CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

HOOD CANAL ENVIRONMENTAL COUNCIL, *et al*, Petitioner, and SUQUAMISH TRIBE, Intervenor, v. KITSAP COUNTY, Respondent.	**CPSGMHB Consolidated Case No. 06-3-0012c** ***(Hood Canal)*** **ORDER ON MOTIONS**

I. BACKGROUND

On February 27, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Hood Canal Environmental Council, People for Puget Sound, West Sound Conservation Council, Kitsap Citizens for Responsible Planning, Futurewise, Judith Krigsman, Irwin Krigsman, and Jim Trainer (**Petitioners** or **Hood Canal**). The matter was assigned Case No. 06-3-0010, and is hereafter referred to as *Hood Canal Environmental Council, et. al. v. Kitsap County.* Board member Bruce Laing is the Presiding Officer (**PO**) for this matter. Petitioners challenge Kitsap County's (**Respondent** or **County**) adoption of Ordinance No. 351-2005 amending the County's Critical Areas regulations as noncompliant with the Growth Management Act (**GMA or Act**).

On February 28, 2006, the Board received a PFR from Kitsap Alliance of Property Owners, William Palmer, and Ron Ross (**Petitioners or KAPO**). This case was assigned CPSGHMB Case No. 06-3-0012. Bruce Laing is the PO in this matter. KAPO also challenged Kitsap County's adoption of Ordinance No. 351-2005. The basis for KAPO's challenge is non-compliance with various provisions of the GMA, the State Environmental Policy Act (SEPA), and the Shoreline Management Act (SMA).

On March 3, 2006, the Board determined that the *Hood Canal* PFR (CPSGMHB Case No. 06-3-0010) and the *KAPO* PFR (CPSGMHB Case No. 06-3-0012) both challenge the same Kitsap County action in amending the County's Critical Areas regulations. Therefore, the Board consolidated the matter. The consolidated case number is CPSGMHB Case No. 06-3-0012c.

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On March 30, 2006, the Board received Respondent's Index of the Record. The Index lists 1,045 items by Index number.

Motion to Dismiss

On April 12, 2006, the Board received Kitsap County's Motion to Dismiss Legal Issue No. 7 with exhibits (**County Motion to Dismiss**).

On April 21, 2006, the Board received Petitioner KAPO's Response to County's Motion to Dismiss SEPA Claims with exhibits and Declaration of Karl Huff (**KAPO Response to Dismiss** and **Huff Declaration**).

On April 28, 2005, the Board received Kitsap County's Rebuttal to Motion to Dismiss KAPO's SEPA Claims with Declaration of Dave Greetham (**County Rebuttal – Dismiss** and **Greetham Declaration**).

Motion to Supplement

On April 13, 2006, the Board received Hood Canal's Motion to Supplement the Record with exhibits and Declaration of Cyrilla Cook (**Hood Canal Motion to Supplement)**.

On April 21, 2006, the Board received Kitsap County's Response to Hood Canal Motion to Supplement (**County Response to Supplement**).

On April 21, 2006, the Board received KAPO's Response to Hood Canal Motion to Supplement (**KAPO Response to Supplement**). In their response, KAPO joined with the County in their arguments pertaining to the Hood Canal Motion to Supplement.

On April 27, 2006, the Board received Hood Canal's Rebuttal to County's Response to Supplement (**Hood Canal Rebuttal - Supplement).**

Motions to Intervene

On April 13, 2006, the Board received Petitioner KAPO's Motion to Intervene on behalf of the County (**KAPO Motion to Intervene**).

On April 17, 2006, the Board received a Motion to Intervene from the Suquamish Tribe (**Suquamish Motion to Intervene).**

II. MOTION TO SUPPLEMENT

Hood Canal's Motion to Supplement sought to admit five aerial photographs and the Declaration of Cyrilla Cook. The documents requested for supplementation are the following:

Exhibit A:	Map Number 010426 143720
Exhibit B:	Map Number 010462 142740
Exhibit C:	Map Number 010426 145612
Exhibit D:	Map Number 010426 145514
Exhibit E:	Map Number 010426 150312
Declaration of Cyrilla Cook	

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Petitioners assert that these photographs are provided to supply visual illustrations of critical areas depicted on the Washington Department of Fish and Wildlife (WDFW) mapping that was included in the Record at Index Number 590. Hood Canal Motion to Supplement at 2. Petitioners argue that these visual references along with the overlay captions will provide both context and substantial assistance for the Board in regards to the issues presented on shoreline protection. *Id.* at 2-3.

