



# Kitsap County Department of Community Development

2018 Comprehensive Plan Amendments - Planning Commission Consideration - Comment Matrix			
#	Name, Org	Comment	Staff Response
<b>AMENDMENT: CPA 18-00431 (UELAND TREE FARM LLC)</b>			
19.	Jack Stanfill, Chico Creek Task Force	<p>Summary of Oral Testimony (7/17/2018 &amp; 7/31/2018) and attached comment:</p> <ul style="list-style-type: none"> <li>Information that has changed in the last 3 years that affects the proposal</li> <li>The watershed boundaries were wrongly located during the Gorst watershed analysis of 2012-2013. 500 acres not calculated in the stormwater runoff analysis and was added by Ecology to Hines Basin via Parametrics. Ecology – permitted uses must preserve forest cover and not result in conversion as part of the re-assessment of the Gorst watershed [Exhibits provided].</li> <li>Green zone, 25 page specific study that included 500 acres that was inadvertently left out in 2012-2013 Gorst watershed analysis. We got it changed since the report was first issued.</li> <li>I first want to address the comprehensive plan amendment application. Ueland has marked on the lake pond reservoir, which they say is the beaver pond lake. The real beaver pond has been left out of the process since 2007.</li> <li>Wants to address the trails. It is written in the staff report that there are public trails in the tree farm. These are not public trails, they belong to Ueland and he can control who does and doesn't go on the trails. Since 2011, Mr. Ueland has kept us off the trails. If you are a member of Chico Creeek task force, you cannot go on the trails.</li> </ul>	<p>Thank you for this comment. The impacts associated with the proposed quarry operations were evaluated during the State Environmental Policy Act (SEPA) process in 2009 and 2015 as part of the conditional use permit process. The resulting environmental documents were challenged and determined to be adequate by the courts. The proposed amendment does not modify the previous environmental documents and is consistent with the conditions of approval and development agreement between the applicant and Kitsap County.</p> <p>The 'green' or 'protection zone' which was outlined during the Gorst Subarea planning process with the City of Bremerton was a planning tool and was not given any subsequent legislative, regulatory or code-based standing by any agency or jurisdiction. In addition, the site will need to be reclaimed in a manner that would allow for future development on the site consistent with the land uses permitted in the Forest Resource Lands zone.</p> <p>The applicant has stated during oral testimony on 7/31/2018 that the trails are open to the public as long as they are being used for recreational enjoyment.</p>
20.	Mark Mauren, Ueland Tree Farm LLC	<p>Summary of Oral Testimony (7/17/2018):</p> <ul style="list-style-type: none"> <li>Response to earlier comments (regarding the Gorst watershed). Ecology study was a planning document, not regulatory document, to point out that these are things to consider when permitting a project.</li> <li>The issue is that the stormwater and the stream were studied when the CUP (Conditional Use Permit) was applied for and approved in 2007 when the mines were put in place. These decisions were challenged and upheld.</li> </ul>	<p>Thank you for providing additional information regarding the environmental documents and approved Conditional Use Permit.</p>

2018 Comprehensive Plan Amendments - Planning Commission Consideration - Comment Matrix			
#	Name, Org	Comment	Staff Response
		<ul style="list-style-type: none"> <li>It came up again in 2015 and was upheld again, when the CUP was revised to change the location for hauling in and out of the property, moving it to the South End at Warner, which is Industrial, instead of the North Lake, which is residential</li> <li>We did the studies, on the drainage and the mines to be sure it did not exacerbate any sediment, stormwater or water flow issues.</li> </ul>	
21.	Alex Sidles, Bricklin & Newman LLP Lawyers Working for the Environment	<p>Summary of attached letter:</p> <ul style="list-style-type: none"> <li>The amendment should be denied. The proposed amendment is forbidden by the Growth Management Act's special protection for forest lands of long-term commercial significance and by Kitsap County's regulations for forest and mineral resource lands.</li> <li>The proposed amendment violates the Growth Management Act (GMA). The GMA has special protections for forestlands of long-term commercial significance, which our state needs to support the ailing timber industry. By re-designating Ueland's forest resource lands as mineral resource overlay lands, the proposed amendment unlawfully deprives these forestlands of their GMA protection.</li> <li>Kitsap County Code does not allow mining on forest resources land, except under limited circumstances in support of forestry. Kitsap County has determined that mining is incompatible on forest resources lands. The County may not re-designate the five forest resources land parcel as mining resources land. The comp plan promotes forestry above mining and does not treat them as compatible. These GMA rules for forest resource lands amendments are repeated in substantially similar form in the Kitsap County Code.</li> <li>Under the Kitsap County Code, any parcels in mineral resource lands must be at least 20 acres in size, unless the entire parcel is used only for extraction. The parcels are smaller than 20 acres, and do not qualify for the mineral designation. Ueland's development agreement with the County does not effectuate a rezone. It provides that the county will consider a possible rezone. Ueland is seeking a post hoc rezone ordinance. This is a violation of</li> </ul>	<p>Thank you for this comment. The impacts associated with the proposed quarry operations were evaluated during the State Environmental Policy Act (SEPA) process in 2009 and 2015 as part of the conditional use permit process. The resulting environmental documents were challenged and determined to be adequate by the courts. The proposed amendment does not modify the previous environmental documents and is consistent with the approved conditional use permit and development agreement between the applicant and Kitsap County.</p> <p>The Mineral Resource Overlay zone does require a minimum lot size of 20 acres unless the property is used for extraction (see Kitsap County Code Section 17.420.060.A.30). A basalt quarry totaling 39.2 acres was approved on the site in 2009 and 2015 via a conditional use permit. The approved conditional use permit was challenged and determined to be valid by the courts.</p> <p>See also response #19.</p>

