



May 1, 2017

Kitsap County Planning Commission  
% Department of Community Development  
619 Division Street, MS – 36  
Port Orchard, Washington 98366

**SUBJECT: Top 10 Issues Manifest in the Current Draft Critical Areas Ordinance**

Honorable Planning Commission Members:

Kitsap Alliance of Property Owners has prepared a list of questions and issues that are not addressed either by the Department of Community Development Staff nor are they self-evidently resolved in the present draft version of the Critical Areas Ordinance update (CAO). Members of our organization have presented written testimony about the problems and unresolved issues in the Draft CAO in the comment period. Many of our comments have been summarized by DCD staff such that they have left the issues presented unsupported. We trust that the Commission members will read the entirety of our previously submitted testimony and not just the summary of our comments as prepared by staff.

As a means of providing a key to the points we have made in our testimony we are herein submitting the "Top Ten" issues and problems our members have identified in prior testimony and those that arise out of our meetings with DCD staff and individual members of the Board of County Commissioners.

**1. The WHY of the CAO**

- a. Specifically what are we trying to protect (species or geophysical condition)
- b. If there has been a study of environmental conditions of Kitsap County not disclosed to the public,....Exactly what protections are required to rectify the problem. Such recommendations should have included "best management" solutions as well as demonstrate a need for regulatory measures.
- c. Why was such a study not undertaken? And where is the treatise documenting public verses private responsibilities and solutions?
- d. What is the minimum level of each protective measure appropriate to the species/condition for the specific site?

**2. Exactly what guidance was provided for conduct of the update**

*"The small landholders are the most precious part of a state." - Thomas Jefferson*

- a. Was the Department of Commerce Update Checklist followed?
  - b. What guidance did the BOCC provide?
  - c. What guidance did the Director of DCD provide?
  - d. What state level guidance or grant parameters were used for update?
  - e. How was Basic Available Science for Kitsap identified and validated?
  - f. Was BAS other than “State approved” considered or used?
- 3. How is CAO effectiveness determined**
- a. Where is the definitive inventory of specific Critical Areas covered by the ordinance?
  - b. What are the specific metrics applicable to assessing the effectiveness of either the existing or proposed CAO?
  - c. Where is the baseline for those metrics established and documented?
  - d. What are the specifics of the monitoring and reporting program for each Critical Area?
- 4. Practical Basis for current revision not evident**
- a. Not fewer than 12 court. GMHB cases and decisions not reflected in update
  - b. No evidence that provisions of 2005 edition were not effective
  - c. No evidence that 2005 provisions were not restrictive enough or even too restrictive.
  - d. Update appears to be based solely on DOE revised “guidance” even though the Department of Ecology has no review authority of the ordinance and Kitsap County’s experience with implementing the 2005 CAO is not considered.
- 5. What is the economic impact of the CAO**
- a. Encumbrance of lands previously considered “available” for development that cannot be used and that restricts where population growth can be accommodated. This issue was/is not considered in the preparation of the Draft CAO Update.
  - b. Exceptional negative impact on value and desirability of land with Notice to Title redounds to the land owner and no consideration of this fact is acknowledged by either County DCD staff or elected officials.
  - c. Increase in development cost (without value to end product) caused by various “studies” and extended permitting time. Such costs are passed to consumers without consideration of the impact on the County’s responsibility to provide “affordable housing.” No consideration of these associated costs is evident the Draft CAO Update.
- 6. The Takings considerations**
- a. CAO is discriminatory in that it impacts only those applying for permits and does not extend to adjacent properties. Consequently there is discrimination against the land owner, land developer and ultimately against the in migration of people coming into Kitsap County or people relocation within its borders.

