

John (Jack) R. Venrick

From: "Captain KEN" <sailboi@yahoo.com>
To: "Scott" <ssshock@exponent.com>; "Norm MacLeod" <gaewolf@waypt.com>; "Bud Schindler" <schindlerbudval@embarqmail.com>; "George Sichel" <gkprofsvc@tscnet.com>; "Jim Hagen" <jhagen@donobi.net>; "Jim Kennedy" <jskedy@olymp.com>; "Ron Ewart" <r.ewart@comcast.net>; "Jack" <jacksranch@skynetbb.com>; <dickmuri@aol.com>; "Dan Goebel" <dangoebel@gmail.com>; "John W Mc Duff" <jwmd@olymp.com>; "Paul Smith" <ruhadeen@cabespeed.com>; "John Wilkes" <john@wilkes.com>; "Judi Stewart" <js@olympus.net>; <jgreenwood@wildblue.net>
Sent: Saturday, March 08, 2008 2:37 AM
Subject: Fwd: Re: Subversion of the Intent and Clear Language of ESHB 1933
Gentlemen - FYI

From my friend David Smith, owner of :
<http://slastudioland.com/about.html>

International planning specialist, with offices in Texas and Japan:
<http://slastudioland.com/contact.html>

comments on the Washington State Enviro

- Ken

David Smith <dsmith@slastudioland.com> wrote:

From: David Smith <dsmith@slastudioland.com>
To: Captain KEN <sailboi@yahoo.com>
Subject: Re: Subversion of the Intent and Clear Language of ESHB 1933
Date: Fri, 7 Mar 2008 10:04:02 -0600

Ken:

Thanks for the reminder of the Washington State environmentalist horror. I processed a 4.5 acre "downtown" tract in BI through zoning and was regularly "bullied" by the Commissioners since I wasn't BOI or the color green of which they were familiar. I think it was only my perseverance and sense of humor that ultimately proved successful.

I really like the Sound and sort of miss the beauty but holy cow, to have to deal with this kind of assault on a daily basis gives me the shivers.

BR/DS

On Mar 7, 2008, at 1:29 AM, Captain KEN wrote:

David - FYI - Ken

Jack Venrick <jacksranch@skynetbb.com> wrote:

From: "Jack Venrick" <jacksranch@skynetbb.com>
Subject: Subversion of the Intent and Clear Language of ESHB 1933
Date: Thu, 6 Mar 2008 15:34:28 -0800
To: <sailboi@yahoo.com>

bcc: Property Rights Groups, Freedom Foundations, Washington House and Senate, King County Council, King County Ag

1. FYI - please see below and attachment above ESHB 1933 from Gary Trip, Director, Bainbridge Citizens Commonsense Environmental Regulations and Accountable Government

2 Also note "Planning for rural

1/18/2011

Lands" (CTED PublicationsView.pdf) attached just received from Ron Ewart!

Thank you Gary and Ron.

Jack Venrick

"The most effective way of making people accept the validity of the values they are to serve is to persuade them that they are really the same as those which they... have always held, but which were not properly understood or recognized before. And the most efficient technique to this end is to use the old words but change their meaning. Few traits of totalitarian regimes are at the same time so confusing to the superficial observer and yet so characteristic of the whole intellectual climate as the complete perversion of language, the change of meaning of the words by which the ideals of the new regimes are expressed."
-- F. A. Hayek

----- Original Message -----

From: Gary Tripp
To: jacksranch@skynetbb.com
Sent: Thursday, March 06, 2008 3:18 PM
Subject: Subversion of the Intent and Clear Language of ESHB 1933

You should be concerned that the DOE, GMHB and local governments are either misinterpreting, or otherwise subverting the intent and clear language of ESHB 1933. The result has been that local governments are being forced to regulate marine shorelines under the requirements of the GMA and Best Available Science, which is the opposite effect ESHB 1933 was to have. I would like to offer four separate examples:

First, please refer to the DOE-issued "Questions and Answers on ESHB 1933 Critical Areas Protection under the Growth Management Act and Shoreline Management Act"^[1], which includes the following paragraph:

