

MINUTES

KITSAP COUNTY PLANNING COMMISSION  
PUBLIC HEARING  
September 22, 2005

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

**DRAFT**  
3:00 PM

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

3:05 PM

Approval of Minutes

Minutes of August 2, 2005

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

Minutes of August 23, 2005

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

- Frank Mahaffay objected and asked for clarification on RCW 36.70.040 relative to the Department of Community Development staff being obligated to present the Planning Commission's recommendations to the Board of County Commissioners prior to moving forward, when in fact this was not done. He asked that that the minutes be corrected

1 to indicate this omission. Page 203, line 24, shows the  
2 discussion that does not indicate the RCW and therefore  
3 believes the minutes are incomplete.  
4

- 5 • Michael Gustavson – Asked that not only the RCW but also  
6 the WAC referencing Best Available Science be made  
7 available to the Planning Commission. While this task was  
8 completed the WAC is also not referenced in the minutes.  
9
- 10 • Chair Mahan suggested these minutes be held over for  
11 approval until the next meeting.  
12
- 13 • John Ahl – Commented that draft copies of the minutes were  
14 made available to the Planning Commission members quite  
15 some time ago. It is preferable to forward changes to the  
16 Secretary ahead of time to avoid lengthy discussions at  
17 meetings.  
18

19 **PUBLIC HEARING on Critical Areas Ordinance**  
20 **Second Draft**  
21

- 22 • Chair Mahan – Prior to accepting testimony staff and the  
23 Department of Community Development Director Cindy  
24 Baker will address the staff.  
25

26 Cindy Baker – Today’s task for the Planning Commission is to  
27 consider testimony on the Critical Areas Ordinance second draft, that  
28 has been extensively reviewed both legally and scientifically and that  
29 the Department of Community Development believes meets all  
30 statutory requirements for adoption by the Board of County  
31 Commissioners. Therefore the Planning Commission’s roll as an  
32 advisory body to the Department is to make recommendations to the  
33 Board and in the process hold deliberations and produce findings of  
34 fact. The recommendations should focus on the goals, policies,  
35 standards and procedures contained in this draft. From the  
36 beginning, staff has recognized the controversy inherent to this  
37 ordinance and while personal opinions are understood and  
38 respected, the duties today are clearly to consider oral and written  
39 testimony and to recommend for approval possibly with conditions  
40 or denial of the ordinance. The Planning Commission’s efforts to this

1 point are appreciated and it is now time to move the ordinance  
2 forward to the Board of County Commissioners for a final decision.  
3

4 Jim Bolger – Today Dave Greetham and himself will present a brief  
5 summary and overview of the Critical Areas Ordinance. Bolger will  
6 briefly describe the process undertaken and Greetham will following  
7 by describing the substantive changes in the proposed revised  
8 ordinance relative to the existing ordinance. The staff's presentation  
9 will be conclude by Bolger formally entered into the record a list of all  
10 materials, documents and comments generated thus far in the  
11 revision process for the Planning Commission's consideration  
12 during deliberations. Via a PowerPoint presentation, Bolger showed  
13 that State law requires local jurisdictions to adopt laws, plans and  
14 policies to achieve GMA goals, including the protection of critical  
15 areas. These laws, plans and policies should be periodically  
16 reviewed. In addition, the Act requires that Best Available Science be  
17 included in developing policies and development regulations to  
18 protect the functions and values of critical areas. If this review  
19 reveals that the ordinance does not meet Best Available Science or  
20 the goals of the GMA, it must be revised. Critical areas are defined in  
21 the GMA as wetlands, fish and wildlife habitat conservation areas,  
22 geologically hazardous areas, frequently flooded areas and critical  
23 aquifer recharge areas. Protection of the functions and values of  
24 critical areas is a statewide and local goal as well as relates to the  
25 environmental sensitivity, public health, safety and welfare  
26 conditions involved in the five critical area titles. The protection is  
27 from avoidable losses that cost public dollars. It is widely  
28 recognized that it is less costly to protect than to restore. In addition  
29 to legal review, the ordinance has been drafted with primary  
30 consideration for scientific information. Bolger listed the three  
31 primary publications available this evening for the public relating to  
32 Best Available Science process. Scientific information looked at for  
33 this draft was considered Best Available Science and was examined  
34 for applicability to Kitsap County critical areas. In addition, technical  
35 representatives throughout Kitsap County were convened for five  
36 months during this process. Beginning in November of 2003 to  
37 present, public involvement has been a major factor in the process.  
38 It will continue on through the Board of County Commissioners  
39 public hearing prior to adoption.  
40

**1 Dave Greetham – Using the same PowerPoint presentation, gave a  
2 brief recap of major changes.**

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

**8  
9 ~ Increases or decreases in buffer widths along stream, wetlands and  
10 shorelines.**

**11 ~ Language clarifications, definitions added, obsolete language  
12 deletion.**

**13 ~ Habitat management plan that could provide up to a 50% buffer  
14 reduction**

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

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

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

**33 ~ Critical Aquifer Recharge Areas. There is new mapping available  
34 provided by Kitsap County PUD, Health District and other agencies.  
35 Zone of influence for high-risk activities have been expanded. These  
36 include gas stations, dry cleaners, etc. This includes activities with  
37 potential threat to groundwater. These would still be covered under  
38 hydro-geological reports. If a report states it is safe to locate in an  
39 area, then approval is given. If not safe, the use would be prohibited  
40 there. No significant regulatory changes to this chapter.**

**41**

1 Special report section in back of draft was edited. These include  
2 wetland, geological, habitat management plans. Greetham clarified  
3 the language in these reports.

4  
5 In summary, the major points are stream, shoreline and wetland  
6 buffers.

7  
8 Bolger – Formally entered into the record all materials, information,  
9 documents on submitted listed including documentation of extensive  
10 public input received on both drafts of the ordinance, reports and  
11 documentation of public outreach activities including the two BKAT  
12 video tapes from the August 10, 2005 public workshop held in  
13 Bremerton. Also, scientific information reviewed along with State  
14 laws and rules, the RCWs and WACs followed by Kitsap County  
15 review of draft ordinance.

- 16  
17 • Lary Coppola – The Planning Commission has asked a  
18 number of specific and direct questions of staff that have yet  
19 to be answered. Are these questions and the answers  
20 included in the material submitted by Bolger?  
21

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

- 27  
28 • Coppola – All questions the Planning Commission has  
29 asked staff in the last six months.  
30

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

- 34  
35 • Coppola – Does not believe all questions have been  
36 answered. Some have been non-answers and some ignored.  
37

38 Bolger – The satisfaction with the answers does not negate the fact  
39 that the questions have been answered.  
40

1           • Coppola – One question is needing answered is the specific  
2           value of the land that will become unusable if this ordinance  
3           is enacted as written.

4  
5           **Bolger – This is a difficult question to answer because, first of all the**  
6           **land is not necessarily completely unusable.**

7  
8           • Chair Mahan – Requested that this discussion be moved to  
9           next Tuesday’s deliberations.

10  
11          • Coppola – Does not want the material entered into the  
12          record until that question has been answered. He feels the  
13          record is incomplete.

14  
15          **Cindy Baker – There have been questions asked as well as support**  
16          **from legal counsel, that staff is not able to answer. The Department**  
17          **was able to get the number of acres based on GIS information. To**  
18          **get the property value would be a one to two year process at this**  
19          **time. Even real estate agents at this time are having trouble**  
20          **estimating the value of land. It would have taken an assessment on**  
21          **every parcel.**

22  
23          • Coppola – That is what the Assessor does.

24  
25          **Baker – Using the Assessor’s numbers does not reflect total**  
26          **accuracy. The Department believed acreage was the best answer.**  
27          **There may have been other questions staff was unable to answer but**  
28          **have, to this point, responded to questions to the best of their ability.**  
29          **This is all we are planning to present.**

30  
31          • Chair Mahan – Reminded the Planning Commission members  
32          that this was a public hearing to take testimony from the  
33          citizens present.

34  
35          • Coppola – Made a motion that the material be excluded from the  
36          record until the question is answered.

37  
38          **Baker – Not sure that is an allowable motion. The staff has the right**  
39          **to make its presentation. She will check with legal staff while the**  
40          **public hearing proceeds.**

41

- 1 • Chair Mahan – Have some 40 people signed up to speak, does not think  
2 the Planning Commission purpose is served by trying to hold up the  
3 process. This is the public’s opportunity to speak. This is not the Planning  
4 Commission’s time to make political statements.  
5
- 6 • **Coppola – Withdrew his motion.**  
7
- 8 • **Chair Mahan – Purpose of this meeting is to take public  
9 testimony on the Critical Areas Ordinance second draft. Copies  
10 are available. Because of the number of people prepared to  
11 speak, he believed it best to limit testimony to a three-minute  
12 time frame.**  
13
- 14 • **Jenniges – Asked how long people would have to submit  
15 written testimony following tonight’s hearing.**  
16
- 17 • **Chair Mahan – Thinks this should be decided before testimony  
18 begins. Therefore, if someone cannot stay to the end, they will  
19 know what the deadline is. He personally thinks it should be  
20 two weeks, but discussion has been held regarding  
21 deliberations being held next week on two consecutive days.  
22 He asked for Planning Commission members’ opinions.**  
23
- 24 • **Mahaffay – Favors two weeks.**  
25
- 26 • **Gustavson – Although he appreciates two week deadline, but  
27 thinks need the written comments to go into deliberations with  
28 all the facts.**  
29

30 **A motion was made by Dean Jenniges and seconded by Michael  
31 Gustavson that the record for written public testimony is left open  
32 until Thursday, September 29, 2005 at end of business day.**  
33

- 34 • **Mahaffay – Doesn’t think it is enough time.**  
35
- 36 • **Jenniges – Amended his motion to September 30, 2005 at end  
37 of business day.**  
38
- 39 • **Deborah Flynn – With a meeting scheduled next week, Tuesday,  
40 September 27, to begin deliberations. This will not be possible  
41 without all of the comments available.**

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- Ahl – Thinks a work/study session can be held without all information. It would be work/study without a conclusion. Suggested that rather than two back-to-back days the second date could be moved out further.

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

- Chair Mahan – First explained the responsibility of the Planning Commission and then asked that speakers sign in and that speakers state their name and home address for the record. He reiterated that each speaker limit testimony to three minutes, after which he will decide if they are speaking to the issue or getting off track. If he asks the speaker to sum up after the first three minutes, he hopes this will happen. He asked for a respectful speaking process. He referenced the public hearing rules on the back of the agendas.
- Jenniges – Asked that people not repeat what someone else has already said but rather to agree with that person.
- Mahaffay – Asked that everyone state his or her name and address for the record.
- Chair Mahan – Called three names at a time to line up to speak.
- Gustavson – Made a motion that only Kitsap County residents are allowed to speak first.
- Chair Mahan – On the list, there is only one person who lists his residence as not being in Kitsap County.

Baker – Advised by legal counsel that the motion made by Lary Coppola was out of order and that it is the responsibility of the Planning Commission to move forward their recommendation to the Board of County Commissioners through the Department of Community Development. Further, that the Planning Commission has the option to make the changes and recommendations it wants to make, the Department of Community Development can choose to move the Planning Commission’s recommendation forward to the Board or to show differences between the Planning Commission’s

1 recommendation and the Department's. That being said, if the  
2 Planning Commission has differing opinions, it can show a minority  
3 and/or majority vote as it moves forward. Ultimately a  
4 recommendation must be moved forward to the Board of County  
5 Commissioners. It also has to meet the State statutes and the  
6 County Code.