2018 Comprehensive Plan Amendments - Planning Commission Consideration - Comment Matrix			
#	Name, Org	Comment	Staff Response
		<p>the County Code's procedures for development agreements. Rezoning forest resource lands is not like rezoning other types of properties.</p> <ul style="list-style-type: none"> <li>Under the GMA and the Kitsap County Code, forest resource lands are preserved for the long term. They cannot be rezoned because a more profitable use presents itself to the landowner. Ueland and the County have failed to make the findings required under the law to re-designate these five parcels.</li> </ul>	
22.	Jack Stanfill, Chico Creek Taskforce	<p>Summary of attached comment: Will you please add Kitsap County Senior Manager, Scot Diener's August 23, 2017 email (below) to my comments concerning Public Comment for Ueland's Site-Specific Comp Plan Amendment 18-00431?</p> <p>Mr. Diener's states, "Please note the zoning is not incorrect and has not been revisited anytime recently, including the 2016 Comprehensive Plan update. There is no error in the zoning, nor is there any plan to change the zoning designation(s)."</p> <p>Mr. Diener also wrote, "Finally, please know that the Ueland Tree Farm mining operation is vested to the code under which it was submitted, so that even additional development or restrictions were put in place, they could not impact what has been approved." The Ueland property, that Mr. Diener responded to me about with his email mentioned above, is NOT zoned with a mineral resource overlay.</p>	<p>Thank you for this comment. In 2016, the County received a request from Ueland Tree Farm to change the land use designation and zoning classification of six parcels (permit 15-00522) from Urban Reserve to Rural Industrial with a Mineral Resource Overlay. The Board of County Commissioners denied the request and instead redesignated the five parcels as Rural Protection with a Mineral Resource Overlay in accordance with the approved Conditional Use Permit.</p> <p>The impacts associated with the proposed quarry operations were evaluated during the State Environmental Policy Act (SEPA) process in 2009 and 2015 as part of the conditional use permit process. The resulting environmental documents were challenged and determined to be adequate by the courts. The proposed amendment does not modify the previous environmental documents and is consistent with the conditions of approval and development agreement between the applicant and Kitsap County.</p>
23.	Mark Mauren, Ueland Tree Farm LLC	<p>Summary of Oral Testimony (7/17/2018 and 7/31/2018): In response to previous comments</p> <ul style="list-style-type: none"> <li>The wetland that Jack Stanfill mentioned earlier, and the beaver damn are one in the same.</li> </ul>	<p>Thank you for providing additional information regarding the environmental documents and approved Conditional Use Permit.</p>

2018 Comprehensive Plan Amendments - Planning Commission Consideration - Comment Matrix			
#	Name, Org	Comment	Staff Response
		<ul style="list-style-type: none"> <li>• Trails are open to public as long as they are used for recreational enjoyment and we are working with the county to get that formed through an easement process.</li> <li>• Went through a Conditional Use Permit process for the two quarries, and they were permitted. This is a development agreement that went through a hearing and processes.</li> <li>• Discovered in Conditional Use Permit process that we weren't able to mine under forest resource land. Reapplied and it was suggested to do a mineral resource overlay.</li> <li>• Not expanding the sites. Legitimizing what has been approved. Want a mineral resource overlay which is allowed by the Growth management act and county comprehensive plan. Trying to follow what the county rules and regulations allow us to do.</li> </ul>	
24.	Bernie JMW Fleming, Private Landowner on Dickerson Creek	I am concerned about disruption to the ground about the headwaters of Dickerson Creek. I note that the corner of the uppermost lot actually touches these fragile wetlands. Anything done to this creek as shown will flow all the way down to Chico, where the county has invested heavily in restoration.	Thank you for this comment. The impacts associated with the proposed quarry operations were evaluated during the State Environmental Policy Act (SEPA) process in 2009 and 2015 as part of the conditional use permit process. The resulting environmental documents were challenged and determined to be adequate by the courts. The proposed amendment does not modify the previous environmental documents and is consistent with the conditions of approval and development agreement between the applicant and Kitsap County.

July 31, 2018

Jack Stanfill President-Registered Agent  
Chico Creek Task Force  
2461 Northlake Way NW  
Bremerton WA 98312

Kitsap County Planning Commissioners  
Kitsap County Admin. Bldg.  
619 Division St.  
Port Orchard, WA

RE: 2018 GMA :

CPA 18-00431, Ueland Tree Farm LLC, Comprehensive Plan Amendment Application, Kitsap County, and Kitsap County Department of Community Development Staff Report and Recommendations, Annual Comprehensive Plan Amendment Process for 2018, Site-Specific Amendment 18-00431 (Ueland Tree Farm, LLC).

Dear Planning Commissioners:

The Chico Creek Task Force has noted factual errors with the two reports listed above, Comprehensive Plan Amendment and Kitsap County DCD Staff Report .

First, we'll address the **Comprehensive Plan Amendment Application:**

"Indicate below all environmental features on or near the parcel(s)..” Lake, pond, reservoir, gravel pit of quarry filled with water”. Mr. Mauren checked the “Yes” bullet and listed only the Beaver Damn Lake. This wetland is fed from the headwaters of Dickerson Creek which is a real beaver dam 17.5 acres lake, which is bigger than Beaver Damn Lake. Ueland and Kitsap County did not delineate the 17.5 acre wetland which was identified on the Parametrix and Ueland’s maps and documents as **Wetland 4 in 2009. PLEASE SEE EXHIBIT 1.**

**Please see Dr. Sarah Cooke’s Evaluation of 2012 wetland delineation of Wetland 4. EXHIBIT 2**

**Staff Report and Recommendations, Site-Specific Amendment 18-00431 (Ueland Tree Farm, LLC):**

Page 3 of 15, C. **Geographic Description** , “The site is within the Ueland Tree Farm (UTF), an approximately 1.646-acre area that includes, forestry, mining activities, and **public trails.**”

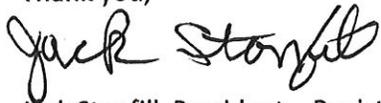
**The trails are not public on Ueland Tree Farm. Ueland CUP Conditions – Public Trail – Legal Review from Kitsap County Policy Manager, Eric Baker, to Jack Stanfill, Chico Creek Task Force on April 22, 2016. Exhibit 3.**

**Email from Mark Mauren to Jack Stanfill dated 12-29-2017, "We remain hopeful that one day that we will have a mutual respectful relationship with the Chico Creek Task Force and can reopen the tree farm to you for recreational access, AS WE HAVE DONE FOR PAST MEMBERS OF YOUR GROUP."**

**Unfortunately, we have not yet achieved that with you and the ban is still in place. Your recent comments on our SDAP.. highlights the challenges that remain." Exhibit 4.**

If I understand Mr. Mauren and Ueland correctly, they are telling members of the Chico Creek Task Force, and the public who uses Ueland's private trails, if you question the environmental impact on the UTF, you will be banned from the tree farm trails. Seems like blackmail, but what do I know.

Thank you,



Jack Stanfill President – Registered Agent  
Chico Creek Task Force  
PO Box 4773  
Bremerton WA 98312

Indicate below all environmental features on or near the parcel(s). The questions below refer to maps that can be found on the [Kitsap County Planning and Regulatory maps webpage](#).

