. There must be room for compromise. One grumpy neighbor should not be able to prevent me from building. There is no lot on our lake 150 feet deep. Nobody on our lake would be able to build. Please reconsider the 150 feet being mandatory.

Bob Burkholder: I’m a resident of Bainbridge Island and have been for 25 years. I helped write part of the comprehensive plan for Bainbridge Island. Most of us know the key requirement of the GMA is that cities and counties identify and protect the natural environment’s most critical areas including near shore habitats. Puget Sound is in tough shape. Our governor is emphasizing the importance of restoring Puget Sound to the tune of $220 million. The tragedy of
hurricanes stresses the vital importance of these critical areas to our community.
Had not the extensive wetland deltas protecting that city been channeled and
further compromised by near shore developed, impacts of hurricanes would have
been lessened. We could possibly make similar mistakes in Kitsap County. Our
CAO should be about protecting sensitive habitats, not about devising
regulations to allow maximum encroachment on these natural God-given areas.
The GMHB has recognized that fact. I think the recent election provided you
another chance to demonstrate your dedication to clean air and clean water.
There are those who would rather put their personal gain above the welfare of
our community. Decisions are either for the common good or common greed.

Rod Reid: I am a South Kitsap resident and landowner. I am disappointed you
did not take general questions prior to testimony. Is Bainbridge Island part of this
remand? Do cities have their own critical areas? Is the urban we’re speaking of
not part of a city already? How do public roads like Beach Drive figure into the
picture? Do these roads change the designation or does the road become part
of the 150 feet?

Dave Greetham: The ordinance changes apply to unincorporated Kitsap
County, not the cities.

Depee: Is a LAMIRD considered unincorporated?

Greetham: Yes. To Rod’s second question, if we treat Beach Drive like we treat
other buffers in the ordinance, the road would create the stop point to the buffer.
We would not leap over the road and start the setback for a homeowner on the
other side of the road. The buffer would stop at the road.

Gustavson: If the buffer stops at the built environment, does the buffer also
stop at the bulkhead?

Greetham: No. The bulkhead is typically at the shoreline edge where the
setback starts.

Gustavson: Somebody living on the other side of the road, would not be in a
buffer?

Greetham: This has not been solidified yet because it is a new proposal, but if
we treat it the same as other buffers in the code, that is how we propose to treat
it.

Foritano: To Rod Reid, do you consider the remediation process onerous?

Rod Reid: Cost is going to be a factor. I think we have to be careful about
others dictating what we do while not compromising the shoreline.
Foritano: Is your objection on cost, principal, or both?

Reid: Both

Gary Lindsay: I reside in Silverdale and I am a waterfront owner in Chico. I ask that the urban growth boundaries have the same regulations today for the waterfront setbacks and for you to reconsider the removal of exemptions for wetlands. A great deal of nonconforming uses are going to be created within the urban growth boundaries and a significant number of waterfront homes will become nonconforming.

Lois McMahan: I live in Olalla. The GMA requires that the best available science be considered in developing policies and development regulations. The 2004 Fisheries and Aquatic Report of Marine Experts in King County and the Puget Sound Action Team members found insufficient evidence in the scientific literature to recommend any specific width of marine buffers. The largest factors affecting Chinook are ocean food supplies, spawning habitat, and commercial and tribal fishing. Six years ago, state senator Bob Morton rented a small plane and flew up the Columbia River. He observed that every stream flowing into the Columbia had a tribal net stretched across its mouth. We can gather from this observation that the lack of Chinook is not an environmental issue but rather a result of fishing. The fourth factor is predation by marine animals. Seals in Elliot Bay feed on the salmon returning to spawn in their streams of origin. The fifth factor is pollution from roads and industries. The National Marine Fisheries Service’s internal designation of all Puget Sound shorelines as critical habitat is not the best available science. Freshwater riparian studies are not relevant to title shorelines. They can no more classify all of Puget Sound and Hood Canal as critical habitat, than they can the entire Pacific Ocean. The GMA gives local jurisdictions the authority to decide these issues, so please don’t allow an unelected board of non-scientists to push the County around. Stand up for local control as the GMA intended.

Bernie O’Dea: I am against the 150 foot setback. If passed, a person owning one acre will not survive. I would like to see buffer reductions remain at 35 feet with best management practices.