7  
8 **SPEAKERS**

9  
10 John Cambalik – Regional liaison for the Puget Sound Action Team  
11 and as such, he covers all of Clallam, Jefferson and Kitsap. In  
12 comment letter to staff dated August 10, 2005, Cambalik highlighted  
13 some of the key points. For Chapter 19.300: Fish And Wildlife Habitat  
14 Conservation Areas, the PSAT recommends: Explicitly designate  
15 primary association areas along the marine shoreline for  
16 anadromous fish such as juvenile salmon, as critical Fish and  
17 Wildlife Habitat Conservation Areas, within Section 19.300.310, item  
18 A. He then listed the primary association areas included. Next,  
19 asked that Section 19.300.15, the development standard section,  
20 protects marine riparian areas and feeder bluffs in recognition of  
21 their roll in creating and sustaining primary association habitat areas.  
22 Important also that ESA listed and sensitive fish species have forged  
23 fish spawning areas. Feeder bluffs and migratory corridors are  
24 important for protecting marine riparian areas. Effective marine  
25 shoreline buffers can protect critical near shore processes,  
26 functions and values at risk throughout the marine shoreline. He  
27 highlighted specifics for protections along marine shorelines. The  
28 proposed standard buffer widths for all urban, semi-rural and rural  
29 shorelines may put critical near shore processes, functions and  
30 values at risk. Buffers should, following a precautionary approach,  
31 be as protective as those the County has proposed for fish rearing  
32 fresh water shorelines. Guidance material is attached with his  
33 complete presentation. Aquatic habitat fish and wildlife conservation  
34 areas should be protected from the impact of stormwater. Aquatic  
35 habitat Fish and Wildlife Habitat Conservation Areas should be  
36 protected from the impacted stormwater. He suggested specific  
37 measures for critical areas protection such as adoption of updated  
38 2005 Stormwater Manual for western Washington, the Department Of  
39 Ecology manual or equivalent manual; provisions for areas draining  
40 into critical fish and wildlife habitat areas that limit and disconnect  
41 impervious surfaces, retaining native forest cover and encourage or

1 require the use of low impact development stormwater management  
2 techniques to treat and infiltrate stormwater on-site as allowed by  
3 site conditions. In conclusion, he added, the importance of adopting  
4 and implementing effective critical areas ordinances is well pointed  
5 out in the habitat section in the 2004 State of the Sound report. The  
6 conclusion section of that report state, “The accumulative pressures  
7 on Puget Sound are driving a silent and slow motion crisis. While the  
8 Sound still appears beautiful, its diverse web of life is at risk.” It  
9 goes on to state that while the goal of a healthy Puget Sound now  
10 and for future generations is still within reach, we need to redouble  
11 our effort and expand the scale of our work. One important way  
12 among others to do that is to adopt and implement strong and  
13 effective regulations at the local level such as this Critical Areas  
14 Ordinance. The PSAT appreciates the Planning Commission and  
15 staff’s diligence in this area and encourages consideration of the  
16 above recommendations to further protect the Puget Sound eco-  
17 system. (Letter, addendum and State of the South Report submitted  
18 for the record).

19  
20 Jack Hamilton – A Silverdale resident, responded to the question  
21 from the Planning Commission concerning acreage and cost. He  
22 asked the County Assessor this question and was given an acreage  
23 number of 295,423 acres (unincorporated private lands) and an  
24 assessed dollar amount of \$9,354,922,963. This would be an  
25 underestimate, as the Assessor does not assess at market value.  
26 Translated into the 30 thousand acres that would be given up as  
27 buffers, a number given by County staff at the last hearing, that is  
28 10% of the area or approximately \$935 million dollars worth of  
29 property. He received response to his question in one day. Hamilton  
30 then presented his detailed review of the Critical Areas Ordinance,  
31 Second Draft, for the record. Areas he claimed inability to comment  
32 on included: comparison of the existing Critical Areas Ordinance to  
33 the Second Draft. He claimed this was due to the differences in  
34 content and organization; there are no meaningful cross-references  
35 between the two documents; and no scientific basis for existing  
36 ordinance and draft. Both document lack citation required in WAC  
37 365.195.915. Hamilton’s comments (detailed in his complete  
38 presentation presented for the file at this hearing) included: Areas  
39 Hamilton did comment on included: overall logic and content  
40 supported in the draft ordinance; frequent reference to RCW 36.78  
41 (Growth Management Act (GMA)). His written presentation included

1 section 140 – Comprehensive plans—Ensure public participation.  
2 This section contains two key words: participation and discussion.  
3 There is no priority, one over the other, of any of the twelve goals of  
4 GMA. Ownership of private property and associated rights are  
5 afforded specific protection by the constitution and have solid basis  
6 in law. The environment as such, is provided no specific protection  
7 under the constitution. Therefore, GMA goals 6-Property Rights and  
8 11-Public Participation have equal priority with all other goals. A  
9 primary understanding of regulations is that a regulation imposes  
10 behavior control either to prevent a condition not acceptable to  
11 society or to correct such a situation. The creation of a regulation is  
12 a classic problem-solving exercise. The first of is to define the  
13 problem. Hamilton does not believe this has occurred with the  
14 Critical Areas Ordinance. Rather the assumption is made that critical  
15 areas exist and because they exist, they must be protected. Does not  
16 think that in reading 98 pages of the Second Draft, there is a single  
17 instance of identification of a specific problem that requires  
18 restrictive regulations. He also believes that the public process  
19 review mandated by the GMA has not taken place and further that the  
20 public has been excluded from conducting any review and that it is  
21 apparent to him that the intent of the County is to define success by  
22 enacting legislation. Prior to any regulations restricting the  
23 enjoyment of use at highest utility of any property are implemented,  
24 the County needs to demonstrate that a specific problem exists.  
25 Also, because of the requirement to consider Best Available Science,  
26 the specific problems identified must be defined in scientific context.  
27 Does not think the draft proposal defines local problems but does  
28 assert problems globally by assumption. The second step in  
29 effective problem solving is to identify all possible actions or  
30 solutions that could prevent or correct the problem. This is one of  
31 the GMA’s requirements under Section 140. One action available but  
32 not considered, is to “do nothing.” He asked that if staff is so  
33 expert, why it is necessary to revise the regulations and specifically  
34 to make them more restrictive. After potential solutions are identified  
35 they must be tested for credibility and applicability and that every  
36 possible solution must satisfy a common standard science criteria.  
37 This step also needs to begin with public participation. Does not  
38 think that staff has identified any possible alternative solutions but  
39 has provided only the proposed regulations. With this approach, one  
40 could think that no other solution exists or that all other solutions  
41 failed the science criteria. This allows staff to control the outcome.

1 Without having science criteria properly identified, it is most difficult  
2 to understand the process used by staff. Through open discussion,  
3 the public can become part of the answer rather than a body to  
4 regulate. Problems are rarely singular in nature, as he believes is  
5 applicable in the current Critical Areas Ordinance draft, then seldom  
6 will a single action or option result in the practical solution of the  
7 original problem. Combining options and searching for the best fit,  
8 Hamilton thinks must invariably impact a number of GMA goal areas  
9 and the final selection of a course of action will be a political  
10 decision. Again, he believes that public participation was lacking.  
11 As defined in the Viking Properties decision, active public  
12 participation is essential. He pointed out that after five years of the  
13 current Critical Areas Ordinance, there still is no valid means to  
14 determine the effectiveness of the regulations. An effective element  
15 in the creation of options and the final solution is the identification of  
16 the associated metrics or the means to measure the effectiveness of  
17 the solution to achieve its stated objectives. Hamilton said that the  
18 current Critical Areas Ordinance and Draft Two are abject failures  
19 from the perspective of problem identification and implementation of  
20 metrics and monitoring. He believes that the current Critical Areas  
21 Ordinance and the draft proposal are no more than thinly veiled  
22 attempts to exercise ever-increasing public interest and control over  
23 private property. In his testimony, he has used the terms credible  
24 and applicable when talking to scientific basis for decision-making.  
25 He said the earth is healthier today than 40 years ago when Silent  
26 Spring was published. Rachel Carson was wrong in her predictions.  
27 Merely publishing a scientific opinion does not make it creditable.  
28 Creditable scientific data is significant in the Critical Areas Ordinance  
29 since it will impact use of both private and public property and will  
30 involve significant financial burdens both public and private.  
31 Applicability is also essential. The body of science regarding the  
32 environment is vast with most of it paid for by public funds.  
33 Hamilton believes it is essential to recognize that scientific research  
34 or study, especially from academia or otherwise publicly funded, is  
35 conducted to prove that a problem exists. He thinks that studies  
36 involving water flow from mountain snow pack or glacier fed streams  
37 are not applicable to Kitsap County. Broad scientific studies are not  
38 applicable to site-specific problems. Additionally, the Second Draft  
39 not only failed the public participation requirement, science citation,  
40 stated Hamilton, it also fails the test related to arbitrary and  
41 discriminatory regulation. GMA Goal 6 supports this statement. He

1 believes that the draft ordinance is filled with instances of assigning  
2 authority for determination of specific application of provisions of the  
3 ordinance to County staff. He thinks this is arbitrary by definition.  
4 The one size fits all solutions of the draft ordinance can only be  
5 defined as arbitrary. Also, the draft ordinance, by way of its own  
6 wording, he thinks identifies itself as discriminatory as it clearly  
7 attempts to define all “critical areas” in the County. However the  
8 wording states that the County does not have a finite inventory of the  
9 critical areas and that it does not know where the critical areas are.  
10 Hamilton feels that the County has no intent and no vehicle to extend  
11 the restrictions and regulations regarding critical areas to existing  
12 conditions of developed properties. He then asked what problems is  
13 the County trying to solve. Hamilton’s testimony to this point  
14 concentrated on the specifics of the GMA, the requirements establish  
15 in the Washington Administrative Code (WAC) and proven problem  
16 solving practices. Next, he addressed perceptions and charges  
17 about anyone who would oppose the Critical Areas Ordinance,  
18 respecting and protecting property rights, GMA goals not focused on  
19 unlimited and unrestricted assault on the environment. He then  
20 made references to how important the environment is to people’s  
21 livelihood. Next Hamilton discussed responsible use of property by  
22 the owner and that this does not necessarily constitute harm to the  
23 environment.

24  
25 **Gentleman in the Audience – Objected to Hamilton’s length of time**  
26 **used to make his presentation.**

27  
28 Hamilton then reiterated his presentation by summarizing his key  
29 points. In closing, he thought that no testimony presented this  
30 evening would be able to identify all deficiencies and failures of the  
31 draft ordinance. It was Hamilton’s belief that more public  
32 participation could have avoided these failures. He strongly  
33 recommended that the Planning Commission present to the Board of  
34 County Commissioners findings that include rejection of the Critical  
35 Areas Ordinance Second Draft and recommend to the Board to re-  
36 commence the process in the manner specified by law. (Hamilton  
37 presented a complete written copy of his presentation for the record).  
38

39 **Bob Benze - Environmental Engineer from Silverdale, has experience**  
40 **in protection of streams and marine environment. He addressed Best**  
41 **Available Science. He attended a meeting last year about buffers and**

1 protection of habitat. The size of the buffers depended on a number  
2 of variables, the most important being the variety of species being  
3 protected. The draft ordinance under Section 19.300.15.a.1, states  
4 that the buffer should be maintained along the perimeter of fish and  
5 wildlife habitat conservation areas as listed in Table 4. The question  
6 here is what are these conservation areas noting that the County  
7 defines these as areas established to protect all fish; other listed  
8 aquatic species and listed terrestrial species. The buffers are to be  
9 designated and defined by Best Available Science but Benze believes  
10 there is a disconnect on the definition of Best Available Science. The  
11 County's December, 2004 Best Available Science Review Summary  
12 document states, it is repeated throughout the sources of Best  
13 Available Science that site specific analysis is the best way to  
14 approach critical areas. Therefore by the County's own definition, it  
15 is site specific. Further based on the County's own science  
16 presentations, it is clear that the Best Available Science is also  
17 species specific. It is important to know which species is being  
18 protected so that the scientific knowledge is used pertaining to that  
19 species. However, the wording in the draft ordinance is neither  
20 species nor site specific. He urged the Planning Commission not to  
21 recommend approval of this ordinance until Best Available Science is  
22 employed.