**Bay, estuary, Puget Sound (see Critical Areas map)**

- Yes
- No
- Don't know

**Lake, pond, reservoir, gravel pit or quarry filled with water (see Critical Areas map)**

- Yes
- No
- Don't know

**Name of body of water**

Beaver Dam Lake

**River, stream, or creek (see Critical Areas map)**

- Yes
- No
- Don't know

**Name of body of water**

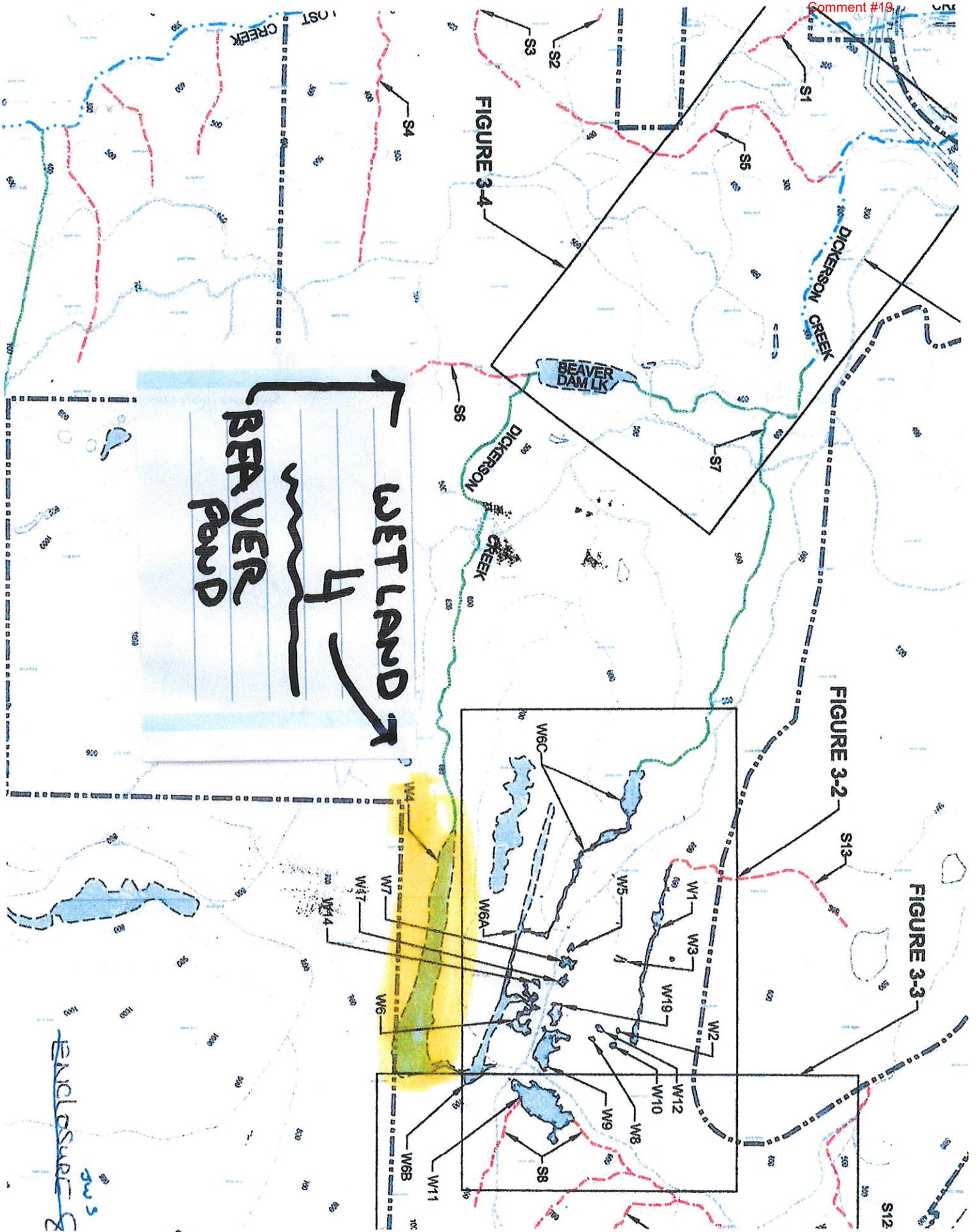
not named

**Select Type (if yes to River, Stream, creek)**

- (S) Shoreline of the State
- (F) Fish Habitat
- (N) Non-fish Habitat
- (U) Unknown, unmodeled hydrographic feature

**Wetlands (see Critical Areas map)**

- Yes
- No
- Don't know



ENCLOSURE 2  
p. 2



## COOKE SCIENTIFIC

4231 NE 110<sup>th</sup> ST, SEATTLE, WA 98125

PHONE: (206) 695-2267 FAX: 206-368-5430

[COOKESS@COMCAST.NET](mailto:COOKESS@COMCAST.NET) [WWW.COOKESSCIENTIFIC.COM](http://WWW.COOKESSCIENTIFIC.COM)

March 3, 2015

Jack Stanfill, President, Chico Creek Task Force  
P.O. Box 4773  
Bremerton, WA 98312

### **RE: Chico Creek/ Ueland Tree Farm HMP and Wetland Report Third Party Review**

Dear Mr. Stanfill,

I have prepared the 3<sup>rd</sup> party review and analysis for the proposed Ueland Tree Farm, LLC's mineral mining application at your request. I was asked to review the documents listed below identifying any comments, questions and discrepancies I find in the files.

#### **Ueland Tree Farm Project Resources Reviewed**

1. Leyda June 2012. *Draft Mineral Resource Development Wetland Review, Rating, and Impacts: Ueland tree Farm, Kitsap County, Wa.* June 4, 2012 to the Chico Creek Task Force
2. August 5, 2011. *The Ueland Tree Farm, LLC Mineral Resource Development and Preliminary Reclamation Plan.* Civil engineering package.
3. Parametrix. 2009. Wetland Delineation and Stream Identification Report Ueland Tree Farm – Mineral Resource Development.
4. Soundview Consultants. April 2014. DRAFT Wetland and Fish Wildlife Habitat Assessment and Habitat Management Plan. Ueland Tree Farm/Kitsap Quarry Private Access Route
5. GeoResources, LLC. May 2015. Geologic and Hydrogeologic Report Supplement – Ueland Tree Farm Mineral Resource Development (originally dated February 2009- update).
6. Ueland Tree Farm Mineral Resource Development
7. Preliminary Drainage Plan, all by Parametrix, 4660 Kitsap Way, Suite A, Bremerton, WA.
8. Ueland Tree Farm Mineral Resource Development Final EIS dated August 2009, by ESA
9. ESA (Adolfson) June 2009 (2015). Ueland Tree Farm Mineral Resource Development. Final and Supplemental EIS.
10. Wa State Department of Ecology (Stephen Stanley, Susan Grigsby, Kelly Slattery). August 2013. Final Revised Water Flow and Water Quality Assessment for Gorst Watershed.