John Cambalik: I am the regional liaison for the Puget Sound Action Team. Our comments are directed only at the marine shorelines. We appreciate and support the County’s work to propose an increase in the standard buffer width from 35 feet to 150 feet. We recommend staff and the Planning Commission consider an increase in buffer width for those marine shorelines that are classified as natural and conservancy exceeding the 150 ft buffer for other areas. We would like to reiterate our statement in our last comment letter that standard buffer widths may not effectively protect the functions, values, and near shore...
processes that fish and wildlife depend on along the marine shorelines. We encourage the County to closely track the scientific recommendations so that even stronger protective measures along the marine shorelines can be implemented in the future. We recommend the Planning Commission retain the formal variance process for all permit requests to reduce marine shoreline buffer widths included in the expert review of Washington Fish and Wildlife staff on the permit and the habitat management plans.

*Gustavson requests data regarding fish scales and fish survivability.*

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**Jay Robertson:** I live in the Suquamish area where many lots do not even go back 150 feet. I work for Windermere in Poulsbo and deal with shoreline properties. Taxes have gone up as well as waterfront property prices. People restricted to build on these are not going to be able to build their homes. Will this ordinance be going into effect February 23?

**Chair Taylor:** That is when the BOCC will be making a decision. The Growth Hearings Board gave us until 23rd to respond. The date is to be determined.

**Bolger:** The Growth Hearings Board set February 23rd as the deadline to take legislative action. It would be the Board’s adoption of the revisions to the CAO.

**Robertson:** If somebody has a current building permit in process, is it affected by this change?

**Greetham:** State law vests you under the rules on the day you applied for your building permit. Any existing permits ahead of any changes that have been applied for, but not approved, are vested under current rules.

**Frank Leach:** I live in Poulsbo, I own property in Silverdale and I am a realtor that handles many waterfront property owners. I’m representing Julius Templeton. None of us in this room were able to vote on the GMA. We were able to vote on I-547, which was soundly defeated because the citizens in Washington State were concerned about having issues taken out of their hands and that people living outside the community would be making decisions for those that do. I am concerned about the buffers in Kitsap County. Best available science seems to be sidelined based on the GMHB’s mandate to correct this issue. I do not see anything in the documentation that recommends 150 feet. I would ask the Planning Commission to consider where we are at 35 feet and not to embrace the 150 foot buffer.
Glen Jurges: I live at Enetai Beach and I’m representing 22 property owners. We oppose the 150 feet. The Critical Areas Ordinance took a lot of our back property away causing it to be non-usable. It took away 50% of my land. I am being taxed for a buildable site, but the county considers it unbuildable. Enatai Creek runs through our properties. It has been one of the most polluted creeks in Kitsap County. Septic systems are failing. There are slides along the area that have nothing to do with homeowners. There is no longer a salmon population in Enatai Creek. The State Sound Report released in 2005 said the leading problem with Puget Sound is stormwater pollution. A 150 foot buffer is not going to change that. The San Francisco Bay area is able to substantiate a 100 foot setback. We disagree with 150 feet; leave it the way it is until a more appropriate science can show us that 150 feet is better than 35.

Mary Bertrand: I represent the Chums of Barker Creek. This is about the problem of the one and the many. This is about the wants of a minority for the present and the needs of the majority for the future. This is about a tunnel vision look at survival or a holistic view of the requirements of unpolluted water and air for the health of generations to come. This is about the argument that the GMHB controls our lives versus the fact that their decisions are truly based on best available science. This is about “What’s in it for me?” versus “What is good for the community as a whole?” It is about how each of you perceives the wants of the few over the needs of the many.

Leo Schilling: I am from Bainbridge Island. It is very likely that whatever is adopted here, will likely be adopted on Bainbridge Island when their shoreline master plan is updated. My neighbors and I have 150 feet behind our lots. If we had this 150 foot buffer, a permit would not be issued to do that. I would appreciate an explanation of what can be done in addition to what cannot be done.