23  
24 Jeannette Franks – A Gerontologist (a specialist in aging and the  
25 elderly), Thanked the Planning Commission for the opportunity to  
26 speak. As a scientist and teacher on waterfront property, she  
27 believes in research and did homework regarding living on a  
28 shoreline or slope. Thinks the County has good science, that  
29 Shoreline Management, stabilization of slopes and protecting  
30 wetlands is very, very important to everyone. People should want to  
31 protect the salmon, habitats and properties for the children of today  
32 and for generations to come. Franks supports a strong and fair  
33 Critical Areas Ordinance. Thinks it should be regulated. Draft looks  
34 good to her but won't know until a lot of technical details have been  
35 completed. Two things stood out to her. 1) Should drop science for  
36 isolated wetlands. Kitsap County has a mandate to achieve no net  
37 loss of wetlands. It is difficult to get wetlands back once gone. 2)  
38 Important to maintain connections between habitat areas, something  
39 that is not in second draft. 3) Important to establish limits on  
40 clearing land and maintaining natural vegetation. Does not only  
41 disagree with some people's opinion that a Critical Areas Ordinance

1 decreases property values but believes it actually increases  
2 Protection of species and property. Want to protect for future  
3 generations. Supports a strong ordinance that should be enforced.  
4 There is an inherent responsibility to the children of today and the  
5 grandchildren of tomorrow plus future generations.  
6

7 Faye Henden- A Poulsbo resident, said she is not a biologist and has  
8 no scientific background. She does however have firsthand  
9 experience what the Critical Areas Ordinance because she has lost  
10 the use of six acres of land along a creek. She believed the proposed  
11 update would further restrict her family's enjoyment of their land.  
12 Henden attended public forums and after reading the Second Draft,  
13 she concluded that it took 6-8 County staff with technical or scientific  
14 backgrounds to prepare the document. She saw errors as follows: 1)  
15 need source goal statement on page 2. The stated one is  
16 inappropriate; 2) on page 3, there is no a specific definition for  
17 quality of life. She asked for location of the definition and  
18 environmental factors for protection are located. The definition  
19 section does not begin until page 16 but it is required to be in the  
20 front of the document. Henden then offered specific examples of  
21 insufficient definitions, i.e. the word "Buffers" is listed with several  
22 definitions that she did not believe to be accurate. She asked that  
23 the Planning Commission recommend that the Board of County  
24 Commissioners direct staff to re-draft the Critical Areas Ordinance.  
25

## 26 NEW TAPE

27

28 Dorothy Guice – Poulsbo, speaking for herself. Needs evidence that  
29 the original Critical Areas Ordinance has inadequate protections. If  
30 not, then she questioned why the County needs to revise the original.  
31 If there is evidence that it needs to be revised, then the public has a  
32 right to see the need. She asked why a large buffer be taken from a  
33 property owner if a smaller one will work. She referred to this as a  
34 land grab. She quoted specific titles from the draft and addressed  
35 each relative to buffers. She said that human life should always take  
36 precedence over anything else. She foresees lawsuits against the  
37 County. She mentioned the removal of dangerous trees to assure  
38 habitat protection. She asked what would happen during the  
39 fulfillment of specified requirements, a dangerous tree should fall  
40 injuring or killing a human being. She then expressed concern  
41 regarding a statement in the draft granting the Department of

1 Community Development Director the right to enter a person's  
2 property without permission. She cited sections that contradicted  
3 this provision. She asked several questions, one stating that if a  
4 situation is only a substantial danger, not an emergency, why is  
5 immediate action required. She also asked why environment given  
6 equality with human health and welfare. Title 19 is a control/power  
7 grab and she is opposed to it. Duty of a democratic government is to  
8 protect people, not control them.

9  
10 Rod Reid – Alpine Evergreen Co., owner of approximately 4 thousand  
11 acres in Kitsap County, most of it in South Kitsap. He works with  
12 stream buffers on the land, which mostly requires a forest practice  
13 application. He now sees that the County is adopting the Department  
14 Of Ecology's guidelines for stream classifications with adjustment to  
15 the buffer widths, and he is opposed to this. The DNR module is new  
16 and still does not work well, in particular on gradient lands. He went  
17 on to explain the rationale behind his objection to this module. He  
18 understands that the module does well on more hilly lands but not on  
19 the lowlands. He explained what his firm now has to do to practice  
20 its business. DNR does not require any buffer. Now Kitsap County is  
21 proposing to increase buffers from 25 to 50 on streams. He noted  
22 that Kitsap County is covered with NS streams. These are seasonal  
23 streams. He asked that this class of stream not be given any more  
24 importance than they deserve. 25 feet is more than adequate to  
25 protect them. 50 feet is overkill. Kitsap County has fish bearing  
26 streams that are dry most of the year. He gave an example of how  
27 fish will spawn where there is sufficient water. However a particular  
28 stream in south Kitsap County has not had fish spawning for several  
29 years because it is too dry. Okay but watch the module. Looked at  
30 stream map and will see new DNR module map, but old map is on  
31 wall. Consider inconsistencies."

32  
33 Richard Rumane by Vivian Henderson – Will not comment on Best  
34 Available Science as others have already discredited it but said that  
35 past practices were better. However, it is impossible to return to the  
36 past so we must look to the future utilizing data that looks into the  
37 future. Listed future problems, included depletion of oil supply and  
38 provided statistics. Namely that 90% of all known reserves in  
39 production, 80% in the depletion phase with 80% of those being old  
40 fields discovered over 35 years ago. Oil demand over past two years  
41 has grown at twice the pace for past decade according to the

1 International Energy Agency. It estimates world demands will  
2 increase up to 47%. She listed supply and demand statistics stating  
3 that peak demands will be reached in this decade. It will take  
4 decades to develop the infrastructure to utilize alternatives to oil.  
5 Henderson also referenced the steady decline in other valuable  
6 resources such as water and the possible integration of borders  
7 between Canada, the United States and Mexico. This would  
8 encourage low paid workers from any place in North America.  
9 Finally, Congress is sure to amend the federal Endangered Species  
10 Act (ESA) that would provide for landowners to receive  
11 compensation but the level of compensation will cause heated  
12 debates. (Complete written testimony on file)

13  
14 Starla DeLorey – Resident of Poulsbo, Agreed with Hamilton and  
15 Benze that one size fits all is not the answer but doubts feasibility of  
16 anything other than a generalized system. DeLorey was in favor of  
17 strong but flexible buffers and regulation because the ecological and  
18 long-term public health value outweighs the commercial value.  
19 DeLorey was

20  
21 **BREAK**

- 22  
23 • Chair Mahan – Reiterated need to contain testimony to a three-  
24 minute limit.

25  
26 Vivian Henderson – With Kitsap Alliance of Property Owners (KAPO),  
27 registered a protest to Chair Mahan regarding the opportunity for the  
28 public to speak and did not believe that three minutes to talk was  
29 reasonable. She presented a packet for consideration and the record  
30 that included: 1) KAPO's September 22, 2005 critique of the May 27,  
31 2005 Second Draft of the Critical Areas Ordinance; 2) Additional  
32 references of Kitsap County's Critical Areas Ordinance by Dr. Robert  
33 Crittenden dated August 2005 with CD listing areas; 3) Letter to the  
34 Board of County Commissioners dated December 20, 2004, critiquing  
35 the County's roundtable process on the first draft of the Critical  
36 Areas Ordinance and appealing to the Board for an honest effort  
37 toward a public participation process; 4) Letter dated December 29,  
38 2004, transmitting suggested comprehensive plan for public  
39 participation, no response or acknowledgement received; 5) Letter  
40 dated December 29, 2004, from KAPO to the Board of County  
41 Commissioners with a paper by James W. Buell, PhD, titled *Best*

1 ***Scientific Commercial Information-Getting Back to the Garden.***

2 **KAPO believes this is a common sense approach to be considered**  
3 **by law and policy makers; 6) Letter to the Board of County**  
4 **Commissioners dated May 10, 2005, expressing concern relative to**  
5 **the County's process for revising the Critical Areas Ordinance**  
6 **without lawful participation pursuant to RCW 36.70a.140; 7) Letter**  
7 **dated May 25, 2005 to the Board of County Commissioners inquiring**  
8 **about public process planned for education and participation in**  
9 **updating the Critical Areas Ordinance; 8) Letter date June 13, 2005 to**  
10 **the Board of County Commissioners asking again for a public**  
11 **education process plan; 9) Letter to the Board of County**  
12 **Commissioners dated June 17, 2005, transmitting Dr. Robert**  
13 **Crittenden's nine page review of the Critical Areas Ordinance Second**  
14 **Draft dated May 17, 2005; and 9) Letter dated June 28, 2005 to the**  
15 **Kitsap County Planning Commission, appealing to the members to**  
16 **support a public participation and education plan which includes the**  
17 **public in the process as required by law. In addition, Henderson**  
18 **submitted a letter dated May 22, 2005, from the Pacific Legal**  
19 **Foundation, addressed to the Board of County Commissioners**  
20 **addressing what it perceives to be very restrictive regulations found**  
21 **in Kitsap County's proposed Critical Areas Ordinance update relative**  
22 **to private property. The Foundation suggested that the County's**  
23 **Critical Areas Ordinance may contain significant constitutional and**  
24 **statutory flaws that should be remedied prior to the Board's vote on**  
25 **final approval. If adopted as written, affected parties will most likely**  
26 **ask the Foundation to file a suit challenging it. Finally, the proposed**  
27 **Critical Areas Ordinance as applied to significant landowners may**  
28 **contain significant, constitutional flaws that include takings and due**  
29 **process claims. The most recent draft of the County's Critical Areas**  
30 **Ordinance may also include statutory flaws including adequate**  
31 **consideration of Best Available Science In conclusion and in**  
32 **response to a comment from Jenniges about Kitsap County**  
33 **Prosecutor's legal opinion that the Second Draft is well within the**  
34 **legal statutes of the County's requirements, Henderson thinks that**  
35 **legal counsel tells the Board whatever it wants to hear. KAPO's main**  
36 **concern has always been provision of time for public comments.**  
37 **Henderson does not know what is happening to their property and**  
38 **this she thinks is because there has been no effort on the County's**  
39 **part to include explanations for the public. Testimony is not the**  
40 **same as open and free discussions. KAPO wants open, free**  
41 **discussions. Also, she does not believe that staff has provided**

1 honest responses to what the updated Critical Areas Ordinance  
2 represents. Henderson called the roundtable discussions provided  
3 by the County, the Delphi Process where people in attendance are  
4 carefully controlled. It was not conducted in an open and free  
5 discussion. Lastly, Henderson complained about the legal  
6 notification process carried out by County staff. KAPO continues to  
7 assert that the County has not followed proper processes regarding  
8 preparation for consideration of the Critical Areas Ordinance, Second  
9 Draft. It's the law that the public be involved in this process. Not  
10 acknowledged by County staff was an outline submitted by KAPO  
11 spelling out preferred method for including public processes  
12 obtained from the State's website. She emphasized the lack of  
13 provisions for public participation. As to a proposal to modify  
14 wetland buffers, KAPO recognizes there are fewer than four options:  
15 Increase, decrease, no change or eliminate buffers. KAPO calls then  
16 "Big Dumb Buffers." The definition of Best Available Science and  
17 other related terms have also been modified in the Second Draft with  
18 no alternatives listed. . (Complete written testimony and submittals  
19 on file).

20  
21 Gentleman in the Audience objected to the amount of time allowed  
22 for Henderson's testimony.

- 23  
24 • Chair Mahan – Asked that she be allowed to continue.

25  
26 Over the past four years, KAPO has attempted to work within the  
27 system and process established by the County, while continuing to  
28 spread the word that it is believed by KAPO there are shortfalls in  
29 active and meaningful participation. She asked that a proper public  
30 participation process be enacted immediately. Additionally, KAPO  
31 asks that because the ongoing CAO process has not provided for  
32 proper public participation and that the current process is terminated  
33 until such time as an effective process can be implemented. She  
34 requested that the Planning Commission recommend to the Board of  
35 County Commissioners that the Critical Areas Ordinance be redrafted  
36 consistent with comments provided in testimony. Further that this  
37 include the actual requirements of the GMA and not what is made up  
38 by staff. Also, that the opinions expressed by the Washington  
39 Supreme Court in its August 16, 2005 decision on Viking Properties,  
40 Inc. vs. Home and other pertinent court decisions be considered.  
41 Personally, a very good article in *The Kitsap Sun* had a headline that

1 annoyed her. It read “Your Land or Our Land.” Henderson said the  
2 land is not yours or ours, it is “My” land. Environmentalists want the  
3 Government to take away her ability to use her land. Also, unhappy  
4 with Robbyn Myers statement that the goal of the Critical Areas  
5 Ordinance is to maintain a semblance of nature as the County’s  
6 population doubles and doubles again. Questioned the rationale  
7 behind this goal and said that Ms Myers should be fired. Henderson  
8 thought the way the Critical Areas Ordinance update has been  
9 manipulated by staff is criminal. She then entered the following  
10 emails into the record: 1) Dated September 19, 2005, to  
11 Commissioner Patty Lent from Henderson and copied to the other  
12 two commissioners and some Planning Commission members  
13 regarding the totally incompetent manner in which advertising for  
14 this meeting was handled by County staff; and 2) a replay from  
15 Gustavson expressing is own frustration. Either this is deliberate or  
16 total incompetence on the part of the staff. Housecleaning is  
17 warranted in the Department of Community Development.

