

Protect the Peninsula's Future Newsletter

December 1, 2012

OUR ANNUAL MEETING: THURS. DEC. 6



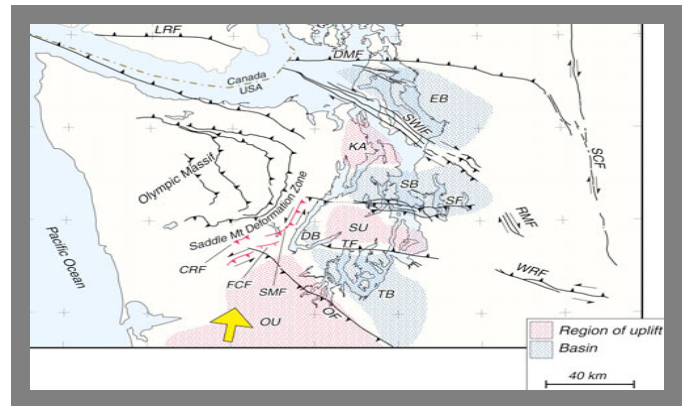
The meeting will start at 7:00 PM, preceded by a potluck at 6:00 PM, at the home of Eloise Kailin, 160 Kane Lane, Sequim, telephone: 360.683.6644.

Directions: From intersection Hwy. 101 and River Road, proceed south on River to Secor (low sign shows Dungeness Meadows is reached this way), right on Secor to Kane Lane, which is a small private road that only goes to the left—watch for the mailbox cluster on the left—do not go down the hill to Dungeness Meadows. Turn

left on Kane Lane to 160 Kane Lane. It is the fourth building on the right from the intersection of Kane Lane with Secor, a white small building with green metal roof.

Annual Meeting Presentation—*Understanding Seismic Risk: and its Impact on the North Olympic Peninsula*

Ron Tognazzini will be our featured speaker at our December 6th annual meeting. Ron retired from nearly 30 years of service with the largest municipally owned utility in the nation where he worked as a Civil Engineer and Structural Engineer. He has specialized in Earthquake Engineering, Emergency Management, and Disaster Planning Coordination. The talk will include a quick overview of risk metrics, NW regional earthquake modeling, faults that threaten the North Olympic Peninsula, and what is known about the potential for specific hazards (ground shaking, liquefaction, subsidence, landslides and ground rupture) in the area.

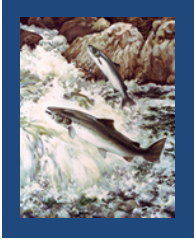


President's Message—Steve Koehler

Protect the Peninsula's Future (PPF) is winding up its 38th year of positive work to secure the resources and inhabitants of the north Olympic Peninsula. This issue of our annual newsletter provides a summary of a few of those efforts. If you would like a color copy of this issue as an Adobe PDF file please email me: steve@stevekoehler.com.

I want to personally thank all of our board members and general membership for their commitment and support. I am proud to be associated with such an incredibly talented and dedicated collection of folks.

Agriculture and Critical Areas —by Eloise Kailin



fish production.

How should the State balance its interest in protecting agriculture with its interest in protecting habitat for anadromous fish? Buffers along streams reduce arable land. Buffers less than 30 meters wide can demonstrably compromise conditions needed by fish. Those conditions include sediment and pollution filtration, temperature moderation, litterfall and nutrient input, bank stabilization and erosion control, shading, large woody debris, and instream habitat. Even very small streams are important to

PPF challenged Clallam County's critical areas code for several inadequacies. Two cases were brought before the Growth Management Hearings Board (GMHB): *Protect the Peninsula's Future v. Clallam County GMHB* Nos. 00-2-0008 and 01-2-0020. Residual issues were reviewed by State Court of Appeals.

THE GMHB ruled that:

1. Existing and ongoing agriculture is subject to the GMA (Growth Management Act) requirement for protection of critical areas.
2. The reduced protections proposed in CCC 27.12.035(7) were not appropriate for all properties enrolled in the open space tax program (RCW 84.34).
3. Filing of BMPs (Best Management Practices) with other agencies for existing and ongoing agriculture is not sufficient to meet GMA requirements for protection of critical areas.
4. Use of BMPs for existing and ongoing agriculture to meet GMA requirements for protection of critical areas requires an effective monitoring program.
5. The Clallam County critical area regulations specifically addressing existing and ongoing agriculture were noncompliant and invalid.