Tom Donnolly: I live in South Kitsap at a distance from marine shoreline. I speak on behalf of Citizens for Responsible Planning. KCRP believes the actions proposed by the County will satisfy the Hearing Board objection to the Critical Area Ordinance. Recent discussions among parties about compliance reveal that the shoreline designation will need modification to meet the standards of the new shorelines management act. The conservancy shoreline buffers and natural shoreline buffers are not likely to provide adequate protection in the future. However, natural features may continue to afford protection. There is signification merit to immediate action to create harmony between the shorelines management plans and the CAO. Such a project would be complex and disruptive of the County’s work schedule. More to the point, it is not necessary to comply with the Hearing Board remand. KCRP recommends that the Planning Commission endorse the staff proposal for compliance and recommends that the County undertake the project to update and integrate the critical areas in shoreline plans in the near future.
Faye Henden: My husband and I have lived on our property in Poulsbo for 41 years and have raised five children there. We want to see the county prosper. I hear confusing statements about quality of life and economic development. From what I hear they are very inconsistent. We cannot have both. Please consider the restrictions you are putting on the citizens of Kitsap County. Please consider that the buffers have not been scientifically proven. We are grabbing at things that we don't even know work. We want to see the county taken care of. We need an advocate for the citizens.

Break: 8:15

Tim Matthes: Reads William Palmer’s written testimony:
Seldom do legislative bodies have to work with the regulations that they pass. Consequently, they do not as a rule appreciate the absurdity of “one-size-fits all” rules. Kitsap County and one has to include state agencies in these comments, seldom if ever take time to study a problem, before solutions are drafted. As decision makers, what one of you has taken the time to analyze a site to determine how rules that are now in place actually work out? The answer to that question based on observations over a 24 year span of time is almost never. That is irresponsible government. To make matters worse, you set such short time frames for public notice and citizen comment that by design you clearly do not want to hear from the people most affected by the rules. There is no evidence that proposed changes in regulations will better address KC environmental circumstances. In short, where is the evidence that the proposed changes are justified? Since KC has not taken the time to evaluate the potential effect of the proposed regulations, it will be faced with either paying monies to compensate property owners or it will clog an already over-burdened permit review process with variance applications, reasonable use exceptions and administrative determination appeals. KC has not address how the existing structures and on-site improvements will be affected by the rule changes contemplated. Please note that one of the flaws of your 2005 adopted CAO is the definition of “Non-conforming use or structure”. Also consider the fact that there is no allowance for conformity in the wetland/buffer, stream buffer, steep slope setback or geologically hazardous slope setback regulations. Imagine the lawsuits brought against the County as a result of this oversight. This is an instance when the County is setting itself up for a lawsuit or the need to provide compensation for lost development rights to property owners. The CAO is not based on any serious study of the shoreline areas and makes no such environmental distinction. Therefore the County can not justify the proposed 150 foot buffer any more than it could defend the 35 foot existing buffer requirement. More important than these facts is the Kitsap County cannot preempt the work required in the SMP update with CAO regulations. There is more that could be said and, if time permitted, examples can be presented as to how the proposed rule changes would be implemented. However, it seems apparent it is not
interested in fact. If the Board seriously wants to pass legislation appropriate for
Kitsap County then the County needs to do its homework, study the issue in
detail and allocate enough time to hear from your constituency. Otherwise it
appears that the Board is nothing more than a gutless lackey of state agencies.
Also, it might be added that key state agencies have failed to do their homework
as well and these comments are directed at the State Department of Ecology and
the State Department of Fish and Wildlife. These state agencies want Kitsap
County to implement regulations that are not based on field studies either in
Kitsap County or Western Washington. Why the rush?

00:04:55 (2nd Audio File)

Bob Benze: I'm an environmental engineer and a property owner residing in
Silverdale. The County's own scientific experts recognized that the best
available science was both species specific and site specific. Instead of mapping
streams and shorelines to find areas where there is important habitat, the County
elected to classify all stream banks and shorelines as critical area and apply
highly generalized buffer zone criteria everywhere using buffer studies that, in
most cases, do not even apply to Kitsap County species or habitat. The best
example of stream mapping is the Maryland Stream-Mapping program. The 150
foot buffer being proposed has no more scientific justification than the previous
specific buffers. They are just larger blankets to ensure everything is covered. I
do not believe this is about preserving the land for species. Most wildlife in the
county is thriving. In the entire county no more than 5% of the land is developed.
I suspect the real reason is more political than scientific. It's more about the use
of the political system by people who want to retain the aesthetic values they
enjoy through the use of government regulations to impose controls all without
having to pay the property owners for the privilege. In Britain and Sweden the
government purchases the land, at least the development rights, when they want
to avoid sprawl and preserve open space. I propose the ordinance not be
approved, until the best available science approach is employed using site and
species specific criteria.