18  
19 **BREAK**

20  
21 Don Flora – Bainbridge Island resident. (Flora submitted his  
22 complete written testimony and attached packet of referenced  
23 material for the record). In it, he expressed concern over the  
24 County’s wetlands, stream banks and designated habitat and related  
25 corridors that all need to be saved or at least administered. He asked  
26 that the Planning Commission address the five following questions:

- 27
- 28 1. What will happen on the ground if Kitsap County doesn’t
  - 29 update its Critical Areas Ordinance?
  - 30 2. Will this action make a measurable difference?
  - 31 3. In how many places must the Critical Areas Ordinance be
  - 32 applied?
  - 33 4. What is foregone when Kitsap County does this ? and
  - 34 5. Are thee reasonable alternatives?
- 35

36 Flora has been very interested in the buffer situation in the past few  
37 years and has researched the subject extensively. Double the width  
38 does not equal double the benefit. He does not believe buffers are  
39 required under GMA. Some reading he has done indicates buffers  
40 cause more damage that good. He suggested the Planning  
41 Commission recommend to the Board of County Commissioners not

1 to implement buffers. If buffers are located on land that continues to  
2 grow in value, Flora thinks the property owner is entitled to the same  
3 benefits. He referenced Low Impact Development activities. He did  
4 not think buffers work for holding back earth in the Pacific Northwest  
5 where it rains heavily in the winter months. Whatever problems exist  
6 today, Flora thinks will still exist 5-10 years from now. Buffers  
7 become saturated. He mentioned the following alternatives:

- 8
- 9 1. Low impact development
- 10 2. Selective exclusion
- 11 3. Moving incentives
- 12 4. Remove offending nuisance
- 13 5. Plant grass
- 14

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

17

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

- 23
- 24 1. Page 6: 19.100.125 Exemptions Paragraph H;
- 25 2. Page 73: 19.700.705 Special Reports and Paragraph C.  
26 Special Reports-Responsibility for Completion. Payment  
27 for special reports. Lions believed this to be an opening  
28 for Government waste, fraud and abuse. Need to put a  
29 limit on government spending;
- 30 3. Page 81: 19.700.720 Habitat Management Plan, paragraph  
31 E;
- 32 4. Pages 81 and 82, Paragraph B: Geotechnical Report and  
33 Geological Report;
- 34 5. Pages 52 and 53: 19.300.325 Development Standards,  
35 Paragraph A, item 2 – Buffers and Setbacks – Buffer  
36 Measurement Table 4; and
- 37 6. Item 4: Provisions for Decreasing the Buffer.
- 38

39 Lions said he may have missed other issues and problems with this  
40 document but did his best wading through volume of information.

1 (Complete description of suggestion changes and petition presented  
2 for the record).

3  
4 Carl Duff – South Kitsap resident, was present to address three  
5 topics. But first he noted that interpretation or meaning of the word  
6 environment has undergone a not so subtle change in the last few  
7 years. It now means wildlife habitat. The State Attorney General has  
8 strict guidance on takings. The last advisory was signed by Christine  
9 Gregoire with clear guidance on avoidance of unconstitutional  
10 takings. The three words the public should be aware of are health,  
11 safety and welfare. Duff's three points. 1) Scientific reports  
12 pertaining to Pacific Northwest streams but not included in Kitsap  
13 County's Best Available Science study. He reviewed highlights and  
14 submitted for the record, a complete package of all scientific papers  
15 he has. These scientific papers were submitted to staff yet are not  
16 reflected in staff's report on an update to the Best Available Science  
17 report. These reports all support small buffers. He specifically  
18 referenced a paper by a man named Desbonnet. It is probably the  
19 broadest summary of scientific papers that exists. More importantly,  
20 he sticks to public health and safety, nitrogen, pollution, suspended  
21 solids and sediments. In the area of pollution, what Desmond comes  
22 up with most often are buffers. Another man often referred to is  
23 Christopher May who Duff believes to be an eco-extremist and he  
24 calls for restoration of hundred-year-old forests under what Duff  
25 believes to be a false assumption that first growth forests produce  
26 the best salmon habitat. Scientific papers contradict this. Some  
27 papers show to the contrary. They show that twice the biomass of  
28 fish, higher insect populations and better habitat exist where buffers  
29 are narrow. 2) Source distances for coarse woody debris. Duff  
30 thinks this is the current buzz word amongst environmentalist.  
31 Mathematic models have been used to predict how close the stumps  
32 and logs have to be to get into the streams. Papers will show that the  
33 actual measurements are half of what the models produce and  
34 anything within ten meters of streams determines whether or not it  
35 will get into the streams as large woody debris. 3) Evidence  
36 showing that narrow buffers' open canopies produce much higher  
37 feed rate, growth rate and bio-mass and salmon productivity, and  
38 with cutthroat also in fisheries than first-growth forests. There are  
39 papers on logging, fish and wildlife relationships and old growth  
40 forests (a ten-year study on selective streams in Oregon). The study,  
41 with respect to fisheries, indicates that it is essentially irrelevant

1 whether the adjoining acreage was logged or un-logged. The  
2 Department of Fisheries is the interference behind wildlife habitat  
3 that he feels is an ideology. His packet contains a three-page  
4 summary and a one-page summary of what staff did issue relative to  
5 Best Available Science. Duff thought that what staff did issue was  
6 biased so strongly in favor of wildlife habitat that it almost ignores  
7 public safety. For example, under Goals and Policies, 60% of the  
8 policy discussion addresses environment and wildlife habitat. Only  
9 15% addresses public health or safety. Also in the staff report is a  
10 bar chart published by Dr. Chris May who he again considers to be  
11 an eco-extremist. Next Duff addressed legalities. Four points in legal  
12 foundation that constitutes risk are:

- 13
- 14 1. Taking of private property without just compensation in  
15 contradiction of the Federal Constitution
- 16 2. Taking of private property in contradiction of the more stringent  
17 Washington Constitution
- 18 3. Violation of Washington’s due process doctrine
- 19 4. Compliance with the Growth Management Act’s doctrine  
20 relative to Best Available Science requirements
- 21

22 He read other opinions, judgments and questions regarding  
23 mandating of public property for public usage. One quote states that  
24 Wildlife, fish and shellfish are the property of the state. Also,  
25 Nothing. . . shall be construed to impinge on the right of a private  
26 property owner to control the owner’s private property. Another,  
27 “Wildlife means all species of the animal kingdom whose members  
28 exist in Washington in the wild state.” He asked that since all wildlife  
29 is determined by public law of this state to be the property of the  
30 State of Washington, how could the County legally impose a Critical  
31 Areas Ordinance mandating private property for public use by  
32 wildlife. Next, he read from Nolan vs. California Coastal Commission,  
33 the US Supreme Court ruled that no municipal government has  
34 authority to place conditions of development permit approval except  
35 for conditions for which it has the right to impose unilaterally. This  
36 means, stated Duff, that only Eminent Domain and Just  
37 Compensation appear to be the only means in which Kitsap County  
38 can impose the type of deed encumbrances called for in the Critical  
39 Areas Ordinance as a contractual condition for issuance of permits.  
40 He quoted the Nolan case and the City of Tigard that stated  
41 governments cannot ignore the Best Available Science in favor of the

1 science it prefers simply because the later supports the decision it  
2 wants to make. Another, states placing a fixed set-aside in order to  
3 mitigate the impact of development is therefore illegal. It also states  
4 that development conditions must be tied to an identified  
5 development impact . He mentioned other case law to substantiate  
6 his point. Lastly he addressed the question of how much acreage is  
7 being taken in this, in his opinion, land grab. He believes staff failed  
8 to answer this question and more. The County finally attempted to  
9 answer this at the August 23, 2005 Planning Commission hearing.  
10 The answer was only ten thousand acres for streams, only 15 square  
11 miles. Not believing the answer, he obtained maps from PUD #1  
12 which shows the buffered areas on the streams. The maps showed  
13 approximately 66% buffered areas. Having been involved in three  
14 different environmental groups, the County's comments addressed  
15 controlling development. He currently is on the Parks and  
16 Recreation Open Space Committee. Here the County states it will  
17 use regulatory protection for government use of buffers to link  
18 environmentally critically areas currently protected by land use  
19 regulations and to establish a defacto network of habitat across the  
20 County and natural networks of connectivity across the landscape.  
21 Duff refers to this as policy within the Department of Community  
22 Development and pervades all they do.

23  
24 Joan Gorner – Poulsbo resident, agreed with several others who  
25 spoke before her. If the Planning Commission had not insisted on  
26 answers from staff, this ordinance would most likely have been  
27 forwarded to the Board of County Commissioners for approval  
28 without questioning the staff. She attended the Critical Areas  
29 Ordinance meeting in Poulsbo where questions went unanswered by  
30 staff. Gorner was grateful for the Planning Commission for taking  
31 the time to understand the impact of the proposed ordinance. Have  
32 notes of a meeting on August 28, 2000. Bob Turner from National  
33 Marine Fisheries Service was present, setting on the criteria for the  
34 County pertaining to the 4D rule. She remembers Commissioner  
35 Botkin asking Turner to define terms because the terms were so  
36 nebulous. The same problem occurs in the Critical Areas Ordinance  
37 draft, many terms are nebulous and subjective. Gorner also  
38 remembers a Department of Community Development staff member  
39 holding meetings throughout the county, telling citizens they could  
40 not replace their bulkhead unless a house was going to collapse.  
41 She also remembers a consultant saying that all of North Kitsap

1 should be a wildlife refusia. Kitsap County has dedicated citizens  
2 with the skills and commitment to help the County. Asked the  
3 Planning Commission to recommend denial of this draft of the  
4 Critical Areas Ordinance.

5  
6 John Holmberg – Family bought property in Tracyton in 1946. Have  
7 been good stewards of his land. He listed all of the wildlife to be  
8 found on his land. Holmberg asked that the Planning Commission  
9 review the entire document.

10  
11 **DINNER BREAK**

- 12
- 13 • Chair Mahan – reviewed the rules for length of time for speaking  
14 noting that there is not enough time if everyone takes 25-30  
15 minutes. From this point on, he will evaluate anything after 3  
16 minutes. He noted that oral testimony could always be backed  
17 up by written testimony.
  - 18
  - 19 • Michael Gustavson – Expressed concern about time allowed,  
20 and suggested the hearing be continued to an additional  
21 hearing if time does not allow everyone to talk.
  - 22
  - 23 • Dean Jenniges – Suggested the negative remarks against staff  
24 be discontinued if the speakers wanted him to consider their  
25 remarks. It is very offensive and personal attacks do not work.
  - 26

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

- 30
- 31 • Chair Mahan – This will be discussed at the end of the hearing.
  - 32
  - 33 • John Taylor – Asked that the speakers refrain from using  
34 personal names and that comments be respectful. This hearing  
35 is not for the purpose of insulting individual people but instead  
36 to review and comment on a document.
  - 37

38 Jean Sherrard – Agate Pass in North Kitsap presented three brief  
39 comments and sited case law. He referenced case law from 1958  
40 when he received his law degree. Believes there exists a tension  
41 created by the academic community versus remainder of property

1 owners. Developing land is quite detailed and involved. A general  
2 theme appears to exist and that is land use control. A concept in our  
3 culture brought forward from the Constitution stating land is our own  
4 and a person can do what he wants with it. Another concept  
5 perceived from the academic world is constraints on what people do  
6 with their land. This is what the draft Critical Areas Ordinance is  
7 about. Underneath this is land use control. Sherrard does not mind  
8 controls but wants to see them within reasonable bounds. The draft  
9 Critical Areas Ordinance, he believes, is neither enforceable nor  
10 practicably workable. Attempting to comply with the Growth  
11 Management Act, could create a document that is not enforceable  
12 and is not practical. The federal government (Corp of Engineers)  
13 does not have any buffers in its wetland regulations. When he  
14 obtained a permit from the federal government to deal with wetlands  
15 and a permit from the City of Poulsbo for the same wetlands, the  
16 federal government did no care about buffers. The Critical Areas  
17 Ordinance appears to be moving against people's rights to own and  
18 operate their own property. A decision on August 18 titled by  
19 Sherrard, "It Changes the Law." The Growth Management Act can no  
20 longer be used by the State or the Growth Management hearings  
21 boards to require any level of action by the County. Per case law, he  
22 believes a new land use world exists for County government in that  
23 each county and city can do as they wish. The 13 Growth  
24 Management Act goals are to guide, not direct, in developing the  
25 Comprehensive Plan and developmental regulations. Also, he  
26 referred to a broad range of discretion that may be exercised. It goes  
27 on to say it does not prescribe an approach to growth management.  
28 The Growth Management Act is not intended to regulate site-specific  
29 activities. He believes this clearly applies to the Critical Areas  
30 Ordinance. The courts say that the Growth Management Act's non-  
31 prioritized goals have irreconcilable conflicts that must be resolved  
32 by local jurisdictions. In other words, all the goals in the Growth  
33 Management Act cannot be dealt with together. Some of them fight  
34 each other. Also, according to the courts, there are no bright lines in  
35 the Growth Management Act. As of now, the Growth Management  
36 Act regulations are consensual, not definitive, and often ambiguous.  
37 The Act grants jurisdictions a broad range of discretion. The State  
38 Supreme Court also said it will not tolerate Growth Management  
39 Hearing Boards making their own opinion on interpretation of the  
40 law. Their jurisdiction is very restrictive and will only apply to  
41 individual cases. He asked the Planning Commission to read this

1 case and possibly tossing out the current Critical Areas Ordinance  
2 draft.