A Review by the State Court of Appeals upheld the GMHB finding that existing and ongoing agriculture is subject to the GMA requirement to protect critical areas. The Court ruled it is possible to give reduced protection to all open space lands, but the County may have to more strictly control such more broadly exempted lands. *Clallam County v Growth Board*, 130 Wn App 127 (2005) (Supreme Court Review denied).

In 2007, before the GMHB acted on the Court of Appeals recommendations, the Washington State Legislature enacted SSB 5248 to further resolve and implement "environmental protection and agricultural viability goals." This bill placed a moratorium on adopting or amending critical areas regulations "as they specifically apply to agricultural activities." An Agriculture and Critical Areas Committee was formed under the guidance of the Ruckelshaus Center, and tasked to return with bill language for the legislature to adopt. In 2010, there were three caucuses in this Committee: Agriculture, Environmental, and Counties. These three caucuses agreed that any language to be included in proposed Voluntary Stewardship Program legislation must first have been agreed to by each caucus. Caucus-agreed language was adopted by the legislature in 2011 in ESHB 1886.

Prior to ESHB 1886, all cities and counties were required to protect all critical areas using regulations. ESHB 1886 created an option, just for counties, to protect critical areas in areas used for agricultural activities by the Voluntary Stewardship Program (Program) instead of by regulation. Twenty-eight counties opted-into the program. Clallam County did not.

In March, 2010, a clerk at the GMHB posted on the GMHB website that the Clallam County cases were “closed.” When cases are validly “closed,” it means that compliance with the GMA is achieved. That clerical error contributed to a potential major statewide problem because one of the provisions in ESHB 1886 allows any rural county that opted-into the Program, but later leaves the Program, to adopt the Clallam County regulations to protect critical areas in areas used for agricultural activities if the rural county makes certain findings. The problem is that such counties would be adopting regulations that the Growth Board has already found non-compliant with the GMA and invalid. This problem could result in many critical areas having inadequate protection.

The County currently has a motion before the GMHB arguing that because ESHB 1886 allows Clallam County regulations to be adopted by other counties, that ESHB 1886 implies that these regulations comply with the GMA. PPF is arguing that this was not the intent of ESHB 1886. A majority of the members of the Environmental Caucus of the Committee have issued statements that they would not have allowed Clallam County regulations to be in ESHB 1886 if they knew the regulations were non-compliant and under invalidity, but that fact was not known at the time.

Under ESHB 1886, other counties will not be able to adopt Clallam County regulations before July 1, 2015. PPF is also arguing that the Growth Board should expedite its process to require Clallam County to actually come into compliance with the GMA on this issue before July 1, 2015 so that other counties will only be able to adopt compliant regulations. The hearing on the County motion will be on December 3, 2012.

Update for biomass projects on the north Olympic Peninsula —Bob Lynette

To remind readers, both Port Townsend Paper in Port Townsend and Nippon Paper Industries in Port Angeles are working on projects that would burn forest slash to produce electricity for sale on the open market. Since all of the western states treat biomass as “renewable”, the projects qualify for huge financial incentives that could make the projects very profitable. But it will require burning more than 250% as much wood as they burn today – more than a million pounds per day for each plant.

Burning wood creates emissions that can severely impact human health, especially for the young, elderly, and those with pre-existing conditions. Of particular health concern are the ultrafine particulates that are not specifically regulated or currently measured by the existing and proposed monitoring systems on the north Olympic Peninsula. The statuses of the projects are:

Port Townsend Paper (PTP)—Litigation over whether an Environmental Impact Statement (EIS) should have been required for the PTP biomass project is at the State Court of Appeals. A decision is expected in first or second quarter of 2013. Additionally, PTP must apply for renewal of its permit to operate its landfill, where the ash from the PTP’s activities is deposited. This is the only mill landfill in our state that is allowed to operate as an “Inert” landfill. All other mill landfills are operated as “Limited Purpose”, which require higher standards of groundwater monitoring and financial security. PTP opposes applying the higher standards. Recently, Dr. Locke (Jefferson County Health Officer) rejected PT Paper’s application to continue operating an as inert landfill. It is not clear what will happen now, but a local group has stated that they are ready to take legal action if a Limited Purpose classification is not required.