Project location: Kitsap County

Permit process: SDAP (Site Development Activity Permit)

#### **Project Issues**

Although the adequacy of the original EIS was upheld in Superior Court, and the Supplemental EIS submitted only addresses the new access route for the project, there are issues that have still not been resolved that pertain to the original project that the new EIS still fails to address. The major issue pertains to "Wetland 4" (located near the proposed Basalt Quarry C in the Beaver Pond of Dickerson Creek, located at the southern portion of the project area (parcel Nos. 242401-1-006-1003, 242401-1-007-1002; T24N/R1W W.M./S24) in Kitsap County, Washington). There are numerous issues with Wetland 4, the first being there is confusion about this wetland because the project documentation actually lists two wetland 4's. A summary of all the issues I found while reviewing the Supplemental EIS road project and remaining issues with the original project as discussed in the documents listed above are identified and expanded on below:

1. Wetland 4, which one? There seems to be some confusion about which Wetland 4 is being assessed and identified in both the reports and during the Kitsap County hearing (2010), the Hearing Examiner's denial of the SEPA Appeal, and the Superior Court dismissal of the Appeal. This wetland is the closest to the proposed mine and so just ignoring this confusion is not an option with respect to understanding potential impacts as a result of the proposed mining project. Leyda in his (6/4/12) report lays out the confusion about Wetland 4 (Figure 2). Initially, Parametrix identified a Wetland 4 that was separate but located at the north end of Wetland 6. Molly Adolfson (ESA, June 2015) stated this was part of Wetland 6 mentioned in the EIS but this is inaccurate there are actually 2 wetland 4's identified in the materials so there is some confusion that persisted in the hearing (Leyda 6/4/12). It is important that the permit application and record accurately reflect the two wetland 4's and resolve the confusion with respect to Wetland Ratings, and buffer assignments.

2. For Wetland 4 that is part of the Beaver Pond of Dickerson Creek, there is no information available, no wetland boundary determination, no delineation data, and no rating. The second Wetland 4 that is within 200 feet of the proposed quarry as shown on the Parametrix wetland map (Figure 1) but no other information is given. No rating, no data sheets and no information on how it was marked. The County typically requires information on wetlands within 300 feet of the proposed project – the buffer width for Cat I wetlands, AND Mr. Dennis Oost, Kitsap County Environmental Planner, confirmed to Patrick McGraner (email 4/1/15)

“that a note exists within the parent application (Permit 07"44975) that the wetland boundaries and buffers be reconfirmed prior to construction with an emphasis to pay attention to the large wetland complex north of proposed Quarry C due to its headwater supply function for Dickerson Creek.”

Clearly this wetland needs to be assessed, properly delineated, and characterized for the permit file to be complete and the County to be able to evaluate and issue a permit. The County should be requiring this information but it is possible they were not aware of the confusion about which of the two Wetland 4's was being discussed. Leyda (4/1/12) has provided information on this wetland (delineation data and rating for both Wetland 4 of the north lobe of Wetland 6, Wetland 4 of Dickerson Creek, and the revised Wetland 6, and this documentation should be reviewed when the new information is submitted by the Ueland Mine developer. I have attached the wetland characterization information for the Beaver pond wetland as Appendix A attached here. I have reviewed the Leyda documentation, including the delineation and rating data sheets and it all appears to be correct, with respect to the delineation documentation and proposed boundary assignment but I have not been out to the site and so cannot confirm my approval until I am able to review the results of the Leyda assessment on the ground.

“LCI recommends a full delineation, with data to prove the upland edges, and a licensed survey of Wetland 4” (of Dickerson Creek) “to show the actual extent of the wetland in proximity to the proposed Quarry C. The data should include upland sample plots in locations in all low spots where the quarries are planned, and where stormwater features discharge to the low points in the uplands”.

I concur this information should be provided by the Ueland Tree Farm Group. The discharge locations is especially critical because changes to the hydrology and water quality of the wetland near the discharge points can be highly detrimental to the wetland without sufficient mitigation (buffer between the discharge point and wetland edge).

3. Wetland 4 (northern lobe of Wetland 6) would likely be rated as a Category II wetland and as such should have a 200-foot buffer width with the proposed mining activity, which would be considered high intensity. I agree with the Leyda assessment that the Parametrix Delineation Report only rates the wetlands under the current land use conditions but not as they would be under the proposed mining scenario. As Leyda states:

“When land use changes, and new pollution sources are created by the proposed road and quarry developments, the ratings can change. If the ratings change, the buffers can change. If the buffers change, then the proposed quarry developments could fall inside them, compromising protection of the wetlands. LCI describes some of these changes under the developed condition, and some changes under the existing conditions. Wetland 4 scored 18 points for water quality, and has the opportunity to improve water quality because of clear-cut logging in the basin to the west and south and because the logged soil units surrounding the wetland are rated by the NRCS as having “Severe” and “Very Severe” erosion hazard when disturbed”.

# Ueland CUP Conditions - Public Trail - Legal Review

Eric Baker <Ebaker@co.kitsap.wa.us>

Fri 4/22/2016 9:00 AM

To: JackStanfill@hotmail.com <JackStanfill@hotmail.com>;

Cc: Edward E. Wolfe <ewolfe@co.kitsap.wa.us>;

Greetings:

Thank you for your patience as staff fully reviewed your questions regarding the Ueland CUP and whether there was a requirement for public trails. Multiple staff and then legal reviewed the multiple documents that apply to this approval to come to the conclusions below.

Based upon County review, we can find no requirement for public trails in the Ueland CUP.

You argued in your email that Paragraph 4 on page 6 of 117 of the approval "mirrors what's in the Draft EIS". Paragraph 4 is a Finding, and does not impose conditions. While it does appear to mirror the description of "current recreational use" described in the DSEIS (section 12.2.1), it is not required mitigation.

Paragraph 4 states:

The subject property is currently managed for commercial forestry and a majority of the property supports third-growth conifer forest. Commercial forestry management includes tree harvest, tree planting, fertilizer and herbicide application, forest reclamation, and management activities. The subject property has been logged in stages, with some areas cleared as recently as 2003 and other forested areas not cleared since 1943. A network of unpaved roads on the property supports commercial forestry activities, and serves as a de facto trail system for the public, which has informally used the property for hiking, biking, horseback riding, camping, hunting, and wildlife viewing. No structures or residences currently exist on the subject property. There are several small borrow areas on the subject property where sand, gravel, and hard rock have been mined from the site to aid in construction of existing onsite access roads. *Exhibit 90;Exhibit 92.*

The conditions of approval (page 85) state that the mitigation and best management practices outlined in the DEIS are imposed, including those for recreation. However, there are no mitigation measures proposed in the DEIS for recreation, and it only states that it *may* be used for recreational use. Section 12.4 states:

## **12.4 MITIGATION MEASURES**

The proposed UTF Mineral Resource Development Project is not expected to have significant impacts on the recreational resources on the UTF property or in the surrounding area. Because the portions of the UTF property not proposed for development may remain available for continued, although unauthorized, recreational use, mitigation is not proposed.