3  
4 **Marian Berejikian – West Sound Conservation Council, submitted a**  
5 **three-page letter and verbal highlighted important points of the letter.**  
6 **For over 20 years, local jurisdictions in Puget Sound have required**  
7 **construction of stormwater management facilities to mitigate the**  
8 **impacts of development on our water resources. However, has**  
9 **shown that these facilities do not effectively mimic the natural**  
10 **hydrological cycle. Manmade wetlands fail to replace the functions**  
11 **of their natural counterparts. As one study reports, out of 38**  
12 **mitigation sites, 37 failed. Because of the high rate of failure of**  
13 **manmade wetlands and their importance in hydrologic function,**  
14 **wetlands of all sizes should be protected. Wetlands provide benefits**  
15 **to the citizens of our state by protecting and preserving drinking**  
16 **water and by providing a natural means of flood and storm damage**  
17 **protection. It is estimated that the value of flood protection by**  
18 **wetlands was between \$7,800 to \$51,000 per acre. Estimates indicate**  
19 **that Washington State is losing 700 to 2000 wetlands every year.**  
20 **These numbers are already outdated. According to other county**  
21 **wetlands inventories, freshwater wetland losses are estimated at 55%**  
22 **for Thurston County, 82% for Pierce County and 70% for King**  
23 **County. Kitsap County’s loss is unknown because a comprehensive**  
24 **inventory has not been done. The Growth Management Act requires**  
25 **jurisdictions to identify, designate and protect Critical Areas, which**  
26 **includes wetlands. The sooner the County can complete a wetland**  
27 **inventory, the sooner a baseline can be established by which to**  
28 **measure what is left. The County cannot make well-informed**  
29 **decisions about its critical areas without this information. Because**  
30 **of this, Berejikian’s agency requested that Kitsap County inventory**  
31 **its wetlands to protect and designate the critical areas. She listed**  
32 **three points to her recommendation as specific changes to the**  
33 **Critical Areas Ordinance. These are as follows: 1) Do not allow**  
34 **wetland buffers to be reduced by more than 25%; 2) Restrict allowed**  
35 **uses in wetland buffers to those listed in Wetlands in Washington**  
36 **State Chapter 8 Volume 2 – Protecting and Managing Wetlands (April**  
37 **2005); and 3) Protect all wetlands as required by the Growth**  
38 **Management Act. She will mail the study referenced in her complete**  
39 **written submittal for the record.**

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41 Cheryl Rawlins -

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**Cheryl Rawlins – A South Kitsap resident who loves the trees and land. Owns and paid for her land, planted more trees and removed some dangerous ones. Over last 20 years watched neighborhoods grow. She believes that careless land use development led to the need for the Growth Management Act. Wildlife, fish and shellfish are the property of the State. This is stated in the Growth Management Act that also states that nothing shall impinge on the rights of property owners. Therefore she feels the draft Critical Areas Ordinance is contradictive unless people are compensated for land required for buffers and unusable to the property owner.**

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

**William Palmer – land use consultant questioned the need for an updated Critical Areas Ordinance by a date certain. There seems to be a push to get the draft to the Board of County Commissioners by a specific date. Not certain where this mandate comes from because he could not find a requirement for enacting a new ordinance by a certain date, specifically by December of 2005. The Growth Management Act does however stipulate that Best Available Science must be consulted when developing the ordinance. He believes there are unnecessary regulations in the existing ordinance. Palmer thinks**

1 County staff needs to take the time to research current regulations as  
2 to effectiveness or not. He does not think it is necessary to have an  
3 ordinance just for the sake of having an ordinance. The County  
4 needs to address specific problems that have not been identified.  
5 Palmer does not believe that staff has taken the time to research  
6 whether the current Critical Areas Ordinance does or does not cover  
7 specific needs. Studies are needed to demonstrate if a need exists.  
8 He believes such studies would show no problems exist. Palmer was  
9 concerned that the draft has no benchmark or sunset clause.  
10 Important not to add additional regulations without sun setting  
11 outdated regulations. Next, Palmer had a concern with process. He  
12 asked if the draft ordinance has been subjected to compliance with  
13 the Shoreline Environmental Protection Act (SEPA). Next he asked  
14 how this draft came to be because he does not see where any work  
15 was done by a stakeholder group. His concern stemmed from the  
16 Zoning Ordinance that was developed with very little technical  
17 review. Palmer said he works with County ordinances everyday and  
18 has a good prospective on what works and what doesn't. His final  
19 point relates to the Best Available Science issue. The Growth  
20 Management Act states in Section 36.70.a.172, that Best Available  
21 Science is to be consulted. He said that literally volumes of Best  
22 Available Science have been presented to County staff, to the  
23 Planning Commission and ultimately to the Board of County  
24 Commissioners. Since he cannot find where any technical review  
25 committee was asked to make a Best Available Science  
26 determination for reference, he questioned which Best Available  
27 Science the County intends to reference and who on staff or what  
28 consultant has the credentials to review the draft document to  
29 determine which Best Available Science should be used to construct  
30 the Critical Areas Ordinance. He asked who could make that final  
31 judgment. Palmer did not think the County knows what the Critical  
32 Areas Ordinance needs to do. Until someone makes that kind of  
33 assessment, the County is wrong to try and enact an ordinance that  
34 may or may not be affective.

35  
36 George Warrington – A South Kitsap resident, agrees with Jack  
37 Hamilton that the existing Critical Areas Ordinance draft needs  
38 revising. He said there is a healthy abundance of wildlife in Kitsap  
39 County. He listed several specific creatures to be found countywide.  
40 Next he addressed the definitions of riparian areas. He takes  
41 exception to definition found in Section 19.150.595. It states that

1 Riparian Area means an area of land that supports riparian  
2 vegetation and “may” include some upland areas, depending on site  
3 conditions. He researched this and found a definition in a biotech  
4 dictionary that defines a “riparian area” as an area “between” a  
5 stream or other body of water, and the adjacent upland, identified by  
6 soil and distinctive vegetation. The latter definition is also in  
7 agreement with Webster’s and with no reference of inclusion of  
8 upland areas. The subject of a riparian habitat is also discussed in  
9 the Executive Summary of Washington Department of Fish and  
10 Wildlife/Priority Habitat and Species Management Recommendation  
11 for Washington Priority Habitats: Riparian. He found this on the  
12 Internet that also stated, Riparian habitat is discussed as being a  
13 relationship with “adjacent” aquatic and upland ecosystems.  
14 Warrington thinks that the definition given in 19.150.595 is saying  
15 that for instance, Oregon is between Washington and California but a  
16 portion of Oregon is in California, including uplands. In conclusion,  
17 he requested that the Planning Commission recommend disapproval  
18 of this Critical Areas Ordinance to the Board of County  
19 Commissioners. Further, that the Planning Commission recommend  
20 to the Board of County Commissioners that the Critical Areas  
21 Ordinance be redrafted, relative to Riparian Areas to be consistent  
22 with the testimony stated above. Next, he discussed the Habitat  
23 Management Plan that has multiple definitions depending on where  
24 you look in the Critical Areas Ordinance. The first one he referenced  
25 was section 19.150.400 that defines the Plan to be for use by a  
26 professional wildlife biologist or fisheries biologist to evaluate  
27 critical wildlife and fish habitat functions. They also evaluate for  
28 measures necessary to maintain, enhance and improve habitat  
29 conservation on a proposed development site. Section 19.3000.315,  
30 defines the Plan as a site investigation to evaluate for potential  
31 presence or absence of a regulated fish or wildlife habitat affecting a  
32 subject property and proposed development site. Based on these  
33 definitions, the proposed Critical Areas Ordinance does not provide  
34 the County Department of Community Development finite knowledge  
35 or direction for processing a permit for property development. If a  
36 Plan is created and attached to a property for development, what is to  
37 prevent conditions of the habitat changing due to uncontrolled  
38 environmental changes and/or the regulated fish or wildlife species  
39 present at the time the Plan was implemented, no longer existing. If a  
40 permit were not initiated for property development, a Plan would  
41 most likely not be created for a specific property because habitat was

1 not documented. This is due to a citizen’s “right to exclusion.” It is  
2 also unlikely that the County has the resources to effectively apply or  
3 monitor enforcement of the proposed Chapter 19.300.315. The above  
4 statements also apply to Chapter 19.700.720 that goes into the  
5 permitting process. Based on the concerns listed above, Warrington  
6 requested that the Planning Commission recommend disapproval of  
7 the draft Critical Areas Ordinance to the Board of County  
8 Commissioners and also requested that it recommend the Critical  
9 Areas Ordinance be redrafted consistent with the above-stated  
10 issues. Finally, he discussed buffers. In section 19.300.315,  
11 buildings and buffer setbacks impose buffers without an explanation  
12 or a scientific justification. This section effectively permits  
13 government to first define the boundaries of a wildlife conservation  
14 area. This is followed up by imposing a buffer around that area  
15 without justification. Wildlife Conservation Area is not found in the  
16 definition section. Section 19.300.315A, inclusion of the  
17 enhancement of buffers is clearly in excess of the Growth  
18 Management Act requirements and is not supported by the Growth  
19 Management Act. Warrington recommends the Planning  
20 Commission recommend revising Section 19.300.315A to fully  
21 document the scientific justification for buffers. The revision should  
22 include the scientific process by which wildlife conservation areas  
23 are to be established. Further, the revision should include the  
24 process by which monitoring and evaluation of buffers is to be  
25 effective. Warrington requested the Planning Commission  
26 recommend to the Board of County Commissioners that the Critical  
27 Areas Ordinance be redrafted to be consistent with above-stated  
28 concerns.(Complete written testimony on file).

29  
30 Lois McMahan – South Kitsap resident, , thanked the Planning  
31 Commission for the opportunity to express concerns about the  
32 Critical Areas Ordinance . She counted decision concerning private  
33 property in the second draft of the Critical Areas Ordinance. In the  
34 first 35 pages of the document, the Department, the Director or the  
35 Director’s designee are responsible for 511 judgment decisions  
36 concerning private property. If that trend continues through the  
37 entire document, the number will mostly likely be over 1,000. To  
38 multiply this number by the number of individual parcels in Kitsap  
39 County indicates that enforcement is impossible. Decisions  
40 regarding property bought and paid for are being turned over to  
41 unelected officials. She said this is taxation without representation.

1 **At the roundtables of the first draft, the public made it clear that the**  
2 **current Critical Areas Ordinance is too restrictive yet nothing**  
3 **changed in second draft. She also asked what problems is the**  
4 **current draft solving. She requested that the Planning Commission**  
5 **look at a draft that addresses specific problems. The authors of the**  
6 **current draft have bragged that more flexibility is built in, however**  
7 **this flexibility occurs at a high price to the property owners in the**  
8 **form of consultants, experts and permit fees. Last year she door**  
9 **belled a gentleman who was the director of the EPA in a previous**  
10 **administration. He said that buffers in east coast states are no**  
11 **greater than 25 feet and most only 15 feet. As attested to tonight,**  
12 **there is no need for buffers over 30 for filtration, etc. Asked the**  
13 **Planning Commission to look at any problems and address those**  
14 **problems only in a new draft.**

15  
16 **Tom Donnelly – A South Kitsap resident speaking for himself and**  
17 **Kitsap Citizens for Responsible Planning (KCRP). He and members**  
18 **of KCRP have already submitted extensive written testimony for the**  
19 **record. This ordinance is one of the most important tools for**  
20 **responsible planning in Kitsap County. It defines a large part of the**  
21 **County’s vision for the future to protect quality of life over the long**  
22 **term. It is not necessary to establish the one true path for all time,**  
23 **only that we do the best with what means are available. Successes**  
24 **must be able to correct the course to correspond with other’s vision.**  
25 **The only absolute in this process is that activities are not sanctioned**  
26 **that could impede achievement of either’s vision. KCRP has a major**  
27 **stake in this Ordinance. KCRP commends County staff for their**  
28 **dedication and confidence to prepare the draft before the Planning**  
29 **Commission tonight. Donnelly’s group likes to think of it as a living**  
30 **document. It builds on its predecessor with changes learned b y**  
31 **experience and application of contemporary science. This is a good**  
32 **document but it can be better. When one thinks of the devastation**  
33 **left by Hurricane Katrina reveals that even the best laid plans can go**  
34 **away. A flood plain that can be used for extensive development, can**  
35 **be disastrous when the river undermines or overflows the channel.**  
36 **Flood planes and wetlands, fish and wildlife habitat and aquifers, all**  
37 **function to provide vital services. It would be folly to disable those**  
38 **functions. KCRP strongly advocates countywide expansion of the**  
39 **Planning by Watershed concept, demonstrated by the Chico Creek**  
40 **Watershed Project. This will identify habitat and species of local**  
41 **importance. Flood plains, wetlands and aquifers. Watershed by**

1 watershed, this information can be incorporated into the Critical  
2 Areas Ordinance and a determination made to designate them for  
3 particular levels of protection. A linked trail network to enable  
4 wildlife travel within and between watersheds could also be  
5 designated. 2) A comprehensive strategy for stormwater  
6 management that protects streams, lakes and aquifers from  
7 contamination and protects downhill property from unmanaged  
8 runoff. In many cases this is the function of small wetlands and  
9 should not be exempt from protection. Thus the Critical Areas  
10 Ordinance should incorporate low impact development. 3) A marine  
11 shoreline buffer of 150 feet to protect Puget Sound and Hood Canal  
12 from contamination and to provide fish-rearing habitat. 4) Donnelly  
13 recommended limiting buffering averaging to avoid any more than  
14 25% reduction. 5) The ordinance should include a plan for  
15 containing the migration of contamination into aquifers and wetlands  
16 and using the mid range of buffer protections recommended by the  
17 Department of Fish and Wildlife. The KCRP does not envy the  
18 Planning Commission's task. KCRP thinks staff has presented a  
19 good product and asks the Planning Commission to recommend  
20 approval to the Board of County Commissioners.