In its response, Kitsap County stated that although the County has no objection to aerial photographs of the County's shorelines, such photographs must be accurate and identifiable, of which, the County asserts, the requested photographs are not. County Response to Supplement at 2. The County argues that, without further investigation, it is impossible to know from the photographs the exact stretch of shoreline depicted, what shoreline designation exists on the depicted shoreline, and what buffer width is imposed. *Id.* The County further asserts that numbers used by the Petitioners to identify the photographs do not match any numbers identifiable by Washington State Department of Ecology and therefore can not be compared with the Kitsap County Shorelines Management Plan Map to determine the corresponding shoreline designation and associated buffer. *Id.* The County also notes that the photographs are not current, taken in approximately mid-May 1992. *Id.*

Petitioners submit that they incorrectly identified the source of the aerial photographs that they seek to admit. Hood Canal Rebuttal – Supplement at 2. Petitioners state that the correct source of the photographs is the Department of Ecology's Washington Coastal Atlas (Atlas) website and they were taken between 2000 and 2002.[1] Petitioners state that the numbers on the photographs match those found in the Atlas and can be compared with the County's shoreline map. *Id.* at 3. Petitioners further assert that few aerial photographs delineate parcels and that the purpose of the photographs is to show what the shorelines physically look like. *Id.* at 3-4.

Discussion

RCW 36.70A.290(4) provides:

> The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such *additional evidence would be necessary or of substantial assistance to the board in reaching its decision*.

(Emphasis added).

According to Ecology's website,[2] the Washington Coastal Atlas is an interactive mapping site that allows access and analysis to geospatial data for Washington's coastal region which is useful in informing broad-scale land use decisions, but not as a substitute for site-specific studies. The photographs Petitioners seek to admit are from this database and are supplemented with a title overlay providing the general location of the photograph and which types of marine species utilize the area for spawning. Information on marine species was prepared by information

[1] Washington Coastal Atlas: http//www.ecy.wa.vo/programs/sea/sma/atlas_home.html
[2] Petitioners' Rebuttal, Page 2, Fn. 2.

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obtained from the State of Washington Department of Fish and Wildlife (WDFW).[3] Petitioners assert, and Ecology's website confirms, that the photographs were taken between 2000 and 2002. Hood Canal Rebuttal – Supplement at 2.

However, the photographs provide no correlation to corresponding shoreline designations and buffers; rather, the Petitioners expect the Board to perform this correlation by identifying the specific stretch of shoreline by comparing the County's Shoreline Map with the Atlas website. Evidence submitted must be of substantial assistance to the Board and not such that the Board is expected to perform further research to garner the information the Petitioners desire to present.

The Board finds, as noted in the summary table below,[4] that Petitioners seek to supplement the record with exhibits which are not necessary or not of substantial assistance to the Board in reaching its decision.

Proposed Exhibit: Documents	**Ruling**
A. Aerial Photograph 010426 143720	*Denied*
B. Aerial Photograph 010426 142740	*Denied*
C. Aerial Photograph 010426 145612	*Denied*
D. Aerial Photograph 010426 145514	*Denied*
E. Aerial Photograph 010426 150312	*Denied*

III. MOTIONS TO INTERVENE

With their motion, KAPO seeks to intervene on behalf of Kitsap County by submitting briefing and providing argument on those legal issues posed by Petitioner Hood Canal whose disposition could substantially impair the interests of KAPO members. KAPO Motion to Intervene at 1-2.

In their motion, the Suquamish Tribe seeks to intervene on behalf of Petitioner Hood Canal. The Tribe's states that they are concerned with issues that may arise during the proceedings which could adversely affect, impact, and impair the Tribe's interest in ensuring that marine and fresh waters are protected by adequate vegetative buffers to protect water quality and habitat for

[3] Petitioners' Motion to Supplement, Page 2, Fn. 4.