I am sorry that this review does not support you conclusions regarding public access. However, Kitsap is actively pursuing a easement with Ueland through the property that would allow full public access. That hopefully will resolve the access issues that you and members of your organizations have been having. Those discussions will continue into the summer.

# Re: Kitsap Sun Bremerton Beat

Mark Mauren

Thu 12/28/2017 8:21 AM

To: Jack Stanfill <JackStanfill@hotmail.com>;

cjfarley@kitsapsun.com <jfarley@kitsapsun.com>; david nelson <david.nelson@kitsapsun.com>; craig@uelandfamily.com <craig@uelandfamily.com>; Micah Waterfalls Kipple <micahkipple@gmail.com>; Micah Kipple <godfireworks@yahoo.com>;

Hi Jack

Thanks for asking if you would be allowed to access Ueland Tree Farm for Micah's tour/discussion of the geologic history of Kitsap County. We remain hopeful that one day we will have a mutually respectful relationship with the Chico Creek Task Force and can reopen the tree farm to you for recreational access, as we have done with other past members of your group.

Unfortunately, we have not yet achieved that with you and the ban is still in place. Your recent comments on our SDAP application to build an access road at Kitsap Quarry highlights the challenges that remain. Your comments on the project focused on a previously approved CUP rather than the project at hand and included personal attacks that we believe were inappropriate.

I talked with Micah late yesterday and he graciously volunteered to give you a one on one tour on another site in Kitsap County so he could provide you with similar geological information that he will present on Saturday at Ueland Tree Farm. I hope you will take Micah up on his generous offer.

Sincerely;

Mark

On Wed, Dec 27, 2017 at 2:55 PM, Jack Stanfill <JackStanfill@hotmail.com> wrote:

**Hello Mark,**

I have registered to accompany Josh Farley, Kitsap Sun reporter, on a "Bremerton Beat" hike to the Dickerson Creek Waterfall on December 30, 2017. Of course the Chico Creek Task Forces realizes Mr. Ueland has ordered us to not go on the trails on his property. If this ban for us is still in force, please let me know.

Thank you,

Jack Stanfill, President  
Chico Creek Task Force

--

Mark Mauren  
Chief Operating Officer  
Ueland Tree Farm, LLC  
(253) 307-5900  
[mauren.wa@gmail.com](mailto:mauren.wa@gmail.com)



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

July 30, 2018

VIA E-MAIL TO  
*CompPlan@co.kitsap.wa.us*

Department of Community Development  
614 Division St. – MS36  
Port Orchard, WA 98366

**RE: Public Comment for Site-specific Comp Plan Amendment 18-00431 (Ueland)**

Dear DCD and Planning Commission:

On behalf our client, the Chico Creek Task Force, we submit the following public comment regarding the proposed site-specific comprehensive plan amendment no. 18-00431 for Ueland Tree Farm LLC.

The proposed site-specific comprehensive plan amendment should be denied. The proposed amendment is forbidden by the Growth Management Act's special protections for forest lands of long-term commercial significance and by Kitsap County's regulations for forest and mineral resource lands.

## **I. PROJECT DESCRIPTION**

Ueland Tree Farm ("Ueland") asks the County to amend its comprehensive plan map to change the current designation of five tax parcels owned by Ueland. Currently, all five of these tax parcels are designated "Forest Resource Land" in the comp plan. Ueland seeks to have the parcels re-designated "Mineral Resource Overlay."

According to Ueland's comp plan amendment application, the five parcels, totaling 96.57 acres, will eventually host a 39.2-acre basalt quarry. This basalt quarry, designated Quarry C, is one part of a larger, multi-quarry project on the 1,646-acre Ueland Tree Farm.

Ueland has a conditional use permit and a development agreement with the County that allow Ueland to have the multi-quarry project. However, neither of these documents creates a rezone or change to the comp plan. The development agreement specifically says that the County agrees to "consider" (not promise) an amendment to the comp plan to rezone or overlay any forest resource land—but the County is not required to grant any such rezone or overlay.

Perhaps in an effort to conceal the true impact of its project, Ueland's comp plan amendment application misleadingly claims that "aggregate extractions sites" (such as basalt mining) are permitted uses on both forest resource and mineral resource lands. In reality, aggregate extraction sites are allowed on forest resource land only when the aggregate extraction site is "no greater than two acres for the purpose of construction and maintenance of a timber management road system, provided the total parcel is at least twenty acres." KCC 17.410.050.A.4. In other words, forest resource lands are not intended to be mined or graded, unless such mining or grading is necessary for the practice of forestry. So, despite its misleading application, Ueland cannot have a basalt mine on forest resource lands without an amendment to the comp plan that re-designates the parcels as mineral resource overlay.

Ueland claims, in its application materials, that the 2016 update to the comp plan was intended to re-designate these parcels mineral resource overlay. The only reason the 2016 update did not re-designate the parcels, according to Ueland, was because the parcels were "accidentally dropped at the last minute" from the comp plan update process due to staff change.

Ueland's application offers no evidence that the five forest resource parcels were ever intended to be re-designated as mineral resource overlay. Nor does Ueland offer any evidence that the re-designation, if it ever existed, was "accidentally dropped at the last minute" from the comp plan update process. Nor does Ueland offer any proof that staff change has any bearing on the parcels' re-designation. These are all unsupported assertions.

Despite the lack of evidence for Ueland's assertions, the County's staff report accepted Ueland's narrative of the accidental drop. The County staff finds no violation of the comp plan, the comp plan amendment process, or the land use code, and accordingly recommends approval of the amendment.

## **II. VIOLATION OF THE GROWTH MANAGEMENT ACT: INITIAL DESIGNATION OF FOREST RESOURCES LAND**

The proposed amendment violates the Growth Management Act (GMA). The GMA has special protections for forestlands of long-term commercial significance, which our state needs to support the ailing timber industry. By re-designating Ueland's forest resource lands as mineral resource overlay lands, the proposed amendment unlawfully deprives these forestlands of their GMA protection.

Under the GMA, "forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production and that has long-term commercial significance. These lands are referred to in the GMA as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes. WAC 365-190-030.