21  
22 Ladeva McMahan – A resident of Olalla, said she is not a scientist but  
23 loves nature, this country and the rights it is built upon. She is an  
24 abstract thinker and from this perspective, she referenced an  
25 example of a dream that related back to one purchasing land, subject  
26 to certain conditions to regulate yet regulations that are too  
27 restrictive. She then specifically compared this hypothetical dream  
28 to the current draft of the Critical Areas Ordinance. She believes that  
29 if she is a good steward of her land, she does not restrictive  
30 regulations or breaks the law, she is hurting no one. The  
31 environment is important but so are the people who are stewards of  
32 the land. She asked that the Planning Commission ask all the  
33 questions necessary to make the right recommendation. There is a  
34 long history of why people are allowed to own their own property.  
35 She asked if this ordinance is constitutional. She referenced a  
36 situation where her brother has been trying for a long time to get a  
37 permit to clear some trees from his own property that he saved for to  
38 buy. She believes that if a person is irresponsible and builds on an  
39 unsafe piece of land, and the bank gives way, then he should be  
40 punished, after a crime is committed. In other words, if a property  
41 owner wants to build on unsafe land, it is his responsibility.

1 Irresponsibility should be punished but they need to break the law  
2 first. She also felt that enforcement of this ordinance would be a  
3 problem. She questioned if a Sheriff's deputy would be asked to go  
4 out with a gun and enforce the regulations in this ordinance. Finally,  
5 if enforcement is not intended, then why have a law in the first place.  
6

7 Mike Shardleman – A Poulsbo resident, said he attended 80 years of  
8 the school of hard knocks. He is a veteran of WWII and one of the  
9 few remaining citizens who gave people the right to sit here tonight  
10 and speak English, not German or Japanese. He did not believe this  
11 to be the constitution he defended. Believes the United States is no  
12 longer a constitutional nation, a nation of laws, and that the laws are  
13 God given, rights, not given by man. He said he does not remember  
14 giving his property rights away and does not remember voting to  
15 give away his grandchildren's future. He also does not remember  
16 voting on the Growth Management Act. He did not vote to give his  
17 property to the government for their benefit. Most of governmental  
18 functions today are by committee or by commission. The Russians  
19 called it commissars. Tonight the citizens are disagreeing over a  
20 point with no basis in the Constitution. He cannot find anything in  
21 the Washington State law giving government the right to legally take  
22 people's land. He suggests that government return back to we the  
23 people as a government. Tonight he heard the idea of best science.  
24 Around 1400, best science at that time said the earth was square and  
25 flat. He again suggested that the Planning Commission listen to what  
26 is said then verify that what is said, is true. So far tonight, he has  
27 heard very little fact.  
28

29 David Grellier – Is an architect in Kitsap County and involved with  
30 environmental reclamation projects. He has heard a lot of talk as to  
31 whether all Critical Areas Ordinance regulations are actually working.  
32 Maybe yes, maybe no. He sees eagles, salmon in clear creek, walks  
33 a trail in the middle of Silverdale because someone had the wisdom  
34 to create buffers on either side of Clear Creek. His main reason for  
35 speaking tonight is to address specifics of the draft ordinance. His  
36 work is more on the receiving end than the creative end of these legal  
37 issues. His job is to enable his clients to accommodate houses on  
38 their properties. He has been working with the existing ordinance for  
39 years and has found the County staff helpful, attentive, and receptive  
40 and to this point has had no problem with enabling a project to  
41 proceed. He said that probably no one likes buffers but they are a

1 place to start and it is good to see flexibility in application . He  
2 requested to take the flexibility further and to consider the nature of a  
3 proposed development, or site specifics. You can have good or bad  
4 development on property. He felt that if a proposal is put forward  
5 that is sensitive to the environment around it, then that should be  
6 given equal consideration. Sees no difference between placing a  
7 home within 5 feet of a stream than having a lawn that is 50 feet back  
8 and saturated with fertilizer. Actually there is a big difference, one is  
9 obviously better than the other. He asked that something be stated  
10 in the ordinance to enable development that may not technically  
11 adhere to the buffer requirements but is sufficiently environmentally  
12 sensitive, be given equal consideration.

13  
14 Dave Dahlke – A South Kitsap resident, said that whenever an  
15 ordinance is enacted, there is a purpose for it. In the case of the  
16 Critical Areas Ordinance, the purpose has been established to  
17 protect and identify critical areas as required by the Growth  
18 Management Act. His questions are: 1) Why is the Critical Areas  
19 Ordinance also being used to develop and expand critical areas. 2) If  
20 the goal is to preserve beneficial functions and values of critical,  
21 where can a person find beneficial functions and values of each  
22 specific designated critical area. If this information exists, what  
23 results have been documented as to the Critical Areas Ordinance  
24 compliance. 3) Why is an expansion of controlled property under  
25 the Critical Areas Ordinance only seen and not a reduction of control  
26 of critical area. He has been led to believe that there really is no  
27 justification required expanding critical areas but if critical area  
28 control were lessened, justification would need to be made to the  
29 State. In Dahlke's opinion, Kitsap County does not want to deal with  
30 justifying a decrease in critical areas to the State, but by expanding  
31 or altering critical areas, the County will satisfy the State's  
32 requirement to update the Critical Areas Ordinance.

33  
34 Bill Matchett – A resident of Central Kitsap and former Planning  
35 Commissioner, said he understands what the Planning Commission  
36 is going through. He has already written a letter that is in the record  
37 and at this hearing he is representing the Hood Canal Environmental  
38 Council (HCEC), a citizens group trying to preserve Hood Canal. He  
39 thinks that at this time, there are problems with the Hood Canal and  
40 that a 35-foot buffer along the Hood Canal is simply insufficient. If  
41 the Canal is to get the protection it needs plus spending a lot of

1 money solving the dissolved oxygen problem. Also, the eel grass,  
2 hearing and smelts that the larger species depend on for food need  
3 to be kept safe. The Department of Fish and Wildlife states that the  
4 proper buffer for the Hood Canal needs to be 250 feet. He recognizes  
5 that politically this will not be achieved but his organization is asking  
6 for a150 feet in lieu of the present 35 feet in the ordinance. Everyone  
7 agrees that there are property rights but there are also community  
8 rights. Part of the problem facing the Planning Commission and the  
9 Board of County Commissioners is to balance those against each  
10 other. Sometimes they come into conflict. For those who say if you  
11 are going to interfere with my future profits you should give me some  
12 money,” someone with an illegal meth lab could say that. The fact is  
13 there are laws that must be obeyed and his organization says that  
14 laws to preserve critical areas are laws that should be obeyed and  
15 that no one needs to be reimbursed if they are obeying the law  
16

17 Ron Rice – A South Kitsap resident, read a passage from an article  
18 regarding degradation and the many reasons for loss of amphibian  
19 decline. The article said we are living in a global soup of chemicals.  
20 One thing he emphasized was the cost to property owner. He  
21 presented references to the original Critical Areas Ordinance plus  
22 changes to the second draft. The 128 page second draft is too  
23 lengthy to comment on all of it. He referenced Section 19.100.110,  
24 Applicability-original Critical Areas Ordinance and 19.100.105..2.8.1  
25 in the second draft and asked that this “catch all” authority statement  
26 be deleted. It is non-specific and would leave citizens with an  
27 unknown and unknowable requirement for complying with the  
28 Critical Areas Ordinance hanging over their heads. Next, he  
29 reference Section 19.100.140, original Critical Areas Ordinance and  
30 19.150.190, second draft, Reasonable Use Exceptions. He asked that  
31 this entire chapter be deleted. He believes it is contrary to the  
32 Federal and State constitutions as well as contrary to the Growth  
33 Management Act and existing case law legal decisions. He said the  
34 County couldn’t assume control of private property and then leave it  
35 to the property owner to hire outside consultants to prove the County  
36 has no jurisdiction. In addition, the applicant first pas for a County  
37 mandated report to be written and then is faced with an additional fee  
38 for the County to review the report. Rice submitted four pages of  
39 written testimony referencing specific sections and requesting  
40 changes, revisions and deletions. He expressed concerns about:  
41 costs and fees requesting reimbursement, unnecessary burdens on

1 **property owners, lack of qualified technical experts on the**  
2 **Department of Community Development’s staff, an appeal process to**  
3 **review staff decisions and specific scientifically justified**  
4 **requirements, not opinions. In conclusion he requested that the**  
5 **Planning Commission recommend disapproval of the draft Critical**  
6 **Areas Ordinance and that the Planning Commission request that the**  
7 **Board of County Commissioners redraft the Critical Areas Ordinance**  
8 **to comply with the actual specific requirements of the Growth**  
9 **Management Act and other legal findings which modify such Growth**  
10 **Management Act requirements. (Complete written testimony on file).**

- 11
- 12 • **John Taylor – Some years ago the Planning Commission**  
13 **reviewed zoning changes and he is trying to connect the name.**  
14 **He asked if Rice is involved in a development project and if so**  
15 **for how many years and does he have his permits yet.**

16

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

26

27 **BREAK**

- 28
- 29 • **Chair Mahan – There is a possibility by 10 PM but this means**  
30 **that people will need to limit their speaking time. If the list of**  
31 **speakers is not completed, this hearing will be continued to**  
32 **another hearing. Those who did not get a chance to speak**  
33 **tonight, will be first on the list to speak at the next hearing.**

34

35 **Joseph Bell – As a citizen he was honored to participate in this**  
36 **process. Said it has become clear the current Critical Areas**  
37 **Ordinance draft is not complete and has some significant problems.**  
38 **He understands Kitsap County has the most shoreline and is the**  
39 **second most densely populated county in the State and possibly the**  
40 **nation. Bell asked the Planning Commission to recommend denial of**  
41 **the second draft of the Critical Areas Ordinance.**

1  
2 **Avon Card – A resident of Manchester in South Kitsap, referenced**  
3 **several sections from the draft Critical Areas Ordinance with a**  
4 **recommendation for revision to each. She highlighted some of these**  
5 **such as, 19.100.105.A, Statement of Purpose. She said this is**  
6 **supposed to be a supplement to an earlier zoning ordinance and it**  
7 **refers to several current critical areas regulations. She could not find**  
8 **anywhere what was wrong with the current Critical Areas Ordinance.**  
9 **She recommended the need be stated for this document and the**  
10 **problems solved by adding more regulations. She asked if time and**  
11 **money should be spent to fix an ordinance that already works. Next**  
12 **Card referenced Section 19.100.105.B, Policy Goals. This section**  
13 **uses terms such as quality of life, and functions and values that can**  
14 **be interpreted in many ways by future county authorities. Here she**  
15 **recommended that these terms be defined so that property owners**  
16 **know the real reason for the regulations and can recognize the**  
17 **whether their property falls under these terms or if their property**  
18 **already complies. In Section 19.100.115, Relationships to Other**  
19 **County Regulations, she thinks this section gives the Department the**  
20 **last word with the provision that in case of conflict with any other**  
21 **Kitsap County code the answer will be that that provides the most**  
22 **protection to the critical area. Since she feels the cost of appeal for**  
23 **this is so high, Card asked that this section be deleted. In the same**  
24 **section, second paragraph, finishes a list of state and county laws**  
25 **that apply. Card recommended that the Constitution of both the**  
26 **United States and the State of Washington be added to the top of the**  
27 **list In Section 19.100.135.G, Variances, states that public utilities**  
28 **have the right to exceptions to restrictions. However this requires**  
29 **possibly the property owner to mitigate when feasible. If the**  
30 **preservation of critical areas is essential, how then is it possible to**  
31 **mitigate a violation and who pays for the mitigation to the property**  
32 **that the utility is crossing. She recommended the County provide**  
33 **specific information on this. Section 19.100.160, Inventory**  
34 **Provisions, paragraph two, states that Kitsap County is required to**  
35 **inventory critical areas four times a year. This would cost most of**  
36 **the County budget each year if this becomes a law. Card**  
37 **recommended this requirement be researched and rewritten. She**  
38 **also has problems with putting bike paths, easements and viewing**  
39 **points on her property. (Complete testimony in file).**  
40