[4] In the summary tables:

- "Admitted" means the proposed exhibit becomes a supplemental exhibit. Each new exhibit is assigned a Supplemental Exhibit No.
- Exhibits "Admitted as part of record" are exhibits from the record below that were inadvertently omitted from the Index. Each is assigned an Index No.
- "Board takes notice" means that the Board recognizes the existence of a decision, order, statute, ordinance, resolution or document adopted by such instrument. Each is assigned an Index No. However, since the Board may not have access to a copy of such documents, the party offering the exhibit shall provide a complete copy to the Board.
- "Already in Record" means that the exhibit is already listed on the Index and therefore is automatically admitted and need not be the subject of a motion to supplement. No Index No. is assigned.
- Exhibits that "May be offered" are not admitted at this time; they may be offered again at the hearing on the merits, at which time the Presiding Officer will rule on their admissibility.
- Exhibits that indicate "Denied" do not become supplemental exhibits to the Record. No Index number is assigned.

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anadromous fisheries. Suquamish Motion to Intervene at 2. Also within their motion, the Tribe states that they are interested in addressing some of the issues raised by KAPO. *Id.* at 3.

Discussion

WAC 242-02-270 enables the Board to grant intervention. KAPO filed a Motion to Intervene on April 13, 2006. Suquamish filed a Motion to Intervene on April 17, 2006. Both motions were filed subsequent to the Prehearing Conference held on March 30, 2006. No response to the Motions to Intervene was received by the Board. Having considered the Motions to Intervene and the provisions of WAC 242-02-270, the Board finds:

That the granting of intervener status to KAPO is in the interest of justice and will not impair the orderly and prompt conduct of the proceedings; therefore, the Board **grants** KAPO's Motion to Intervene.

KAPO may file a brief in accordance with the briefing schedule set forth for the Respondent in the Prehearing Order (**PHO**) issued by the Board on April 3, 2006. Intervenor may brief on Legal Issues 1 and 2 as stated in the PHO. The County's time for oral argument, as assigned by the Board, must be shared with Intervenor KAPO, as determined by the County. Intervenor KAPO is entitled to notice of any settlement discussions that occur between Petitioners Hood Canal and the County, and may participate in such discussion, if any. However, only Petitioners Hood Canal and the County need to be signators to any settlement agreement disposing of all or a portion of Legal Issues 1 and 2.

The Board finds that the granting of intervener status to Suquamish, on behalf of Petitioner Hood Canal, is in the interest of justice and will not impair the orderly and prompt conduct of the proceedings; therefore, the Board **grants** the Suquamish Motion to Intervene in this regard only.

Suquamish may file a brief in accordance with the briefing schedule set forth for Petitioner Hood Canal in the PHO. Intervenor Suquamish may brief on Legal Issues 1 and 2 as stated in the PHO. Petitioner Hood Canal's time for oral argument, as assigned by the Board, must be shared with Intervenor Suquamish, as determined by Petitioner Hood Canal. Intervenor Suquamish is entitled to notice of any settlement discussions that occur between Petitioners Hood Canal and the County, and may participate in such discussion, if any. However, only Petitioners Hood Canal and the County need to be signators to any settlement agreement disposing of all or a portion of Legal Issues 1 and 2.

In addition to their request to intervene on behalf of Hood Canal, the Suquamish Tribe states that they desire "to address some of [the] issues" raised by Petitioner KAPO. Suquamish Motion to Intervene at 3. However, the Tribe fails to provide the board with its reasons for intervening on behalf of KAPO, an explanation of why the Tribe satisfies WAC 242-02-070 in regards to KAPO's legal issues, and which of KAPO's issues they have an interest in. Due to the ambiguity in the Suquamish's Motion, the Board **denies** the Suquamish's Motion to Intervene on behalf of KAPO.

IV. MOTION TO DISMISS

Kitsap County seeks to dismiss Legal Issue No. 7, as raised by Petitioner KAPO. County Motion to Dismiss at 1. Legal Issue No. 7 provides:

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Legal Issue No. 7: Did Kitsap County violate (fail to comply with) the State Environmental Policy Act, Chapter 43.21C RCW, in the adoption of Ordinance 351-2005 when material changes were made in the regulations after the County had issued an MDNS on August 4, 2004 for the June 22, 2004 Draft Critical Areas Ordinance, and none of the material changes made in 2005 were subject to supplemental environmental review as required by Chapter 43.21C RCW and supporting regulations, Chapter 197-11 WAC?