Public Comment of Chico Creek Task Force  
Site-specific Comp Plan Amendment 18-00431  
Page 3

Counties planning under the GMA are required to formally designate forest resource lands when they create their comp plans. WAC 365-190-040(2). Kitsap County began the process of designating forest lands in 1992, with its “Strategies for Resource Lands Designations and Interim Development Regulations” document. *See Bremerton v. Kitsap County*, GMHB No. 95-3-0039 (Final Decision and Order, Oct. 6, 1995). The process of designating forest resource lands in Kitsap County was enormously contentious and resulted in multiple trips to the Growth Management Hearings Board and the state courts. *See generally, Manke Lumber Co. v. Central Puget Sound Growth Management Hearings Bd.*, 113 Wn. App. 615, 53 P.3d 1011 (2002).

The five parcels at issue in this case were originally designated interim rural forest lands in the 1998 comp plan. But the 1998 comp plan was invalidated by the GMHB for failure to designate any forest resource lands, as required by the GMA. In 1999, the County passed ordinance 229-1999, designating forest resource lands within the county. *See Screen v. Kitsap County*, GMHB No. 98-3-0032c (Order on Compliance, Oct. 11, 1999).

The five parcels were designated forest resource lands in Ord. No. 229-1999. In other words, these five parcels have always been forest resource lands for as long as that category has existed in Kitsap County.

Ueland now seeks to upset this carefully crafted, much-litigated designation by re-designating the five parcels mineral resources overlay. However, the GMA makes clear that such a re-designation would be unlawful.

When counties classify lands as forest resource lands, they “must approach the effort as a county-wide or regional process...Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.” WAC 365-190-060(1). Yet a parcel-by-parcel review of these five forest resource lands parcels is exactly what Ueland asks the County to do.

The only way a county can amend a forest resource lands designation is if there has been one or more of the following:

- (i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);
- (ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);
- (iii) An error in designation or failure to designate;
- (iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or

Public Comment of Chico Creek Task Force  
Site-specific Comp Plan Amendment 18-00431  
Page 4

(v) A change in population growth rates, or consumption rates, especially of mineral resources.

WAC 365-190-040(10)(b).

These GMA rules for forest resource lands amendments are repeated in substantially similar form in the Kitsap County Code. KCC 21.08.070.D.4.b. The Kitsap County Code adds the additional requirement that “any proposed change to land designated as natural resource land shall recognize that natural resource designations **are intended to be long-term designations.**”

Ueland has invoked the rules’ third exception, claiming that the “initial designation” was in error. The County’s staff report also relies on a supposed “initial designation” error. In both cases, the claimed error is the County’s supposed last-minute, accidental dropping of the five parcels from the 2016 comp plan update process. As described above, there is no evidence that any such error actually occurred.

More importantly, as a matter of law, even if there had been an accidental dropping of the five parcels, that still would not constitute an error in “initial designation.” These five parcels were not designated forest resource lands in 2016 during the comp plan update. They were designated forest resource lands in 1999, in accordance with the GMHB’s orders. If Ueland and the County want to claim an error in the parcel’s *initial* designation as forest resource lands, that is the moment they must point to. By 2016, the parcels had already carried this *initial* designation for 17 years.<sup>1</sup>

The GMHB has ruled that landowners wishing to claim mistaken designation of forest resource lands must do so at the time the “mistaken” designation occurs—especially if, as here, the landowner first logs the forest land and then turns around and claims that the forest land’s designation as forest land was a mistake. *Forster Woods Homeowners’ Ass’n. v. King County*, GMHB No. 01-3-0008c, n. 5 (Final Decision and Order, Nov. 6, 2001) (“To advance such an argument at this time is ironic, if not disingenuous.”). It is far too late for Ueland to claim there has been any error in initial designation of these five parcels. The comp plans and planning documents of the 1990s were litigated *ad nauseam*. Ueland should have brought his claim of error during that litigation, or if he came to the land after the 1990s, he should have performed due diligence on the zoning of the land prior to his purchase.

Because Ueland and the County do not claim any other basis for re-designating these five parcels besides the factually and legally erroneous claim that there was a mistake in the parcels’ initial designation, the proposed comp plan amendment must be denied.

---

<sup>1</sup> In fact, Ueland itself harvested these parcels in 2016, replanted Douglas-fir on the parcels, and indicated to DNR at that time that Ueland was *not* planning to convert the parcels to non-forest use within the next three years. *See* DNR, Forest Practices Application No. 2418465, dated Feb. 29, 2016. In other words, Ueland itself has treated these parcels as forest resource lands, just as the comp plan says they are.

### **III. VIOLATION OF THE GROWTH MANAGEMENT ACT: MINING IS AN INCOMPATIBLE USE OF FOREST RESOURCES LAND**

When counties are designating natural resource lands, it is possible that a forest resource land may also be a mineral resource land. Under such circumstances, the County must decide if the two uses are incompatible. If they are incompatible, the County must decide which of the competing uses is more important and assign the land to that use. WAC 365-190-040(7)(b). *See Weyerhaeuser v. Thurston County*, GMHB No. 10-2-0020c (Compliance Order, July 17, 2012).

As described earlier, the Kitsap County Code does not allow mining on forest resources land, except under limited circumstances in support of forestry. Thus, Kitsap County has determined that mining is incompatible on forest resources lands. In fact, the 2016 comp plan specifically allows forestry to occur on mineral resource lands, but does not provide for mining to occur on forest resource lands. *Compare* Land Use Policy No. 83 (forestry allowed in mineral lands) *with* Land Use Goal No. 15 (saying nothing about allowing mining in forestry lands).

Because Kitsap County has determined that forestry and mining are incompatible, and that forestry is the higher use, the County may not re-designate the five forest resources land parcel as mining resources land.

Nor may the County rely on Ueland's promise to restore the land after basalt mining is complete. First, it is far from clear that land that has been mined for basalt even can be restored to commercial forest production. Second, Ueland's 2009 FEIS states that Quarry C will operate for at least 22 years (2037-2059). Following that, there will be a one-year reclamation period. *See FEIS* at 1-12. Even assuming there will be perfect reforestation following reclamation, an assumption for which there is no evidence, forestry operations would be disrupted for 23 years at the very least—and the disruption would actually be much longer, since Douglas-fir typically takes around 40 years after planting to reach merchantable size. Re-designating the five parcels means the end of timber production for the rest of our lifetimes, assuming timber can ever return to land that has been quarried for basalt.

These parcels are forests of *long-term* commercial significance. Under the GMA regulations, long-term commercial significance means maintaining forestry on these parcels for the next 20 years. WAC 365-190-030(11). Yet instead of maintaining forestry for decades, Ueland proposes to displace forestry for decades—and possibly permanently, if reforestation does not succeed, which there is no evidence that it will.