Nippon Paper Industries (NPI)—The project is proceeding and is scheduled to be on-line by mid-2013. As the health dangers of the ultrafines become better understood, populations are getting more concerned and they are speaking out on the need for improved monitoring systems. Because of



the increased citizen concern, the Olympic Region Clean Air Agency (ORCAA) has changed course from a “no new monitoring” position, and now is proposing to deploy 4 inexpensive temporary monitors to figure out where permanent ones might go. But neither the temporary or proposed permanent monitors can measure below 0.3 microns size. And that’s the problem—the ultrafines are 0.1 microns and smaller, so they will not be measured.

Monitors that measure ultrafines have recently become available, but because of their sensitivity, they cost more than the monitors currently used by ORCAA. But use of these monitors is essential if we are to learn whether or not our emissions exposure is unhealthy. An effort is underway by the Sierra Club to request that the 2013 state Legislature provide ORCAA with supplemental funds to put in place an expanded monitoring program that incorporates the new devices. Please contact our 24th District legislators and let them know of your concern and support for the enhanced monitoring program. Our 24th District Legislators are:

Senate: Senator James Hargrove: (360) 457-2520 jim.hargrove@leg.wa.gov

House: Rep. Kevin Van De Wege: (360) 582-9830 vandewege.kevin@leg.wa.gov

Rep. Steve Tharinger: (360) 582-9830 steve.tharinger@leg.wa.gov

A Further LOSS For Sequim Bay?—Eloise Kailin

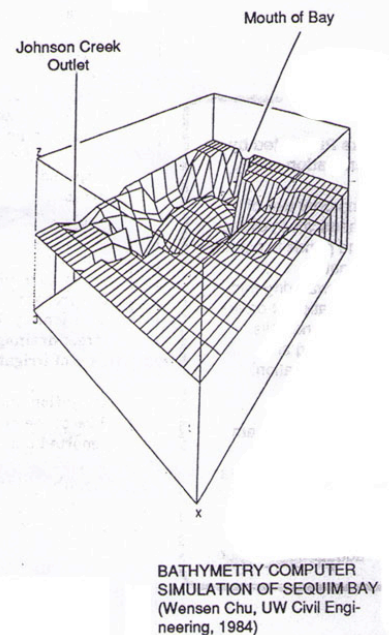
Sequim Bay is an exceedingly fragile body of water because of its tiny opening for tidal exchange. This is why PPF opposed placement of John Wayne Marina inside the Bay and why we fought for 15 years to clean up the sewage outfall from the City of Sequim just outside the entry to the bay. Now we are happy that Sequim boasts that they cleaned up their wastewater to almost drinkable “Class A Re-Use water” quality.

Excessive nutrients such as nitrogen coming from disintegration of organic materials such as debris from the former log rafting operation in the bay, and leaching from septic systems around the bay promote proliferation of algae, which die off seasonally. The decaying material results in decrease of dissolved oxygen in the water. PPF found a report from 1978 where the water off of Schoolhouse Point contained a dissolved oxygen of only 3.3 mg/liter. Healthy marine water should contain 7.0 mg/liter.

In 1989 PPF, commenting to Clallam County’s Planning Department on Sequim Bay Management Plan, cites from a table in its Appendix B: oxygen levels as mg/L at 10 meters depth. Low values reported for September 1985 were 6.6; 6.5 in October 1986; and in 1987 were 5.6 in September, 6.1 in October and 6.1 in November.

A Sequim Bay homeowner reported that shrimp disappeared off her beach during 1985-87. A commercial clam farmer reported increased mats of algae on his beaches in this time frame.