The County argues that KAPO lacks standing to assert a SEPA claim because KAPO's "supposedly endangered interests" are not within SEPA's zone of interests and that KAPO cannot show injury-in-fact, both of which are required to confer SEPA standing. County Motion to Dismiss at 1, 6, and 9. The County supports their claim by asserting that SEPA's zone of interests pertains to protection of the environment and not purely economic interests (such as individual property rights, property values, etc.) which neither the Board nor the court have found to be sufficient to confer SEPA standing. *Id*. at 7. The County asserts KAPO's interests are purely economic interests. *Id.*

In addition, the County argues that KAPO has not provided sufficient evidentiary facts to demonstrate that KAPO suffered an "immediate, concrete, and specific injury-in-fact." *Id.* at 9. The County asserts that KAPO's alleged injuries, limitations on the use of property by increased buffers, are speculative or conjectural since buffer widths are dependent on a variety of factors. *Id.* at 10.

In their response, KAPO argues that they meet the stringent two-part test for standing to assert a SEPA claim before the Board because their interests are not purely economic and do fall within the zone of interests protected by SEPA. KAPO Response to Dismiss at 1. KAPO concedes that some of their interests are economic and does not dispute the County's characterization that SEPA's zone of interests relates to the environment. *Id.* at 5. However, KAPO argues that the courts, and the Board, have found a relatively wide range of concerns may fall within the zone of interests. *Id.* at 5-6. KAPO argues that besides economic interests, they also have interests related to the potentially adverse impacts of the use of buffers on the environment and habitat of critical areas within Kitsap County. *Id.* at 6-7.

KAPO argues that they have suffered an immediate, concrete, and specific injury in fact because members' properties would be directly and immediately affected by the revisions to the buffer provisions issued by the County. *Id.* at 9. KAPO argues that although the precise manner of control may be speculative, based upon future development actions, the current imposition of the regulation is immediate, direct, and specific. *Id.* at 14.

KAPO further argues that the County's failure to issue a new SEPA threshold determination after making substantial revisions to the buffer provisions of the CAO caused injury in fact in that they were unable to review, comment on, and appeal the threshold determination. *Id.* at 9-10. KAPO asserts that the County's failure to follow SEPA process deprived them of the opportunity to have the County consider alternatives. *Id.* at 14.

In rebuttal, Kitsap states that the County, in fact, reviewed its Second Public Draft CAO in May 2005 to determine whether a new SEPA threshold determination should be prepared; as none of the proposed changes made the Second Draft likely to have significant adverse environmental impacts, the County determined that no new SEPA document was required. County Rebuttal –

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Dismiss at 2-3; Greetham Declaration, *citing* WAC 197-11-340(3)(a)(i) and WAC 197-11-600(3)(b)(i).

Kitsap County critiques the documents submitted by KAPO allegedly showing the organization's interest in environmental protections – Index No. 235 and No. 626 – and asserts that "the only harmed interests identified by KAPO" in these exhibits are property-rights interests. County Rebuttal – Dismiss at 4. Further, the County argues that KAPO cannot show injury-in-fact, either procedurally or substantively. *Id*. at 5-7. A careful reading of the regulations, according to Kitsap, reveals that the CAO only affects new activities and does not impose buffers retroactively on existing structures. *Id*. at 7.

Discussion

Both Petitioners and Respondent agree - a party wishing to challenge a SEPA determination must meet a two-part test. County Motion to Dismiss at 4; KAPO Response to Dismiss at 1-2. The two-part SEPA standing test used by this Board is as follows:

> *First*, the plaintiff's supposedly endangered interest must be arguably *within the zone of interests protected by SEPA*. *Second*, the plaintiff must *allege an injury in fact*; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her *specific and perceptible harm*. The plaintiff who alleges a *threatened injury* rather than an existing injury must also show that the injury will be "*immediate, concrete, and specific*"; a conjectural or hypothetical injury will not confer standing.

MBA/Brink v. Pierce County, CPSGMHB No. 02-3-0010, Order on Motion to Dismiss SEPA Claims (Oct. 21, 2002) (emphasis in original, internal citations omitted).