### **IV. VIOLATION OF THE KITSAP COUNTY CODE: COMP PLAN COMPATIBILITY**

One of the criteria for granting a site-specific comp plan amendment is that the proposed amendment must be “consistent with the balance of the goals, policies and objectives of the Kitsap County Comprehensive Plan and reflects the local circumstances of the county.” KCC 21.08.070.D.1.b.

As described above, the comp plan promotes forestry above mining and does not treat them as compatible.

The County's staff report considers only language in the comp plan promoting mining in general under Land Use Goal 15 and its associated policies. The staff report does not once consider the very next section of the comp plan, Land Use Goal 16, which shows that forestry is a more preferred use than mining.

The County's failure to balance (or even consider) forestry against mining is a violation of KCC 21.08.070.D.1.b. A proper balancing analysis would reveal that forest resource lands must stay in forestry production, not be converted to mining.

#### **V. VIOLATION OF THE KITSAP COUNTY CODE: PARCEL SIZES**

Under the Kitsap County Code, any parcels in mineral resource lands must be at least 20 acres in size, unless the entire parcel is used only for extraction. KCC 17.420.060.A.30.

The staff report claims that four of the five parcels each have an area of 20 acres. This is incorrect. The true acreages, according to County property records, are as follows:

242401-4-005-1008:	19.61 acres.
242401-4-006-1007:	19.63 acres.
242401-4-007-1006:	19.64 acres.
242401-4-008-1005:	19.66 acres.
192401-3-005-2005:	16.27 acres.
Total:	94.81 acres.

Thus, the parcels are smaller than 20 acres, and do not qualify for the mineral designation.

According to Ueland's application, the total mining area across the five parcels will be 39.2 acres. But this demonstrates that the entirety of the parcels will not be used for extraction. It is a violation of the County Code to designate parcels smaller than 20 acres for mineral resource overlay, if portions of the parcels have no mining purpose.

#### **VI. VIOLATION OF THE KITSAP COUNTY CODE: CONCURRENT REZONE**

As described earlier, Ueland's development agreement with the County does not effectuate a rezone. It merely provides that the county will consider a possible rezone. Yet the County Code on development agreements says that "If the proposal requires a zoning map change, the zoning change shall be adopted by ordinance concurrently with the resolution approving the development agreement." KCC 21.04.220.E.

Public Comment of Chico Creek Task Force  
Site-specific Comp Plan Amendment 18-00431  
Page 7

Here, there was never any *concurrent* rezone ordinance. Instead, Ueland is seeking a *post hoc* rezone ordinance. This is a violation of the County Code's procedures for development agreements. Ueland should have sought this rezone at the time the agreement was signed. The County has no obligation—and would in fact be violating the County Code on development agreements—to grant it now.

## VII. CONCLUSION

Rezoning forest resource lands is not like rezoning other types of properties. Under the GMA and the Kitsap County Code, forest resource lands are preserved for the long term. They cannot be rezoned merely because some other, more profitable use presents itself to the landowner. Ueland and the County have failed to make the findings required under the law to re-designate these five parcels. The Planning Commission should reject the proposed comp plan amendment.

Very truly yours,

BRICKLIN & NEWMAN, LLP



Alex Sidles

*Attorney for Chico Creek Task Force*

cc: Client

This page intentionally left blank.

 Reply all |  Delete Junk | 

## FW: Zoning Incorrect?

LW Liz Williams  
Yesterday, 8:52 AM  
Rhea Canas 

   Reply all | 

COMP Plan Public Comments

Hi Rhea,  
Will you please add the items referenced below to the public comment submitted by Mr. Stanfill. Please let me know if you have questions on what to include.  
Thanks,  
Liz

---

**From:** Liz Williams  
**Sent:** Monday, August 6, 2018 5:16 PM  
**To:** Louisa Garbo <lgarbo@co.kitsap.wa.us>; Jack Stanfill <JackStanfill@hotmail.com>  
**Cc:** bricklin@bnd-law.com; sidles@bnd-law.com; Scott Diener <SDiener@co.kitsap.wa.us>; alison <aosullivan@suquamish.nsn.us>; Peggy Cahill <cahill@bnd-law.com>; Bob Buck <bobbuck69@gmail.com>; Tim Little <rose@rosefdn.org>; pductky@gmail.com; Dianne Iverson <dianneivr@comcast.net>; EastonShepard11@gmail.com; david nelson <david.nelson@kitsapsun.com>; Scott Diener <SDiener@co.kitsap.wa.us>; Dave Ward <dward@co.kitsap.wa.us>  
**Subject:** RE: Zoning Incorrect?

Hi Jack,

This message is to verify that we will add the information referenced below to your public comment regarding proposed amendment 18-00431.

Thanks,

**Liz Williams**  
Planner  
Planning and Environmental Programs  
Kitsap County Department of Community Development  
(360)337-5777 ext. 3036  
[lwilliam@co.kitsap.wa.us](mailto:lwilliam@co.kitsap.wa.us)

---

**From:** Louisa Garbo  
**Sent:** Monday, August 6, 2018 8:17 AM  
**To:** Jack Stanfill <[JackStanfill@hotmail.com](mailto:JackStanfill@hotmail.com)>  
**Cc:** [bricklin@bnd-law.com](mailto:bricklin@bnd-law.com); [sidles@bnd-law.com](mailto:sidles@bnd-law.com); Scott Diener <[SDiener@co.kitsap.wa.us](mailto:SDiener@co.kitsap.wa.us)>; alison <[aosullivan@suquamish.nsn.us](mailto:aosullivan@suquamish.nsn.us)>; Peggy Cahill <[cahill@bnd-law.com](mailto:cahill@bnd-law.com)>; Bob Buck <[bobbuck69@gmail.com](mailto:bobbuck69@gmail.com)>; Tim Little <[rose@rosefdn.org](mailto:rose@rosefdn.org)>; [pdutky@gmail.com](mailto:pdutky@gmail.com); Dianne Iverson <[dianneivr@comcast.net](mailto:dianneivr@comcast.net)>; [EastonShepard11@gmail.com](mailto:EastonShepard11@gmail.com); david nelson <[david.nelson@kitsapsun.com](mailto:david.nelson@kitsapsun.com)>; Scott Diener <[SDiener@co.kitsap.wa.us](mailto:SDiener@co.kitsap.wa.us)>; Liz Williams <[lwilliam@co.kitsap.wa.us](mailto:lwilliam@co.kitsap.wa.us)>; Dave Ward <[dward@co.kitsap.wa.us](mailto:dward@co.kitsap.wa.us)>  
**Subject:** RE: Zoning Incorrect?