00:13:40

Karl Duff: I live in South Kitsap and I am a waterfront property owner. This
County elected to take what the Department of Ecology calls best available
science. You will find that Kitsap County is bringing up the rear. We have the
strictest codes, buffers, and over-reaching demands of all the counties. I am
going to defend my property rights. I will not pay variance fees and go through a
hearing examiner to try and buy back my property even to get a 75 foot setback.
The county has bland statements of grandfathering, but has no definition of a
grandfather clause. There are no cast exceptions to avoid variance processes
for people trying to buy back their property. I do not know whether the real issue
is the incompetence of the staff or the policy of the Commissioners.
Jenniges: Please resubmit your data.

John Holmberg: I live on Dyes Inlet and I have a functioning septic tank that is well maintained. I don’t understand how an additional 150 foot is going to help the fish and clams. I think we should get off the backs of the small landowners and go after the big operators. The City of Bremerton had 10 combined sewer overflows last year. They have two already this year.

Eric Sandall: I live on Tracyton Beach Road. I have 5 tax parcels affected by the issue. I don’t understand why 10% of the people that haven’t developed their waterfront properties have to be penalized to build a sub-standard home that would sit back in a tunnel. The waterfront issue has always been that you can’t build beyond someone to mess with their view, but here we are putting them back in a tunnel. At least 60% of the waterfront is a high bank waterfront that already provides a natural buffer. You can’t do anything with it. All counties in the Puget Sound area should be working this issue together. Here we are taking great expensive chunks of land. There will be an abundance of rich lawyers when this is all over.

Harold Erickson: I live in Kingston. The Seattle view tracks were created about 80 years ago. There are 61 waterfront tracks on one side and 50 on the other side. There is only one decent, buildable lot on the waterfront side. The rest have all been built on. It’s difficult for me to understand how restricting one lot on this road is going to have any effect on quality of water in Puget Sound. Most of these homes were built on the idea that you can’t block your neighbor’s view. Now one lot has to be behind all the others. When tide is out the land is rock and dirt with no vegetation. There are no trees on the vertical bank. A few people who own this waterfront property are selfish and greedy and don’t want to accept being restricted for the public good. I worked many years to earn the money to live better than my dad did when he retired. If they are saying we should give something up out of the goodness of our heart, I say no. If you want us to give up a place for our kids to live next to us, then you pay for the cost. It’s not our burden because we worked hard to buy this property. I resent a group of people who don’t own this property and make rules.

Jack Hamilton: I live in the Seabeck area. Citizens are told that the revisions do not impact existing development. The CAO does not agree with or support that conclusion. Specific sections of the law make it clear that all identified Critical Areas are subject to regulation. The only difference is the process under which the regulations are applied. All shoreline properties of the county, regardless of level of development, are by definition critical areas and subject to all regulations regarding critical area. Since the new buffers will be 150 feet and most properties are 150 or less in depth from the shoreline, most shorelines will become buffers in their entirety. Those properties not already developed will be unavailable for development because buffer mitigation will not be available for a reasonable cost. Future development action on those properties will be
precluded. The revision will make all shoreline property non-conforming, under
the regulations, and subject to the variance for any future developments. It
makes every location with standing water subject to determination as a wetland.
Because every shoreline is designated as critical area and because the ability to
establish a wetland is now wide-open, those areas are also subject to action by a
group bringing complaint or legal action against the owners. This action is
against people, not some intangible thing called shoreline.

Reed Burch: Much of the material I have read from the county is spurious. The
science does not follow through with the positive impacts of those living on the
shorelines. There are hundreds of things that are not discussed that can mitigate
anything concerning shoreline. The organization that has the most experience
with remediation of shorelines is the Army Corps of Engineers. They will tell you
that these bulkheads are not the best bulkheads to have.

Rob Ballard: I am from Manchester and I think we’re good stewards of our
waterfront community. Our sewage system is impeccable, we have a salmon
enhancement procedure for our creek, and we are concerned about the
environment. We are 100% built out and we are within 150 feet of shoreline.
This revision will have nothing to do with enhancing salmon habitat. We are
against the 150 foot setback. South of Manchester is the non-sewer area. The
Health Department found 43 failing septic tanks out of 200 some homes. Those
people have been fixing their tanks which will enhance the salmon habitat.
Implementing the 150 foot buffer will bring geologically hazardous areas back to
ground zero, even after septic, well, and bank regulations have been followed.