This tough two-part test for SEPA standing was articulated in the courts of Washington to deal with SEPA challenges to (a) non-project actions that were (b) intended to protect the environment. *Trepanier v. Everett*, 64 Wn. App. 380, 382-83, 824 P.2d 524, *review denied*, 119 Wn. 2d 1012 (1992). The Growth Management Hearings Boards hear challenges to local government legislative actions – i.e., non-project actions – such as comprehensive plans and general development regulations. Critical Areas Ordinances (CAOs), under the GMA, are development regulations to protect the "functions and values" of environmentally-sensitive lands. RCW 36.70A.172(1). Thus, when the underlying action is the adoption of "environmental protection" legislation, such as a critical areas ordinance, the Board strictly applies the SEPA standing test.[5] *Pilchuck Audubon Society v. Snohomish County* (*Master Builders Association and Snohomish County Realtors Association – Intervenors*) (***Pilchuck II***), CPSGMHB Case No. 95-3-0047c, Order Granting Snohomish County's Dispositive Motion to Dismiss SEPA Claims, (Aug. 17, 1995).

In their PFR, KAPO stated the basis for their SEPA standing as follows: both KAPO and individual members of KAPO have SEPA standing because they are property owners (a) "with interests in the substantive and procedural zone of interest SEPA was designed to protect" (b)

[5] Board member Pageler's dissent to application of the strict two-part test in *Save our Separators v. City of Kent*, CPSGMHB Case No. 04-3-0019, Final Decision and Order (Dec. 16, 2004), at 27-32, reflected the fact that the Ordinance at issue was a zoning action allowing urban development, not an action for environmental protection.

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who are "directly and adversely affected by the County's failure to follow SEPA rules." KAPO PFR at 13. KAPO's issue statement expands:

> [KAPO members] are within the zone of interest which the SEPA statute was designed to protect, and are directly and immediately and adversely affected by reason of the enactment of Ordinance 351-2005 without SEPA review of the 2005 changes. Mr. Ross and many members of KAPO own land, including or proximate to critical areas directly and adversely affected by the expanded buffers and limitation set forth in the 2005 drafts.

KAPO PFR at 9.

KAPO argues that the use and utility of property owned by KAPO members has been immediately and adversely affected by the increase in buffers and limitations on land use imposed by the challenged ordinances. *Id.*

The County asserts that KAPO's threatened injuries are couched in the use and utility of their land – an economic, as opposed to an environmental interest. County Motion to Dismiss at 7**.** KAPO responds that their PFR, and the record, demonstrates their concern about the potentially adverse impacts of the proposed buffers on the environment and habitat of critical areas within Kitsap County. KAPO Response to Dismiss at 6; Duff Declaration at 3.

Is KAPO's alleged interest within the SEPA "zone of interests"?

The Washington Supreme Court has defined the "zone of interests" protected by SEPA:

> SEPA is concerned with 'broad questions of environmental impact, identification of unavoidable adverse environmental effects, choices between long and short term environmental uses, and identification of the commitment of environmental resources.'

Kucera v. Washington State Department of Transportation, 140 Wn.2d 200, 212-213, 995 P.2d 63 (2000),[6] quoting *Snohomish County Property Rights Alliance v. Snohomish County (**Property Rights Alliance**)*, 76 Wn.App. 44, 52-53, 882 P.2d 807, (1994).

Economic interests are not within the "zone of interests" protected or regulated by SEPA. *Harris v. Pierce County*, 84 Wn. App. 222, 231, 928 P.2d 1111 (1996).[7] Purely economic interests include "the protection of individual property rights, property values, property taxes, [and] restrictions on the use of property." *Property Rights Alliance*, 76 Wn. App. at 52 (1994). Merely being a "resident, property owner and taxpayer" or a party "active in seeking full public participation in the planning procedure" is insufficient for SEPA standing. *Id.*

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[6] Kucera had standing to allege SEPA non-compliance in WSDOT's failure to review the fast-ferry's impacts on the shoreline where the threatened injury was not merely the damage to the Kuceras' water-front property but environmental damage to shorelines of the state.

[7] Harris and Citizen's Against the Trail were denied SEPA standing: their "only interest alleged is economic: owning property that could be condemned." And the injury – condemnation – depends on subsequent project design and thus is speculative.

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KAPO responds to the County's motion by alleging that its non-economic interests, or environmental interests, "include[e] clean water and the maintenance of fish and wildlife habitats". Duff Declaration, at 3.[8] KAPO's members are concerned "about the potentially adverse impacts of the proposed CAO's use of buffers on the environment and habitat of critical areas in the county" and the "possible adverse environmental consequences of the CAO's buffer provisions." KAPO Response to Dismiss at 6-7; Duff Declaration at 3.