A professional diver who lives on Sequim Bay told PPF there are two large dead areas on the bottom of the bay, one just east of Paradise Cove, the second south of Goose Point which appear to be enlarging. The one south of Goose Point extended up to the 50 ft. depth in 1987. “This year it extends 8 feet higher, to the 42 ft. level.” He describes his trip from shore to deeper water as passing first through eelgrass, then through a band of dead clams. Beyond this he finds an extensive billowing layer of dead material where he sees “no life—not even a starfish.” The billowing area is covered



with a thin layer of white, “like icing on a cake.” On one dive, he covered an area of 150 by 200 yards south of Goose Point without reaching the edge of the dead area. He brought back samples. The samples show dead organic matter, bacteria, fungi and hydrogen sulfide.

In July, 2012, PPF investigated a Public Notice reporting a major expansion planned for sewage disposal from the Jamestown Casino complex. A Conditional Use Permit required a hearing. PPF submitted 18 pages of comment.

This was a permit for a new Large On-site Sewage System (LOSS) to serve the Casino and other developments in Blyn on 5 acres west of the casino, and a bit more than 1,000 ft. from the edge of Sequim Bay. Casino Creek borders the entire north side of subject property. A curtain drain along the entire west border, installed February 2012, reduces flow of water from a hillside and discharges it to the creek. The 5 acre parcel is in County, not Tribal jurisdiction, and is zoned rural-low where public sewage systems are prohibited. The land is designated a Critical Areas Recharge Area (CARA) for which Clallam County’s Critical Areas Ordinance (CAO) prohibits sewage disposal of over 14,000 gallons/day unless it is treated to Class A re-use water standards. This permit is for 25,000 gallons/day treated to a much lower standard. Accompanying documents indicate future disposal may be up to 99,000 gallons per day. Not mentioned are well-publicized plans for a 7-story hotel, which could escape all County review if—or when—the land for it is converted to Tribal Trust status.

A procedural problem is that comment and provision for court challenge under SEPA (State Environmental Policy Act) have been foreclosed by a County determination that the DNS (determination of non-significance) processed last fall for a curtain drain was intended to cover disposal of the sewage effluent as well as the curtain drain, even though the SEPA checklist states there will be no discharge to ground. The flawed checklist does not mention nearby endangered summer chum salmon in near by Jimmy Come Lately Creek, and limits discussion of alternatives to a handful of nearby conventional disposal fields. There is no mention of production of Class A re-use water, or of created wetlands, or of a possible tie in to the Sequim City sewer, though the Sequim City Council has expressed willingness to consider a connection.

The major environmental concern is transport of viruses, bacteria, toxic materials and nitrogen from sewage effluent to wells along the shoreline and to waters and shellfish in Sequim Bay. Distance to the Bay in this case is effectively shortened by the fact that Casino Creek is going to pick up water from the disposal area along its entire north side and probably a lesser amount of sewage mixed with water from the outfall of the curtain drain.

At a July public hearing we asked the Clallam County Hearings Officer to require a full environmental impact study and argued that protective provisions of county codes must be applied evenhandedly to all. The land is zoned Rural-Low. The County staff’s justification of location of the facility in the rural area is that the proposal is needed to protect human health. Creation of a new health problem with polluted shellfish is an even larger problem.

PPF shares with the Tribe an intense desire to get sewage effluent out of the marine waters and into environmentally safe upland disposal. Unfortunately, this project in its present form will unnecessarily contaminate ground water, surface water, shellfish and people.

The Hearing Examiner, Chris Melley, awarded the Conditional Use Permit with little change. Only ordinary secondary treatment of wastewater was required. He declared that the liquid coming from the proposed treatment was no longer defined as sewage effluent and thus was not subject to the Critical Area Ordinance prohibiting its disposal in a CARA.

PPF filed an appeal in Superior Court. Defendants were Clallam County and Jamestown S'Klallam Tribe. Clallam County judges all recused themselves. We were assigned to Port Townsend Judge Craddock Verser who conducted the initial hearing on October 19.