Jean Bradford: I don’t own waterfront property but I’m a realtor and deal with
people who do. Many people will lose their view if they have to build so far away
from the water. Buffer and setbacks would deny them the right to build stairs to
the beach even if they have a couple of acres. For those who say this is for the
good of the majority, I say this is socialism and a violation of our state and
national constitutions. Some of our own county employees and a former county
commissioner will soon be living under non-conforming use. Will they manage to
avoid the rules? Why aren’t county employees in front of the microphone?

Brad Buskik: I live on Chico Way on 100 feet of waterfront and I’ve lived in
Kitsap County for over 50 years. First thing we had to do was hook up to sewer
because the Health Department considered us a hot spot. They checked out the
septic tanks and found that we were leaking one gallon of untreated sewage a
year. Millions of gallons are being spilled into Dyes Inlet because of failed
systems. In the storm of 1996 I lost 50 feet of my sea wall, which I had to
replace. I was told it was prime smelt spawning. 6 months ago, 30 Native
Americans were harvesting clams on my beach. A few months ago I cut back
some brush to maintain my bank and was issued a stop work order. I
understand erosion and the environment and I can’t see how a 150 foot setback is going to help with our prized water environment.

Richard Ambur: I have lived in Kitsap County for 40 years. 90% of nitrogen going into the Canal comes from surface water and regional water, not septic systems. I might be thrown off my land because I live less than 75 feet from the water. I have lived there almost 30 years and nothing has changed. Nothing needs fixing where I live. I can’t speak for other areas of the county but I can’t see why we should be punished for what is wrong with somebody else’s property.

Bill Matchett: I’m from Nellita on Hood Canal. I’m speaking for the Hood Canal Environmental Council. We have been trying to preserve the natural wonder. The shoreline that is already built up is not going to change, but we are trying to save a small percentage of the remaining shoreline. I recognize that some property cannot be built on, but I don’t know how else to save it.

Rick Boston: I live in Lakebay. I do not own a waterfront home but I own 2.7 acres on Long Lake Road. I’ve been saving for 30 years and I plan to build on that land. I think the implementation is unfair and doesn’t accomplish anything. 95% of lots are already built. People are saving that land for retirement. If this law is passed my house has to go on the other side of a gravel easement. I will lose my waterfront view and waterfront access because I will be looking at the back of other houses. My house will not affect any fish whether it is 60 feet or 150 feet back from the water. The septic pump is back 250 feet already. That’s a non-issue. I won’t pollute the water and I’m not going to affect birds and bugs. I don’t see why there’s any problem being 50 feet from the water. Why go after small guys? No private citizen should provide public benefit for all others. I think this is a terrible abuse.

Beth Wilson: I live in Olalla and represent West Sound Conservation Council. Many of us get our water from wells. It is important for us to protect the aquifers that we are living on. The wetland issue is pertinent for well protection and flooding. If we let our wetlands go, we will experience even more flooding. Please continue to expand protection on wetlands. The saltwater shoreline buffers at 150 feet protect Puget Sound and Hood Canal from pollution, they protect the shoreline property owners and their investments from erosion and reduce the need for costly shoreline armoring in the future. It will protect wildlife and salmon. Please adopt the proposed ordinance.

Steve Jennings: I live in Central Kitsap and have land in North Kitsap, none of which is on a shoreline. It’s troubling to me to know that the Growth Management
Hearings Board can say “not good enough”. Because they are directing us to do this I hope there is some feedback from the Planning Commission. I would like to get a sense that you are fighting for us. If this rule applies, it seems like one rule will apply to all lots. Certainly there are some areas that need to be protected but I can’t imagine that every lot in Kitsap County needs 150 foot setbacks. If the County does decide to adhere to this, maybe they should buy the land or tax it accordingly. If the owner can’t use the land, they shouldn’t be taxed.