- b. Critical Areas and their attendant Buffers establish a priority of “highest and best use” public value for which the private property owner can derive no “highest and best use” personal value.
  - c. Notice to Title is not universal on all properties in Kitsap County only on properties with some identified Critical Area and thus, there is an exceptional negative impact on both use and disposal of property.
  - d. The Constitutional granted Rights of Property use and ownership are abridged by the proposed ordinance, which restricts the use of all or portions of their property. Such restrictions come without just compensation and therefore violate both the State of Washington’s and our Federal Constitution.
  - e. Be it known that there is no Constitutional based protection for the environment but there is for people who own property.
- 7. Reasonable use is site specific and not universal. Application of CAO not consistent with other County Code Titles**
- a. CAO provisions much more restrictive than other titles
  - b. Plain reading of the proposed ordinance does not reflect intent offered by DCD in their explanations of the text
  - c. Language in used in CAO subverts common use and results in misinterpretation
  - d. Extensive discretion extended to “Department” for interpretation, application, and enforcement without oversight of elected officials.
  - e. Specific comment on the provisions for “entry” onto private property – paragraph should clearly state the actual requirements and stop trying to create a “alternate world.” Simply stated public officials may not enter private property unless permission is granted by the owner, a clear emergency situation exists such as a fire on the premises or that public official has first obtained a warrant from a judge of a court of competent jurisdiction.
- 8. Commissioner “intent” statement not specific and clear**
- a. Department delegated authority to interpret most provisions without clear intent - potential for misunderstanding and lacks reporting responsibilities to elected officials
  - b. Hearing examiner can only guess intent when hearing appeals
  - c. Commissioners are “out of the loop” in the appeals process
  - d. Commissioners adopt CAO but are held responsible at GMHB or in Court, but are out of the loop for what transpires in DCD as the CAO is administered
- 9. No effective “public participation” as required by GMA (and DOC Checklist)**
- a. Committee formed but did little actual work
  - b. CAO revision draft created by DCD without actual public input until after text was set and then DCD staff has demonstrated an unwillingness to make any changes to the text of the Draft CAO in response to public comments.
  - c. Public comment period (considering length and detail of CAO) very short
  - d. Public comments edited and summarized by DCD for use by others (planning Commission, Commissioners, etc.)

**10. Question of who is actually in charge**

- a. In 2005 Commissioners admitted that they had not read CAO prior to adoption
- b. In 2017 in meeting with DCD Director after close of public comment period, Director advised meeting participants that she was not well versed in CAO and was unable to answer any questions about the proposed revised ordinance. At that time the Draft CAO Update had already been presented to Planning Commission.
- c. In 2017 the same people who wrote the 2005 edition were rehired to create the 2017 update after having been away from the county for a number of years.
- d. Public comments submitted to Commissioners and or DCD are not subject to open discussion of debate but are simply subject to a determination made by DCD and the Planning Commission. They who write the draft and then decide what comments and recommendations are worthy of consideration presents a situation where the citizens of Kitsap County are effectively excluded from an ordinance consideration / approval process, an Ordinance that dramatically impacts their property and lives and not the lives of appointed or even elected officials.

Should there be any confusion about any of the ten main points or sub-points presented herein, members of the Kitsap Alliance of Property Owners will be more than pleased to submit answers to those questions in writing. Many of our above listed comments require more explanation or at the very least dialog. However, it is our experience that for the most part, whatever we present is most likely to be ignored or minimized. That has been our experience to date with DCD staff and we wonder what kind of a response there will be from those making decisions. If ignored or minimized as our testimony was in 2005, our organization must necessarily take the next step. Unlike the environment in 2005, both the Growth Management Hearings Board, the Washington State Supreme Court and the US Supreme Court have made decisions that have a direct bearing on the kind of provisions that are now included in Draft CAO. Even though KAPO has provided clear and certain reference to those Hearings Board and Court decisions, there is no evidence our testimony has been cause for even discussion of the issues.

Our testimony should be influential in what is included in an updated CAO, if any changes in the 2005 adopted Ordinance are to be made, but so far there is no indication it has or will. Thus, KAPO concludes the ordinance as presently drafted is vulnerable in an appeal. If our assessment is correct, Kitsap County will be spending the public's money to rectify issues after the fact that could have been addressed in the drafting process or at the very least in the public hearing consideration process.

Based on appearances, the Draft CAO Update is nothing more than proposed legislation for the sake of adopting more restrictive rules. So far, no justification has been presented by DCD staff for a.) what the values and functions are of so-called

Critical Areas, b.) what measures, if any, are necessary to protect those values and functions, c.) what consequences redound to the County's citizens if those undefined values and functions are somehow compromised, d.) what data has been collected to demonstrate a problem exists that justifies regulatory measures and finally e.) what is the minimum necessary to address the issues presented in the analysis that documents or documented a problem. Clearly the "problem" has not been defined and yet draconian rules (even more so than found in the 2005 Cao) are being proposed to supposedly solve a problem that may not in fact exist. KAPO remains unalterably opposed to this proposed Draft CAO Update or any and all other regulations proposed for regulation sake.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "William M. Palmer", with a long horizontal flourish extending to the right.

William M. Palmer, President

KITSAP ALLIANCE OF PROPERTY OWNERS