At this initial Superior Court hearing the County defended its use of and cut-off date for comment on the SEPA issue; the Tribe added a motion to deny PPF standing to even bring the case because they alleged PPF members could not show harm from a project not yet built, and did not participate early enough in the proceedings. Our diligent attorney, Gerald Steel uncovered a sign-in sheet which had erroneously been omitted from the record and which clearly disproved the latter allegation.

Judge Verser denied all County and Tribe motions to limit or dismiss our case, which will likely be heard early in 2013.

PPF Status of Fluoridation Lawsuit—Eloise Kailin



In June 2011 PPF's challenge to the cities of Forks and Port Angeles reached the Superior Court room of Judge Craddock Verser, charging the Cities of Forks and Port Angeles with adding a drug to the public drinking water without proper FDA approvals to do so. That drug was sodium fluoride for Forks and fluorosilicic acid for Port Angeles, which were added with well-advertised intent to prevent dental decay. The legal definition of a drug is any substance used with the intent to treat or prevent disease. Tooth decay is considered a disease.

Judge Verser dismissed our lawsuit because of language in a 1954 decision of the Washington State Supreme Court declaring that fluoridation was not medication.

PPF appealed this decision, asking for direct review by the State Supreme Court. Many months later the Supreme Court refused and the case now lies before the Court of Appeals, Division 2. Briefs and responses from PPF and the defendants are now filed. We are waiting for a hearing date to be set.

UPDATE ON THE RAYONIER CLEANUP SITE AND PORT ANGELES HARBOR—Darlene Schanfald

There was movement this year in the intended cleanup of both the Rayonier Mill site and the Port Angeles Harbor. Two documents were released for public review and comment, one in February, *Port Angeles Harbor Sediment Investigation* and the other in July, *Change to the Cleanup Agreement to Include Additional Work*.

Port Angeles Harbor Sediment Investigation details Washington State Department of Ecology's sampling methods, Harbor sediment transport pathways, Harbor currents at different water levels, and what the analytical results showed for various contaminants found in the Harbor. As there are several liable parties that released contaminants into the Harbor, in addition to Rayonier, Ecology is working with each of these parties in developing Agreed Orders, commitments from each on their parts in the cleanup.

Change to the Cleanup Agreement to Include Additional Work was in relation to the City of Port Angeles combined sewer-stormwater overflow (CSO) project along the City's shoreline and through

the Rayonier site to a 5 million gallon holding tank on the east side of Ennis Creek that the City purchased from Rayonier. The City plans to hold the CSO contents in the tank during heavy rainstorms when the City's nearby wastewater sewage plant is full to capacity.

You may recall that PPF, along with Olympic Environmental Council, opposed this \$42 M construction project. We support the City keeping storm-water out of the sewage system to avoid sewage overflows. We promoted that the City should implement low impact development (LID) methods for controlling stormwater. This would include promoting rain gardens throughout the City, installing grass swales to catch and filter stormwater, consider roof gardens, replace pervious pavement for impervious pavement, planting trees, and other green methods for catching, filtering storm water and replenishing the City's aquifers. Importantly, we urged the millions of dollars be used instead to upgrade the City's failing separate sewage and stormwater pipe systems, and disconnect downspouts that purposely add water into the sewage system.



Most communities in WA State and throughout the nation rely on LID methods and upkeep of their infrastructure to handle stormwater. The City of Port Angeles chose, with Ecology's backing, to install early 20th century technology, instead. It helped to get Ecology's backing when the City's Seattle attorney was (and is again) law partner with the former Ecology Director.

So this project created another one for Ecology's Toxic Cleanup Program, having to spend resources and time to accommodate it, rather than just concentrating on the Rayonier hazardous waste cleanup project.

Ecology's *Change to the Cleanup Agreement to Include Additional Work* document had many holes in it, which were pointed out to them and, if not corrected, will create a new toxic mess on the Rayonier site, and to Ennis Creek and the Strait. For example, Rayonier plans to store toxic soil they must dig up to accommodate the City laying the pipeline in trenches. Some of this soil will be toxic. The toxic soil would sit for 3-5 years until the site cleanup under plastic sheets! Such a storage plan will allow the wind and rain to play havoc with the sheeting and let the soils run off. This does not meet the definition of "best management plan." We recommend the toxic soils be encased in impenetrable containers for long-term storage.