Vivian Henderson: I’m with Kitsap Alliance of Property Owners. I do not have wetlands and do not have waterfront property. I am here to protect those who do. Once again I’d like to remind the County that a requirement of the GMA is to ensure public participation. It can be found in RCW 36.78.140. The county has ignored this requirement. This proposed legislation before you is the most audacious violation of the public trust I have ever seen. The county informed citizens they don’t have the luxury of apprising us of what they are stealing from us. The county is falling all over itself to meet unreasonable deadlines imposed upon us by a board of three unelected people accountable only to the governor. They are not influenced by you at all. Unless citizens vote for the people to go to Olympia, that will take away the Board’s unlawful, unconstitutional power. Voters don’t seem to want to do this. I don’t see our elected officials on the local level making even the slightest attempt to protect property owners against these thugs. They are sanctioning theft of what is rightfully ours; the use and enjoyment of our property and our local elected officials are aiding and abetting them. Secondly the County is not being honest with their citizens. County staff has purposely misrepresented the effects of these regulations on existing developed property. Every attempt has been made to leave property owners out of the process, avoid this public hearing and create utter confusion as to where it will be held. Planners have been the most public source of information to property owners because of articles in the Sun. Evasive, misleading and ambiguous statements were made in response to the reporter’s questions. Depending on your soils, the Health Department could approve a gravity system replacement at a cost of $5,000 or less, but the County Planning Department will not allow a gravity system because it would disturb native vegetation. They will only approve a $30,000 alternative system. These systems have a high rate of failure. The County will have complete control over unimproved lots because applications must be made for permits before anything is done. It’s a different story with existing improved lots.

Gary Johnson: I don’t have waterfront property. Shoreline buffers are a problem. I think a larger problem is the elimination of a minimum size for wetlands. According to the law as proposed, every puddle that has a reed growing in it would have to have a 150 foot buffer zone growing around it. Property purchased for over $1 million an acre a couple of years ago has three or four small wetlands on it, a total extent of less than 400 square feet. Because of that, this entire property is unbuildable. We can’t build Silverdale Community Center. That property is unbuildable and is a total waste of taxpayer dollars.
Theresa Osinski: I work with the Home Builder’s Association of Kitsap County. The issues surrounding any attempt to define, control, or protect privately owned property is complicated. The County now has the unfortunate obligation to open an old wound. These are important matters dependant upon prudent resolution. Failing to control buffer sizes will exacerbate the County’s Growth Management Act. The effect of this ordinance will have a financial impact on land development and construction companies, county revenue potential and tread on the rights of all private land owners of shoreline. These are realities and aren’t intended to sound pejorative. We ask that you seek creative solutions and that you exercise restraint. The HBA asks that you consider a smaller urban specific buffer separate from the rural and semi-rural buffers that you may choose, though we do believe all the buffers proposed are too high. In doing this we believe you will find a balance that is consistent with your density goals, they will diminish a barrier to UGA development and will recognize Kitsap’s unique quantity of urban land affected by shorelines. Other urban areas have adopted shoreline buffers much smaller than the ones staff has proposed. Unincorporated urban growth areas should be treated consistently. Secondly the association asks that you consider the city of Bremerton’s CAO language which allows the use of low impact development techniques in the buffers along wetlands and streams and incorporate that same type of language in your shoreline buffer text. An area of significant concern is protection of water quality for habitat. The science of evaluating the impacts of LID techniques has proven that such techniques are positive water quality mitigation tools and do protect shoreline habitat. Finally the association appreciates the proposed language allowing the department to consider and approve smaller buffers in certain circumstances. For this to be significant it is essential that the director be empowered to consider the unique site conditions of each buffer reduction application and apply the regulation considering the specific circumstances of each site. Only if each individual site is fairly evaluated will the administration buffer reduction process be meaningful.

Foritano: Does your association consider the proposal reasonable or unreasonable?

Theresa Osinski: Personally, I think it is vague. The HBA would be more comfortable if there were teeth put into it. We’d like to see a process that people can bring forward.

Don Flora: I’m from Bainbridge Island. I submitted a list of 20 things that wider buffers will not accomplish. You’ve heard that marine biologists agree that there is no research showing that Chinook will benefit from buffers. Is a long strip buffer above Kitsap tidelands useful for upland reasons? How should the county design spaces for wildlife? Decide on wildlife species of local concern then set
up some criteria. Define wildlife. Find out the limiting factors that control critter
welfare for each species. They may have nothing at all to do with habitat. Decide
how many of what kinds of wildlife you want, including the County’s share of
endangered species then have a census done. Decide how you are going to
adjust whatever limiting factors you’ve identified and where you’re going to do it.
Again, the limiting factors may have to do with predators or pray and have
nothing to do at all with habits. Do this on a localized basis. How are you going
to write a habitat management plan for a 100 foot lot for wildlife that is intrinsically
mobile? You may or may not discover that you need wider buffers in the process.