1 Dave Card – A Manchester, South Kitsap resident, said that 95% of  
2 the people are good stewards of their land and intend to continue  
3 being such. The County is proposing to put too much into law with  
4 the Critical Areas Ordinance. He said that not only are there  
5 statements whose meaning is unclear but there are also unclear  
6 definitions. He wondered what other requirements will be  
7 implemented after this. There are a couple of items that stand out to  
8 him. These are: 1) The term “reasonable” has such a broad meaning  
9 that hardly any two people would come up with the same outcome;  
10 and 2) Who makes the determination and to what degree of  
11 enhancement applies to the phrase “restore to re-existing condition”  
12 or to “enhance” the condition. He also questioned the desire to  
13 protect fish and wildlife in Rich Passage where he lives, yet the State  
14 ferries, and people are now trying to get the Passenger Only Ferries  
15 back on the Bremerton run that destroy fish life in the narrow  
16 channel. He does not believe that the County government has the  
17 right to force a private property owner to give access to pedestrians  
18 bicyclists and view point use in order to repair or construct a private  
19 road on private property. He asked who would be responsible for  
20 any liability if this goes through and who will select the users. Card  
21 believes that private and public roads should be separate. If a public  
22 bike path is located on his property and who will clean up after users,  
23 who will police it. There is enough public land without requiring  
24 private property owners to give up part of their property for this use.  
25 This is taking of private property for public use. Other issue Card  
26 addressed is that utility crossings belong in rights of way but not on  
27 private property. The government should have to do condemnation  
28 and compensate the property owner. Card recommended that the  
29 words “etc.” and “and” be removed as they leave the requirements  
30 that private property owners must give up their rights for, open  
31 ended. He encouraged staff to make an item 3.a to address private  
32 roads. (Complete written testimony on file).

33  
34 Tim Matthes – President of Kitsap Alliance of Property Owners  
35 KAPO, addressed property and individual rights. He cited specific  
36 sections in the Critical Areas Ordinance, commented on each and  
37 made a recommendation to the Planning Commission. First, Section  
38 19.100.120 , Matthes said this paragraph addresses activities related  
39 to the adherence to an ordinance that does not address impact of  
40 such adherence to the rights of the property owners or the mandated  
41 protection of those rights. KAPO recommended that a new

1 subparagraph 5 be added relative to protecting the impact on the  
2 rights associated with property ownership. Growth Management Act  
3 requires that the rights of property owners be protected and the  
4 existing paragraph he did not believe met this requirement. On  
5 19.100.130 C, a paragraph Matthes said clearly establishes the  
6 illogical basis for much of the regulation contained in the title. The  
7 paragraph recognizes a threat to life or property and then discusses  
8 in 10 lines a process that may resolve the condition. He believed that  
9 in the instance of danger to human life or property, the property  
10 owner’s insurance company might find reason to honor a claim. For  
11 this paragraph, KAPO recommended the paragraph be deleted and if  
12 not, be expanded to discuss and demonstrate how the County will  
13 assume liability for any injury caused by a danger tree. Moving on to  
14 40.19.100.135.A.1, Matthes said this paragraph makes provisions for  
15 a variance to the regulation if a property owner applies and can  
16 demonstrate that he/she/they is not enjoying the same rights and  
17 privileges of other property in the vicinity. Unfortunately, he believes  
18 that constitutionally protected property rights do not depend on what  
19 others in the neighborhood may want to do or are allowed to do. In  
20 addition, the concept of privilege associated with the right of  
21 property ownership is inappropriate. KAPO recommended that this  
22 paragraph be rewritten to require variance if a property owner  
23 demonstrates violation of basic protected property rights. Next  
24 Matthes addressed Section 19.100.135.a.2, that he said effectively  
25 established a permanent prohibition on use of property by limiting  
26 actions of future owners because of actions of prior owners. The  
27 paragraph does not identify how those restrictions are to be  
28 documented or reflect in the transfer of title to the property. Matthes  
29 continued on to address Section 19.100.135.A.5 requesting deletion;  
30 Section 19.100.135.D, requesting deletion of the entire paragraph and  
31 any further references to “reasonable use” concept; Section  
32 19.100.150, recommending deletion; Section 19.10.155.C,  
33 recommending rewriting of the entire paragraph; Section  
34 19.100.165.B, recommending rewriting to follow a proper lawful  
35 process; Section 19.200.205.C, recommending deletion of the entire  
36 section as being false and misleading; Section 19.200.255,  
37 recommending deletion as this section is an insult to citizens; and  
38 Section 19.300.315.A.10, recommending deletion of this provision as  
39 being arbitrary in nature and constitutes a “taking.” (Complete  
40 written testimony on file)

41

- 1 • Ahl – Asked if this testimony replaces the August 22, 2005  
2 transmittal of KAPO’s comments and was told it does not  
3 replace it is in addition to the original document  
4

5 Ginger Sommerhauser – a Central Kitsap resident, commented about  
6 remarks about lack of public participation, noting she has had  
7 several opportunities to comment and disagrees with those who say  
8 otherwise. She proofread the May 17, 2005 version of the Critical  
9 Areas Ordinance. Sommerhauser made comments and questions  
10 and submitted these to the Department of Community Development  
11 on September 15, 2005.  
12

13 Kerry Riplinger – Requested that all questions raised relative to the  
14 Long Lake study session be answered before the Planning  
15 Commission makes its recommendation to the Board of County  
16 Commissioners. Riplinger believes that buffers and setbacks  
17 constitutes property robbery. When the public hearing was held on  
18 the first draft, roundtables were held but none of the County staff  
19 could answer questions that night. Asked if a study group reviewed  
20 the current draft. He said this is important because he believes it is a  
21 taking of land. The government says a person must be compensated  
22 for such action. The ordinance states the property restrictions must  
23 be written onto her deed and that she must pay for it. The County  
24 has no right to take her property. She believes the Growth  
25 Management Act requires that the County review not rewrite the  
26 current Critical Areas Ordinance. This proposed draft is one more  
27 reason why people mistrust their government. In conclusion  
28 Riplinger said the Planning Commission could rekindle trust by  
29 recommending denial.  
30

31 Scott Henden – Kingston – Reflected on what he believed to be the  
32 loss of power on the part of the citizens. He believes the County  
33 should be helping to provide business opportunities instead of  
34 passing more restrictive regulations. He said this is not the first or  
35 the last round of County restrictions. This is just the latest one and  
36 he believes there will be more after this. Henden expressed  
37 frustration with regulations that continue to be passed with what he  
38 feels to be without justification. He compared this to the law of  
39 diminishing returns and questioned the County’s position on buffers.  
40 He asked what is known for sure or what can be said in court that is  
41 known for sure. He also wanted to know who is responsible for the,

1 in his opinion, unnecessary and unwarranted changes. His answer:  
2 No one is. However at this meeting, the Planning Commission is  
3 responsible. Henden asked that the Planning Commission tell the  
4 Board of County Commissioners that it does not recommend  
5 approval of this draft ordinance. He believes it does not matter  
6 whether the Planning Commission approves or disapproves. He  
7 addressed what, in his opinion, will happen if this ordinance is  
8 enacted by the Board as drafted. He said he will not give his property  
9 to the County and that it is about Reasonable Use. Henden said it  
10 matters to him about freedom and the America he knows. He asked  
11 the Planning Commission to tell the Department of Community  
12 Development not to approve the ordinance, it is not the right thing to  
13 do for the people of Kitsap County .

14  
15 Harriet Norwood – A resident of South Kitsap presented a packet of  
16 Conservation District material. Her family was presented the Arbor  
17 Day award by the Governor. She presented a petition with names  
18 gathered of people opposing buffers. She noted that Norm Dicks felt  
19 200 feet was way too much of a taking other counties have far less  
20 footage. She said her family farm, the Root Farm, has Ruby Creek  
21 running through the property and is dry from May to November. She  
22 invited Commissioner Endresen and the Department of Community  
23 Development Director, Cindy Baker, to come out to the farm before  
24 the final decision on the ordinance is made. Norwood noted that  
25 deer, raccoons and bats are prolific on the property. Also fish have  
26 returned to the creek. Norwood requested that the Planning  
27 Commission recommend denial and that the Critical Areas Ordinance  
28 be redrafted.

29  
30 Jean Bradford – A Central Kitsap resident said there is no need for  
31 this ordinance. She said it was her opinion that the County is trying  
32 to track the wrong animal and that the Critical Areas Ordinance as  
33 drafted would compound problems and increase the cost of homes  
34 and property. Bradford did not think that the current Critical Areas  
35 Ordinance has been found to be out of compliance with the Growth  
36 Management Act. She did not think a new version was required and  
37 that this is what the County wants to do. Bradford thinks it is a staff  
38 project but not for the citizens. Bradford asked that the Planning  
39 Commission recommend denial of the ordinance to the Board of  
40 County Commissioners. She suggested there will be lawsuits over  
41 the takings issue and that the taxpayer will have to pay the cost.

1 Bradford said that staff admitted they have not considered what  
2 property owners will have to pay plus this will go to help create more  
3 government jobs for people to enforce the regulations in the  
4 ordinance.

5  
6 Robert Crittenden – A resident of Sequim submitted previous  
7 comments relative to wetlands ratings. He said the new wetlands  
8 rating system is beyond repair. KAPO asked him to state that the  
9 County staff, he said, has failed to identify in the draft ordinance, the  
10 scientific studies on which it is based. When reviewing a particular  
11 section, there is no reference to any scientific studies. Crittenden  
12 feels this needs to be in the ordinance to know the scientific basis  
13 used for each section. Lastly, the ordinance, he feels, presents a  
14 general rule instead of specific to individual parcels. He referenced a  
15 court case that requires this. There is no “one size fits all” rule. In  
16 his own comments he submitted previously, he feels the science is  
17 not identified specifically in the ordinance. The County states the  
18 science is based on recommendations from the Department of  
19 Ecology. The referenced book does identify the science on which it  
20 is based. It is a 1999 study. The 2004 study is simply a modification  
21 of the 1999 study. Crittenden said that the 1999 study is a result of a  
22 committee meeting, not a scientific study. He had previously thought  
23 that a sensitivity study could be conducted and then changing ways  
24 in which particular elements of the wetland rating system. When he  
25 attempted to do this, he discovered what he believes in that the  
26 rating system is beyond repair.

27  
28 James Sommerhauser – A resident of Central Kitsap said that based  
29 on information presented at this meeting on takings, he  
30 recommended that the Planning Commission constitutional lawyer to  
31 discover the difference between takings and land use limitations.  
32 Takings is covered by the Fifth Amendment of the Constitution and  
33 land use limitation has been used in this country since before the  
34 Constitution and is generally found to be constitutional and legal and  
35 does not require payment. Next, he congratulated the Planning  
36 Commission stating they were over half way done relative to the fact  
37 that at this meeting it has received testimony on three parts of the  
38 Critical Areas Ordinance but next to nothing on the other three parts.  
39 For Instance, Geological Hazardous areas, Frequently Flooded areas,  
40 Critical Aquifer Recharge areas except for the issue of permit fees,  
41 can be approved. To those people who said do not do anything with

1 the new draft and stay with the existing ordinance, he felt there is one  
2 problem. In the existing ordinance, one can only get prescribed  
3 buffers. In the proposed draft, one gets variable buffer based on-site  
4 specific information. He addressed a table on pages 36-38 that list 18  
5 increased buffers based on type of wetland in use. There are 23  
6 decreased buffers and five with no change. Also, the proposed draft  
7 allows for a 50% administrative reduction. Next Sommerhauser  
8 referenced the issue of property tax reduction. He would prefer the  
9 draft spelled it out better but in fact one is able to get a property tax  
10 reduction. He suggested that the language in 19.200.255 be added to  
11 for more information on how to achieve this goal, but if one is going  
12 to own parcels they cannot use as desired, they deserve to get a  
13 break on taxes. His last issue is process. This is the process of  
14 governmental legislation. He suggested staff obtain someone to  
15 research legislative history. He thinks they will discover that one  
16 thing the legislature looked at on the critical areas portion of the law  
17 is that they wanted citizens to create limitations based on Best  
18 Available Science. They realized that science and its interpretation  
19 changes and they want staff to periodically review its critical areas  
20 process. The law does not require the County to make changes but  
21 does say if the science has changed, the County needs to make  
22 changes. In this process, very seldom will occur a specific problem,  
23 a specific scientific study and a specific way to change the law. The  
24 County will get “sausage”, some good, some summarization of  
25 multiple studies and some of which are specifically applied to the  
26 Kitsap County area and some of which are not. Staff’s, the Planning  
27 Commission’s and the Board of County Commissioners’ job is to  
28 take all information presented and do the best possible. It is not to  
29 have a specific reference to a specific problem, a specific study and  
30 a specific change. This can be done but the property taxes will be  
31 more than most anyone can afford. On behalf of those names that  
32 have been announced since 9 PM and since they may have read one  
33 of two announcements read for the next meeting, he suggested they  
34 be given an opportunity to speak if there is another public hearing.  
35 Growth Management and critical areas is similar to every time you  
36 look at it, it is subject to different interpretation. It should be more  
37 finite but it is not. Sommerhauser said that there is enough benefit in  
38 the new draft that major portions of it should be enacted. He has  
39 worked with various staff members of this draft and he assured the  
40 audience that individual staff members do not have a personal  
41 agenda and are trying to give the people of Kitsap County the best

1 product possible. These people are working hard far beyond what  
2 the County pays them and he asked that the citizens give them some  
3 credit for all their hard work. Staff does need to be made  
4 accountable for their product but it can always be better.