We encouraged Ecology to take split samples of the soils so that the agency does not depend on Rayonier's soil sample analytical results. There was little information on how the soils would be sampled; how clean soil that will be brought onto the property to cover the pipes in the trenches will be guaranteed as "clean"; who is paying for the costs for all this work; there was no mention of warning signage to the public. The public submitted pages more of comments on the lack of information provided in this document.

Digging on the Rayonier Mill site for the CSO project has begun. There are annual increases in the utility bills of the P.A. utility ratepayers for this unnecessary project.

For all information on Ecology's Toxics Cleanup work relevant to the Rayonier site, go to: http://www.ecy.wa.gov/programs/tcp/sites_brochure/rayonier/rayonier_hp.htm

2012 Activities—Judy Larson

In 2012, I have attended on behalf of, or reported to, PPF Board Members on various issues/activities pertinent to the mission of PPF including:

Dungeness River Management Team (DRMT): Judy Larson, delegate. (PPF can/should have an alternate.) DRMT's meeting information can be reviewed online at recently updated website: <http://www.olympus.net/community/dungenesswc/>. The 2012 August field trip was hosted by Sequim-Dungeness Water Users Association, and included various out-take and distribution locations. (I did submit comments on "D.R. rule," and included some background info about PPF and its commitment to wise land and water use. I am currently serving on the DRMT Executive Committee, but so far we have only met 2 times and decided a few issues by email.

The ongoing saga of PPF and Sequim's Sewage Treatment (STP): Regarding Sequim's pending NPDES Permit **NO.WA 0022349**, to date, DOE has not yet sent PPF an official notice of details about City of Sequim's permit. PPF has not been advised whether the City performed tests to meet its past permit modification regarding testing ammonia/total nitrogen acute/chronic toxicity scheduled to be conducted after completion of the STP expansion (which doubled its capacity). Neither City nor DOE have yet to provide pertinent information and opportunity for NPDES review by PPF or general public.

Status of On-Site Septic (OSS) Regulations: Recall that counties bordering marine waters of Puget Sound were required to adopt measures to assure for proper functioning of septic systems. Regulation details for our area can be found on the county website. Opportunities for new online training/information for OSS owners are usually covered in "Clean Water Herald—Septics Edition" at: www.clallam.net/hhs/Environmental/ehnewsletter1.html

Clallam County's Shoreline Master Program (SMP): On behalf of PPF, I participate in the SMP Work Group ("working" to update County's 1976 vintage Shoreline Management Plan to regulate land use and development within 200 feet of fresh and marine shores in the County's jurisdiction. Call 360.417.2563 to request written materials.

Local Leaders (Water Management) Work Group: The main players: Clallam County, Jamestown S'Klallam Tribe, Department of Ecology, Sequim-Dungeness Water Users Association, still provide info on efforts to provide "future" water via conservation, storage, and "mitigation." www.clallam.net/hhs/EnvironmentalHealth/committee_LLGW.html

Newest issues of concern: Proposed Carlsborg STP & PUD water rights: A few newspaper articles have reported on the STP project and there was a forum in August of 2012 in Sequim. However, I have been concerned about lack of transparency/ verifiable justifications in linkage of UGA/GMA "requirements," water quality/public health concerns, plus PUD getting increased water rights (at a time of DR rule concerns?!) and agreeing to take on a ~\$10 million loan (proxy for County?!) and O & M responsibilities for an STP projected to cost ~\$15.6 million. The County website <http://www.clallam.net> has some links, PUD's newsletters have been reticent and its website has only some minutes to read. Best background is obtained via http://www.clallam.net/DCD/committee_Carlsborg.html or by contacting Carol Creasey, a County Sr. Planner tasked with this project: ccreasey@co.clallam.wa.us 360.417.2423.



Protect The Peninsula's Future—P.O. Box 1677 Sequim, WA 98382
www.olympus.net/community/oec/ppf.htm