Jack Bailey: I live near Brownsville Highway and I am a waterfront property
owner. My home is 25 feet from the waterfront. I have an over abundance of
otter, Canadian geese, eagles, and deer. I have the only piece of private
property on Ground’s Bay. The rest of it is highly armored and owned by the
County. Next to my property is a bridge. The County put a plastic bulkhead in
front of it. They removed the natural vegetation and left crushed rock above the
buffer. A third of my property is under water. I’m Port Commissioner and if you
pass these revisions, you will eliminate recreation from Kitsap County. The ports
provide recreation for Central Kitsap. I go to meetings with Washing Public Port
Commissioners and represent 53 ports. Kitsap County ports have the hardest
time getting anything accomplished on the water.

Thomas Averill: I own property in Driftwood Keys. I was very concerned that a
long buffer would cause me to build on the street behind me or in my neighbor’s
front yard. I am one of ten waterfront properties that remain undeveloped. The
land around it has been filled with coverage material. During break, a staff
member recommended I apply for a variance. Pierce County has an infill
provision. Maybe you could write into your code a means of coping with this
decimation. Almost all of the building that has previously occurred, and what has
turned out to be a high density area, can be written into the code that a variance
isn’t required.

John Rose: I’m with Olympic Property Group. We want as little public policy as
we need to get things done properly. We want a balance of stewardship and
hardship. Putting a 150 buffer on an urban area is picking a fight. It’s already in
an area centered on people. Perhaps we’re not quite as balanced on
environmental issues. The effect is going to be minimal; the angst is going to be
maximal. Make sure you’re comfortable before impacting these folks’ properties.
Let’s focus our energy where there is something left to save. An unregulated
wetland with a 50 foot buffer would cause the total buffering to be almost 8,000
feet. The idea of saving a small wetland within an urban area so that we take
one lot’s worth of development away and push our urban core out a little quicker,
is not what we’re trying to get done. Every foot of buffer needs to work. The
smallest buffer should be getting the most effect. Targeting urban areas that are almost completely developed is not strategic.

Gary Tripp: I’m from Bainbridge Island and I represent a group of property owners. We’re concerned about the decision you’re making and the process. The GMA leaves the decision on protecting Critical Areas to the local jurisdiction. It does not leave it to an unelected board or some state agency. The local jurisdiction is tasked with weighing the critical areas protection, property rights, affordable housing, etc. You cannot let an unelected board dictate to you. They don’t have any recourse if you tell them off. You are also in violation of Engrossed Substitute House Bill 1933, where the state legislature said not all shorelines are critical areas. Second, they are not regulated under the GMA. They are regulated under the SMA. You have a separate process for dealing with the shoreline. You should include in the CAO a statement which says we recognize the shorelines contain some critical areas. Those are currently regulated under the existing SMP. Changes to the SMP will be taken care of in its normal process, not put into the CAO. I produced a document which analyzed all of the DOE’s best available science. 80% of the benefit from buffers is gained by the first 50 feet. In a 2004 meeting of marine scientists, they broke up into small groups after discussing all the best available science to decide what they could recommend as appropriate buffers for marine riparian zones. Not one of the 7 groups came back with a recommendation. Are you are going to take the uninformed opinion of an unelected board and impose this county wide? You’re going to create 80% of your entire waterfront as non-conforming. The purpose of non-conforming classification is to remove the non-conformity over time. It’s not to allow it to exist. If you are going to allow it to exist you would designate it as existing conformity. Designating it non-conforming intends to remove it over time.

Nancy Hahn: I live on Scandia Creek and I’m concerned about leaving a good legacy for my kids. I think it’s time for this County to establish the appropriate buffers. We need to preserve the natural environment. I agree with Mr. Burkholder and Mrs. Bertrand. Please weigh all the pros and cons.