5  
6 Chris Danielson – A resident of South Kitsap reviewed the twelve  
7 policy goals. She recommended that these not be done step by step.  
8 She believes these twelve goals are not written in a clear and cogent  
9 manner. She believes they are ill defined, poorly written and have no  
10 actionable intent or realistic implementation. Ambiguous and  
11 subjective terms based on personal opinion should not be used. She  
12 gave examples such as the term “value” and questioned if these  
13 were monetary values, whose values, what monetary system are  
14 these based on. Protection is a word used frequently in the draft  
15 ordinance. If there is no basis that any protection is offered or  
16 provided, Danielson could not find where protection was offered by  
17 an actionable intent. Five of these policy goals, numbers 4,5,6,7 and  
18 12, have vague and arbitrary statements on proposed action that  
19 cannot be accomplished without violating Planning Goal 6 of RCW  
20 36.70.A.020. Geological Hazards, Goal 8, she questioned if this was  
21 already taken into account by building regulations, She questioned  
22 geological factors and potential hazards as being a condition of  
23 securing any building permits. She thought this sentence was added  
24 for the sole purpose of exerting more control. Policies 5 and 12 need  
25 to be addressed together because they are in complete contradiction  
26 with each other. Policy 5 addresses the preservation of the habitat  
27 etc. Preserve means to maintain in its original or existing state. term  
28 used in Goal 8.highlighted the one on quality of life. Yet Goal 12 deal  
29 with mitigation. If the County allows a critical area as stated in Goal  
30 12 to be mitigated, she thinks it is a complete violation of Goal 5. In  
31 Danielson’s opinion, the only thing this policy goal does is allowing  
32 government to make arbitrary, capricious and selective decisions in  
33 controlling development. Danielson asked the Planning Commission  
34 members to question a policy that sets out to define critical areas,  
35 yet that same policy allows the destruction of that same critical area  
36 in the form of mitigation. She asked that the Planning Commission  
37 no only recommend that the Critical Areas Ordinance be redrafted  
38 but that the entire process be rewritten to be consistent with the  
39 actual requirements of the Growth Management Act and of RCW  
40 36.70.A.010 that states in part “. . . It is in the public interest those  
41 citizens, communities, local governments and the private sector

1 cooperative and coordinate with one another in comprehensive land  
2 use planning. She attended the roundtables and staff was asked  
3 questions but could provide no answers. The Staff was asked  
4 questions but no answers were provided. She continued on with  
5 more questions and was assured her comments would be considered  
6 in the next draft. Here is the second draft yet none of her comments  
7 and suggestions have been taken into account. She attended the  
8 round tables but was given no indication that her comments would  
9 be taken into consideration in the next draft. She believed the only  
10 thing this policy does is allow government to make arbitrary,  
11 capricious and selective decisions in controlling development. Again  
12 these are only comments on the first twelve policy goals. If these  
13 twelve goals cannot after two years to be comprehensible, she  
14 believed there was something wrong. At this meeting she has heard  
15 from attorneys, scientists, engineers, all who said they have provided  
16 their expertise yet t has not been considered or dismissed by staff.  
17 She did not feel this was an open process of dealing in a cooperative  
18 and coordinated manner with the citizens as is again required by  
19 RCW 36.70.A.010. She requested that the draft Critical Areas  
20 Ordinance not only be redrafted but scrapped. The entire process  
21 needs to start consistent with the Growth Management Act and the  
22 State of Washington.

- 23
- 24 • Chair Mahan – There are too many names left on the list to  
25 finish this public hearing at this time. He proposed considering  
26 continuing this public hearing at noon on September 27, 2005.  
27 Staff will be asked to notify everyone one the sign-in sheet who  
28 did not get a chance to speak.
  - 29
  - 30 • Coppola – Unable to make that meeting.
  - 31
  - 32 • Mahaffay – Wanted to make sure that every speaker still on the  
33 list be notified.
  - 34
  - 35 • Taylor – For consistency, recommended beginning at 3 PM, the  
36 same as this hearing.
  - 37
  - 38 • Chair Mahan – It depends on facility availability.
  - 39
  - 40 • Mahaffay – Why not set a different date.
  - 41

- 1 • Taylor – What about the Silverdale Community Center.  
2  
3 • Mahaffay – Suggested another public hearing be set out two  
4 weeks ahead to allow for adequate public notice and to secure a  
5 facility.  
6  
7 • Jenniges – Agreed  
8  
9 • Ahl – Not sure the Planning Commission is ready to deliberate  
10 absent the remainder of public testimony. Therefore the two  
11 dates currently set for deliberation on September 26 and 27,  
12 need to be cancelled and a new date and time be scheduled  
13 following completion of the public hearing process.  
14  
15 • Chair Mahan – This public hearing will be continued to a date  
16 certain at the same times as today, 3-10 PM. Additionally, those  
17 people who signed up to speak but did not get their chance, will  
18 be notified and allowed to speak first.  
19  
20 • Ahl – Proposed that in fairness to those who did not get a  
21 chance to testify today, give them first priority under the same  
22 format used today. Following that, any additional people who  
23 sign up to speak, be held to a more stringent speaking time  
24 limit.  
25  
26 • Gustavson– Agreed that those who already signed up should  
27 have first priority but there still may be some who could not  
28 make this meeting but should have same right to express  
29 themselves time wise as those who spoke today. Beyond that,  
30 anyone signing up to speak for a second time, should certainly  
31 be allowed to speak, but at a stricter time limit.  
32  
33 • Jenniges – Concerned that this could be an ongoing debate.  
34 There fore he concurs that those who did not get the  
35 opportunity to speak today be allowed the same lax time frame  
36 to speak as was used today. After that, any new ones be  
37 allowed to speak but that should be the last hearing.  
38  
39 • Mahaffay – Suggested it be made clear that the next public  
40 hearing before the Planning Commission is the last one, Dean’s

1 concern can be alleviated. Thinks that two public hearings  
2 covers the Planning Commission from a legal standpoint.  
3

- 4 • Chair Mahan – Written testimony will be closed at the end of the  
5 second public hearing. He then thanked the remaining  
6 Planning Commission members and the audience for their  
7 patience and endurance.  
8

9 E. Baker – Asked for clarification on the two meetings set up for next  
10 week, September 27 and 28. He asked if they were on or off.  
11

- 12 • Chair Mahan – Suggested canceling those two meetings and re-  
13 set following the second, and last, public hearing.  
14

15 10:15 PM - No further business being heard, the meeting was  
16 adjourned.  
17

18 APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2005.  
19  
20  
21

22 \_\_\_\_\_  
23 Monty Mahan, Chair  
24  
25  
26

27 \_\_\_\_\_  
28 Holly Anderson, Secretary  
29

30 EXHIBITS:

- 31 A. Agenda for the September 22, 2005 Planning Commission  
32 meeting
- 33 B. Sign-in sheet for the September 22, 2005 Planning Commission  
34 meeting
- 35 C. Written testimony received from John Cambalik at the  
36 September 22, 2005 Planning Commission meeting
- 37 D. Written testimony received from Jack Hamilton at the  
38 September 22, 2005 Planning Commission meeting
- 39 E. Written testimony received from Robert Benze at the September  
40 22, 2005 Planning Commission meeting

- 1 **F. Written testimony received from Faye Henden at the September**
- 2 **22, 2005 Planning Commission meeting**
- 3 **G. Written testimony received from Dorothy Guice at the**
- 4 **September 22, 2005 Planning Commission meeting**
- 5 **H. Written testimony received from Rod Reid at the September 22,**
- 6 **2005 Planning Commission meeting**
- 7 **I. Written testimony received from Richard Romane at the**
- 8 **September 22, 2005 Planning Commission meeting**
- 9 **J. Written testimony received from Vivian Henderson at the**
- 10 **September 22, 2005 Planning Commission meeting**
- 11 **K. Written testimony received from Don Flora at the September 22,**
- 12 **2005 Planning Commission meeting**
- 13 **L. Written testimony received from Doug Lions at the September**
- 14 **22, 2005 Planning Commission meeting**
- 15 **M. Written testimony received from Joan Gorner/Karl Duff at the**
- 16 **September 22, 2005 Planning Commission meeting**
- 17 **N. Written testimony received from Gene Sherrard at the**
- 18 **September 22, 2005 Planning Commission meeting**
- 19 **O. Written testimony received from Marian Berejikian at the**
- 20 **September 22, 2005 Planning Commission meeting**
- 21 **P. Written testimony received from Cheryl Rawlins at the**
- 22 **September 22, 2005 Planning Commission meeting**
- 23 **Q. Written testimony received from Art Castle at the September 22,**
- 24 **2005 Planning Commission meeting**
- 25 **R. Written testimony received from George Warrington at the**
- 26 **September 22, 2005 Planning Commission meeting**
- 27 **S. Written testimony received from Ron Rice at the September 22,**
- 28 **2005 Planning Commission meeting**
- 29 **T. Written testimony received from Ayvon Card at the September**
- 30 **22, 2005 Planning Commission meeting**
- 31 **U. Written testimony received from Dave Card at the September 22,**
- 32 **2005 Planning Commission meeting**
- 33 **V. Written testimony received from Tim Matthes at the September**
- 34 **22, 2005 Planning Commission meeting**
- 35 **W. Written testimony received from Chris Danielson at the**
- 36 **September 22, 2005 Planning Commission meeting**
- 37 **X. Written testimony received from Harriet Norwood at the**
- 38 **September 22, 2005 Planning Commission meeting**
- 39 **Y. Written testimony received from Jean Bradford at the**
- 40 **September 22, 2005 Planning Commission meeting**

- 1 **Z. Written testimony received from Martin Sebren, PUD #1, at the**
- 2 **September 22, 2005 Planning Commission meeting with *State of***
- 3 ***the Sound 2004* publication attached**
- 4 **AA. Written testimony received from Leslie Lewallen, Pacific Legal**
- 5 **Foundation, at the September 22, 2005 Planning Commission**
- 6 **meeting**
- 7 **BB. Brief prepared by Shelley Kneip dated October 4, 2003, Kitsap**
- 8 **County vs. Central Puget Sound Growth Management Hearings**
- 9 **Board, Kitsap County’s Opening Brief in Cause Numbers 04-2-**
- 10 **02138-1 and 05-2-01564-8**
- 11 **CC. Decisions of the Washington State Appellate Courts Involving**
- 12 **Washington’s GMA 1999-2005**
- 13 **DD. Letter from Holly Anderson, Planning Commission Secretary, to**
- 14 **Planning Commission members, notification of hearing date**
- 15 **EE. Letter from Monty Mahan, Planning Commission Chair, to**
- 16 **Planning Commission members regarding deliberations**
- 17 **FF. Sample ordinance, Fish and Wildlife Riparian Habitat**
- 18 **Conservation Areas (Buffer Strips) Incursions and Openings**
- 19 **GG. Memorandum to Kitsap County Association of Realtors from J.**
- 20 **W. Buell Ph. D, dated 21 January 2000, regarding Review of**
- 21 **Kitsap County draft “Land Use & Development Policies”,**
- 22 **“Critical Areas Ordinance” and supporting documentation**
- 23 **HH. Legal notice for the September 22, 2005 Planning Commission**
- 24 **public hearing**
- 25 **II. Principles Governing State Agency Correspondence Under the**
- 26 **GMA**
- 27 **JJ. PowerPoint presentation prepared by staff for public hearing**
- 28 **overview**
- 29 **KK. Letter to Patty Charnas, Department of Community**
- 30 **Development staff, dated August 10, 2005 regarding Kitsap**
- 31 **County Critical Areas Ordinance, Second Draft, May 17, 2005**