Reviewing the supporting documents filed by KAPO, the Board agrees with the County that KAPO's core interests are in the unrestricted use of their properties. The August 23, 2004 letter to the County, which KAPO attaches to show its concern for environmental values, questions the BAS underlying the proposed increased buffer widths and the scientific evidence for the effectiveness of buffers, but does not suggest any potentially adverse environmental consequences which KAPO members seek to avert. Rather, the letter advocates identifying "the value of property lost to the increased buffers or the increased burden placed on property owners" and objects to "bureaucrats' tendencies to always increase their control and jurisdiction over private property." Index No. 235.

KAPO also submits, as evidence of their environmental interests, two papers by Dr. Robert N. Crittenden and a paper by Dr. J. W. Buell which they introduced in the County's CAO process. Index No. 626. These documents which, at best, argue about the effectiveness and practical application of buffers and the County's draft CAO, do not suggest that KAPO members are seeking to avert any negative environmental impacts by their participation in the CAO discussion process. However, taking this as a threshold showing of KAPO's concern for environmental

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[8] The Declaration of Karl Duff states that certain named KAPO members own property within critical areas or buffers created by the 2005 CAO [Paragraphs 6-10]. The Duff Declaration states:

> 11. The KAPO members named herein are permanently and adversely affected by limitations imposed on their property under the provisions of the 2005 CAO and have an interest in a healthy environment for Kitsap County, including clean water and the maintenance of fish and wildlife habitats. These KAPO members are concerned that the provisions of the 2005 CAO will not be effective in protecting these environmental interests.
>
> 12. The KAPO members named herein, as property owners with land both affecting and affected by critical areas, and as County residents with an interest in the adequate protection of the environment and habitat encompassed thereby, are within the zone of interests protected by SEPA, including but not limited to (1) adequate and appropriate protection of the environment, (2) the ability to participate in the discussion of alternatives required by SEPA, and (3) the effectiveness and propriety of the regulations proposed to achieve the required environmental goals,
>
> 13. The KAPO members named herein suffered direct and immediate injury by the County's failure to issue a new threshold determination on material changes to the 2005 draft CAO, which improperly excluded KAPO members from data gathering and consideration of appropriate alternatives, directly and adversely affecting their procedural interests protected by SEPA.
>
> 14. In addition, the KAPO members named herein own property and/or structures rendered nonconforming by the 2005 CAO with regulations which do not achieve the environmental protections claimed by the County, as existing structures and activities are subject to new regulation even without a development request. As a result, the failure to adequately continue the SEPA review on material changes to the CAO, with the resulting excessive and ineffective rules, caused injuries to the KAPO members named herein that are immediate, specific, perceptible, and ongoing.

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matters within SEPA's zone of interests, the Board next examines petitioners' alleged injury in fact.

Is the alleged harm to KAPO's interests immediate, specific, and concrete?

The second prong of the *Trepanier* test for SEPA standing is injury in fact.

> *Second*, the plaintiff must *allege an injury in fact*; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her *specific and perceptible harm*. The plaintiff who alleges a *threatened injury* rather than an existing injury must also show that the injury will be "*immediate, concrete, and specific*"; a conjectural or hypothetical injury will not confer standing.

MBA/Brink v. Pierce County, CPSGMHB No. 02-3-0010, Order on Motion to Dismiss SEPA Claims (Oct. 21, 2002) (emphasis in original, internal citations omitted).

KAPO alleges substantive injury, claiming that the County's enactment of Ordinance 351-2005 immediately affects the use and utility of their property.[9] They assert that the 2005 CAO regulations render their property and/or structures nonconforming and subject to new regulation even without a development request. Duff Declaration at 3, paragraph 14. However, KAPO does not explain how these regulations injure them in the present and immediate use of their land. The County explains that KAPO has misread a reference to "prior conditions" in KCC 19.100.120(C) as a retroactive regulation of preexisting uses; rather, according to the County, the provisions deal only with conditionally-approved projects. County Rebuttal – Dismiss, at 7.