Cyrilla Cook: I am representing 602 members of Puget Sound. Whatcom County adopted 150 foot shorelines in 2005 and Snohomish County is now considering the same. They both have site specific flexibility and off-site mitigation options. Skagit and Thurston are going to be looking at their buffers this year and Mason County is looking at adopting 75 foot buffers. Mason County tells citizens how to apply for reduced taxation. It’s written in the code with buffer provisions. Pierce County has a specific salmon provision and requires a minimum 100 foot buffer.
Matt Ryan: I live in Illahee and I have a 150 foot lot. What the Hearings Board has proposed is not realistic, especially in the urban areas. I feel a lot of our problems are non-point pollution; that come from places beyond the shore. Moving people away from the shore does not do away with non-point pollution.

Jim Sommerhauser: I do not have small wetlands nor do I own shorelines. I don't know if a 150 foot buffer is the right size, especially if I look at it for specific species. I'm unaware that we're able in Puget Sound to segregate a species. They all live together. I don't know if you will be able to get away with 35 feet or Class 3 or 4 wetlands. Just because the GMHB is unelected, it doesn't mean they don't know anything. They have staff to do research to provide them opinions. When looking at the CAO, the Commissioners told the public and the Planning Commission that we need to do an inventory of our marine lands. And we need to update under the other law how we deal with them. Staff has done their best at compiling 1300 documents in the database of best available science. They picked something in the middle as a standard so we'd have something to go forward with. I'd rather have a bigger buffer than a smaller buffer with somebody further degrading Puget Sound or Long Lake. You have a responsibility to the public to not recommend something that is going to cost a lot of money. If there is a plan to go forward and do it better as we go forward, the last thing I want you to do is spend millions of tax dollars just to litigate.

Ron Ross: I live in Poulsbo. I read in the text of the proposed regulations, danger trees section, that danger trees can be removed under certain conditions and that permission is required from the Department of Fish and Wildlife. I don't know if Kitsap County has the authority to require them to come from Olympia to look at a tree to see if it should come down. There is no need to have that in the regulation. I would encourage you to take it out. A person should not be required to have somebody from Fish and Wildlife deal with a danger tree. It seems impractical to put a 300 foot buffer on built-out communities. To put existing businesses and parks in non-conforming use is nonsense. 19 County parks and five State parks would become non-conforming use. If this should pass, we might as well forget about the Seabeck Marina.

Ken Jensen: We own a little property on Scandia Creek which is not a salmon bearing stream. No matter the setbacks, as far as marine life, I hope you have some kind of suggestion or procedure to change the cleaning soaps that go into Puget Sound. Those detergents last as long as 40 years. That's the source of our fish and salmon pollution. In the Midwest area, they received suggestions from the government on which soaps to buy outside of grocery stores. Grocery stores are dynamite to fish and wildlife. A year ago, our septic system failed. That house is still vacant because we had to close up. We were told that if we cozied up to Jody, maybe we could get a variance and have the system restored rather than replaced. I am a firm believer in property rights.
Brian Petro: I am the President of Kitsap Association of Realtors. Nobody wants the environment hurt. In the 60’s there were auto wreckers and mills on the waterfront and sewage being drained into the Sound, but there were more salmon in the 60’s than there are now. There is something wrong with 150 foot setbacks. A law cannot be made that says there is a blanket answer to the problem. An example in the GMA states that if there are sewers in place, you have to cut down your lot to the smallest size available. I encourage you not to make a blanket rule for all problems. Each property has to be looked at individually and there has to be a written mitigation process to keep the environment clean. Washington State has more land set aside than any other state in the country. If your permit is in place you will be free from this regulation. That does not happen in this county in practice. I sold a commercial property on Bucklin Hill Road. The permit was in 1997. Before building, the owner was told he needed sprinklers. The same is true for an owner in Kingston. By law that is true, but in practice that is not the case.

Bolger: Additional deliberations are scheduled for January 23rd and time is set aside for the 24th and 25th if needed. Monday, February 5th is the hearing date for the Board of County Commissioners. In the past, hearings have been rescheduled due to public interest.

Chair Taylor: Written comments can be submitted to DCD until 4:00 pm on January 19th.

Bolger: Testimony received after that time can be submitted for the Board of County Commissioner’s consideration as well.

A motion was made by Commissioner Jenniges and seconded by Commissioner Gustavson to adjourn the meeting.

The VOTE: Unanimous

Yes:

No:

Motion carries

Meeting adjourned: 10:15 PM

EXHIBITS

A. Miscellaneous letters of testimony.
MINUTES approved this _______ day of _______ 2007.

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_________________________________________

Christina Lindner, Planning Commission Secretary