6. ESHB 1933 Sec. 5(3)(a) [RCW 36.70A.480(3)(a)] shifts the protection of critical areas within shorelines exclusively to the SMP when Ecology approves an SMP adopted pursuant to Ecology's Shoreline Guidelines after the effective date of ESHB 1933. The Shoreline Guidelines were adopted in December 2003. Section 5(3)(b) [RCW 36.70A.480(3)(b)] specifically provides that GMA designated critical areas in shorelines that are the subject of an SMP adopted pursuant to the new Ecology guidelines are not subject to the GMA. *During the period of time between the effective date of ESHB 1933 and a local government's update of its SMP, the local government's GMA critical areas regulations continue to apply to designated critical areas throughout the jurisdiction. If the local government updates its critical areas ordinance under the GMA before it updates its Shoreline Master Program then the GMA's BAS requirements will apply to the critical area update in the shoreline jurisdiction until the SMP is updated [emphasis added].*

Perhaps without intent, the DOE is providing guidance to local governments that if their local SMP had not been updated since 2003 then their CAO must include protection of marine critical areas until such time that the the SMP is updated. Rather than updating their SMPs, local governments (in our case the City of Bainbridge Island) are now opting to revise their CAOs, from referring marine critical areas to the SMMP, to now include the shoreline as a critical area and using Best Available Science.

A second example is in *Citizens for a Healthy Bay v Tacoma*^[2] case which concluded that the shoreline was not properly protected as required by the GMA. GMHB ordered Tacoma to change their CAO to include protections for the marine shoreline using the requirements of the GMA and Beat Available Science.

A third and very recent example, involves our City of Bainbridge Island, which, after havings its CAO ordinance challenged to the GMHB, felt compelled to commission a study of the Potential Inconsistencies between the Requirements for Best Available Science and the City of Bainbridge Island's Critical Areas Ordinance and Shoreline Master Program^[3] by Battelle. The report concluded Bainbridge's CAO does not comply with the GMA and Best Available Science.

Finally, using the Department of Fish and Wildlife definitions critical areas and relying on the National Marine Fisheries designation of the whole of Puget Sound as critical habitat for the Chinook salmon, The City of Bainbridge Island has classified 80% of Bainbridge Island's shorelines as critical areas and 100% of the shorelines as critical habitat for the Chinook.

The City of Bainbridge Island's SMP and its amendments were approved by the DOE in November 29, 2000. The DOE has scheduled the City of Bainbridge Island to update its SMP in 2011. . In 2005, the City of Bainbridge Island passed its CAO ordinance^[4] which specifically stated "[i]n case of conflict between the provisions of this chapter and the provisions of the Shoreline Master Program, Chapter 16.12 BIMC, the provisions of the Shoreline Master Program, Chapter 16.12 BIMC, shall prevail unless the Critical Areas Ordinance provides greater protection for critical areas. However, the classification or designation of any of the shoreline of Bainbridge Island shall not change from what it is under the Shoreline Master Program as a result of any provisions of the Critical Areas Ordinance".

As a result of a challenge of its CAO^[5] to the GMHB, the City has begun the process to amend the 2005 CAO from its current reference to the marine critical areas being protected by the approved 1996 SMP to regulating the marine critical areas under the guidance of the GMA and Best Available Science.

Given the multiple examples we have provided, we urge this Committee to open an investigation on how ESHB is being interpreted and applied by DOE, the GMHB and local governments throughout Washington that need your help to reaffirm the shorelines are only to be governed by the SMA.

Best Regards,

Gary Tripp
Director

1/18/2011

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(Bainbridge Citizens is non-profit representing shoreline property owners in this matter.)

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- ^[1] http://www.ecy.wa.gov/programs/sea/sma/laws_rules/90-58/1933_Guidance.pdf; undated
 - ^[2] 06301 Citizens for a Healthy Bay v. The City of Tacoma (Nov. 1, 2007)# 06-3-0001 Final Decision and Order
 - ^[3] City of Bainbridge Island Best Available Science Consistency Report; Battelle Marine Sciences Laboratory, November 2007
 - ^[4] Ordinance No. 2005-03, City of Bainbridge Island; BMC 16.20
 - ^[5] 06-3-0006, Squamish Tribe v. City of Bainbridge Island (February 16, 2006)

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