The Board finds and concludes that the use and utility of the property of KAPO members, as it currently exists, is not impacted until such time as development is proposed and site-specific environmental analysis is required; thus the threatened injuries are speculative, and not immediate, concrete, and specific. See *Hensley et. al. v. Snohomish County (Hensley VI)*, CPSGMHB Case No. 03-3-0009c Order on Motions (May 19, 2003); *Master Builders Association et. al. v. Pierce County (MBA/Brink)*, CPSGMHB Case No. 02-3-0010, Order on Motions (Oct. 21, 2002). Speculative injuries are insufficient to confer SEPA standing. *Id.*

KAPO further alleges that they suffered direct and immediate injury due to the County's failure to issue a new threshold determination on material changes to the 2005 draft CAO; this, they claim, deprived KAPO of effective advocacy for better alternatives. KAPO Response to Dismiss at 8-9; Duff Declaration at 3, paragraph 13. On August 4, 2004, the County issued a SEPA Checklist and a Determination of Non-Significance (DNS) for the First Public Draft of the CAO (Index Nos. 781 and 782). The Second Public Draft of the CAO (Index No. 1349) was released for public review and comment on May 17, 2005 with no new SEPA documentation or process. According to KAPO, the lack of being able to review, comment on, and appeal the County's environmental determination was a source of their injuries. KAPO Response to Dismiss at 13-14. The County points out that a new SEPA document was not required, citing WAC 197-11-340 and -600 and the Greetham Declaration. County Rebuttal – Dismiss at 2. The Board notes that

[9] Petitioners KAPO do not allege any imminent injury to their purported *environmental* interests.

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KAPO participated actively in review of the revised CAO, advocating for its preferred critical lands management concepts.

The most important aspect of SEPA is the consideration of environmental values. The Board agrees that one of the key purposes of the SEPA process is to ensure full disclosure and consideration of environmental information prior to a decision being made. It is from the impacts disclosed in the SEPA review process that the decision-maker can make an informed decision about the proposal. *Moss v. Bellingham*, 109 Wn. App. 6, 14; 31 P.3d 703 (2001). However, WAC 197-11-600 allows a lead agency, here the County, to rely on existing environmental documents unless there have been substantial changes to the proposal so that the proposal is now likely to have significant adverse environmental impacts. *WAC 197-11-600(3)(b)(i);* see also *Save a Neighborhood Environment et. al. v. City of Seattle*, 101 Wn.2d 280, 676 P.2d 1006 (1984).

KAPO asserts that the County made material changes to the CAO but does not explain how these material changes rise to the level of being "substantial" or having significant adverse environmental impact thereby necessitating the need for new and/or supplemental environmental review. In fact, the material changes KAPO cites – new methods of calculating buffer widths based on habitat function; increases to base wetland buffer widths, and elimination of administrative buffer reductions procedures (KAPO Response to Dismiss at 3) – seem to be based on a desire to *lessen* environmental impacts by increasing protection to critical areas, thereby further protecting their value and function. The Board fails to see how changes that increase protection give rise to significant adverse environmental impacts that necessitate additional environmental review.

Conclusion

Because KAPO alleges only conjectural and hypothetical injuries to their non-economic interests as a result of the County's action, and economic interests are not within the zone of interests protected by SEPA, the Board holds they lack SEPA standing.

Nor, does the County's determination that the revisions to the CAO did not amount to substantial changes with possible adverse environmental impacts, giving rise to the need for supplemental environmental review, confer SEPA standing on KAPO.

The County's motion to dismiss Legal Issue No. 7. is granted.

V. ORDER

Based on review of the Petition for Review, the motions, responses, and materials submitted by the parties, the Act, Board Rules of Practice and Procedure, and prior decisions of this Board and the court, the Board enters the following ORDER:

1. Petitioner Hood Canal's Motion to Supplement the Record is **denied.**

2. Petitioner KAPO's Motion to Intervene on behalf of Respondent Kitsap County is **granted, subject to the limitations set forth in Section III *supra*.**

Central Puget Sound
Growth Management Hearings Board
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3. The Suquamish Tribe's Motion to Intervene on behalf of Petitioner Hood Canal is **granted.**

4. The Suquamish Tribe's Motion to Intervene on behalf of Petitioner KAPO is **denied.**

5. Respondent Kitsap County's Motion to Dismiss Legal Issue No. 7 is **granted.**

So ORDERED this 8th day of May, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
Bruce C. Laing, FAICP
Board Member and Presiding Officer

_____
Edward G. McGuire, AICP
Board Member

_____
Margaret A. Pageler
Board Member

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