 Reply all |  Delete | Junk | 

Louisa

---

**From:** Jack Stanfill <[JackStanfill@hotmail.com](mailto:JackStanfill@hotmail.com)>

**Sent:** Sunday, August 5, 2018 10:30 PM

**To:** Louisa Garbo <[lgarbo@co.kitsap.wa.us](mailto:lgarbo@co.kitsap.wa.us)>

**Cc:** [bricklin@bnd-law.com](mailto:bricklin@bnd-law.com); [sidles@bnd-law.com](mailto:sidles@bnd-law.com); Scott Diener <[SDiener@co.kitsap.wa.us](mailto:SDiener@co.kitsap.wa.us)>; alison <[aosullivan@suquamish.nsn.us](mailto:aosullivan@suquamish.nsn.us)>; Peggy Cahill <[cahill@bnd-law.com](mailto:cahill@bnd-law.com)>; Bob Buck <[bobbuck69@gmail.com](mailto:bobbuck69@gmail.com)>; Tim Little <[rose@rosefdn.org](mailto:rose@rosefdn.org)>; Jack Stanfill <[jackstanfill@hotmail.com](mailto:jackstanfill@hotmail.com)>; [pdutky@gmail.com](mailto:pdutky@gmail.com); Dianne Iverson <[dianneivr@comcast.net](mailto:dianneivr@comcast.net)>; [EastonShepard11@gmail.com](mailto:EastonShepard11@gmail.com); david nelson <[david.nelson@kitsapsun.com](mailto:david.nelson@kitsapsun.com)>

**Subject:** Fw: Zoning Incorrect?

Dear Director Garbo,

Will you please add Kitsap County Senior Manager, Scot Diener's August 23, 2017 email (below) to my comments concerning Public Comment for Ueland's Site-Specific Comp Plan Amendment 18-00431?

**Mr. Diener's states, "Please note the zoning is not incorrect and has not been revisited anytime recently, including the 2016 Comprehensive Plan update. There is no error in the zoning, nor is there any plan to change the zoning designation(s)."**

Mr. Diener also wrote, "**Finally, please know that the Ueland Tree Farm mining operation is vested to the code under which it was submitted, so that even additional development or restrictions were put in place, they could not impact what has been approved.**"

The Ueland property, that Mr. Diener responded to me about with his email mentioned above, is **NOT** zoned with a mineral resource overlay.

Thank you for your help with this, and I hope someone at DCD will respond that these comments have been added to the comments for Ueland's 18-00431.

Best Regards,

Jack Stanfill, President - Registered Agent  
Chico Creek Task Force  
2461 Northlake Way NW  
Bremerton WA 98312

---

**From:** Scott Diener <[SDiener@co.kitsap.wa.us](mailto:SDiener@co.kitsap.wa.us)>

**Sent:** Wednesday, August 23, 2017 9:50 AM

**To:** Jack Stanfill ([jackstanfill@hotmail.com](mailto:jackstanfill@hotmail.com))

 Reply all |   Delete Junk |  ...

**Subject:** FW: Zoning Incorrect?

Jack:

Kitsap County has considered your email of July 21, 2017. The County certainly understands your desire to remain vigilant about natural systems in your area. To help you understand more we have prepared additional information. Please note this response does not address any of the area that is under the City of Bremerton's jurisdiction.

Please note the zoning is not incorrect and has not been revisited anytime recently including during the 2016 Comprehensive Plan update. There is no error in the zoning, nor is there any plan to change the zoning designation(s).

As to the 'green' or 'protection zone' which was outlined during the collaborative Gorst Subarea planning process with the City of Bremerton, please be aware that the 'planning tool designation' was a recommendation and was not given any subsequent legislative, regulatory or code-based standing by any agency or jurisdiction. There are no plans at this time to revisit the Gorst Subarea Plan or its findings. However, if you wish to gain momentum with your request for future consideration, you may wish to consult with the landowner (requests to impose development restrictions on another's land are often easier to support if the landowner agrees).

Finally, please know that the Ueland Tree Farm mining operation is vested to the code under which it was submitted, so that even if additional development regulations or restrictions were put into place, they could not impact what has been approved.

We hope that this email informs you more of the circumstances of the area and the nonbinding recommendations of the Gorst Subarea Plan. Please feel free to contact me if you have further questions.

Regards,

Scott Diener

Manager, Development Services and Engineering  
SEPA Responsible Official

Dept of Community Development  
Kitsap County  
614 Division St, MS-36  
Port Orchard, WA 98366

[sdiener@co.kitsap.wa.us](mailto:sdiener@co.kitsap.wa.us)

t: 360-337-5777

f: 360-337-4415

[//kitsapgov.com/DCD](http://kitsapgov.com/DCD)

*Please note: All incoming and outgoing email messages are public records subject to disclosure pursuant to the Public Records Act, Chapter 42.56 RCW.*

---

**From:** Jack Stanfill <[JackStanfill@hotmail.com](mailto:JackStanfill@hotmail.com)>

**Date:** July 21, 2017 at 10:37:46 AM PDT

**To:** "[ewolfe@co.kitsap.wa.us](mailto:ewolfe@co.kitsap.wa.us)" <[ewolfe@co.kitsap.wa.us](mailto:ewolfe@co.kitsap.wa.us)>, "[cgarrido@co.kitsap.wa.us](mailto:cgarrido@co.kitsap.wa.us)" <[cgarrido@co.kitsap.wa.us](mailto:cgarrido@co.kitsap.wa.us)>, "[rgelder@co.kitsap.wa.us](mailto:rgelder@co.kitsap.wa.us)" <[rgelder@co.kitsap.wa.us](mailto:rgelder@co.kitsap.wa.us)>

 Reply all |   Delete Junk |  ...

<[jmcnichols@kuow.org](mailto:jmcnichols@kuow.org)>, Christopher Dunagan <[chrisbdunagan@gmail.com](mailto:chrisbdunagan@gmail.com)>

**Subject: Zoning Incorrect?**

Dear Commissioners,

We are concerned with the current zoning of the Heins Basin that includes all of the UTF Quarry B, and about half of Quarry C. Since the original FEIS in 2009, the Washington Department of Ecology has designated that portion of the Heins Basin as a "Green Zone".

Kitsap County has it zoned for urban development with a mineral overlay. This appears to be in conflict with the allowed uses of the uphill property. We seek to ensure this area is protected per WDOE regulations. What do we need to do to start a progressive action with the County to make this happen?

Thank you,

Jack Stanfill