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CAPR San Juan

Critical Areas Seminar Wetlands, Science & Laws

This class is designed for:

- ★ Builders ★ Developers ★ Architects ★ Law Professionals
- ★ Planners ★ Landscapers ★ Property Owners
- ★ ALL Interested Citizens

Registration \$15 per day or \$25 for both days
(includes lunch)

OCTOBER 30 & 31 @ SAN JUAN GRANGE



Steve Neugebauer is a licensed hydrogeologist/engineering geologist with over 25 years experience, and a Principal with SNR Company, a consulting firm based in Duvall. He started SNR to correct all of the "wrongs" not only in wetland areas but also by being objective and bringing in more precise science.

Justin Park's interest in the law came from his involvement in his family's business – electrical contracting. Justin represents clients on issues that face businesses and individuals such as: Construction, Real Estate and Government Relations/Land Use.



Paul Hirsch is an environmental attorney licensed in the State of Washington. He is also a geomorphologist with an abiding interest in land and water, and how these react to human use and development.

SEMINAR SCHEDULE

Saturday October 30, 2010

- 11:30 - 12:00 - Lunch at Grange Hall
- 12:00 - 4:10 - **What you need to know about legal issues of wetlands and other critical areas**

Sunday October 31, 2010

- 11:30 - 12:00 - Lunch at Grange Hall
- 12:00 - 4:10 - **The Science of Wetlands and Other Critical Areas**

Make checks payable to **CAPR SAN Juan**
PO Box 1866 ~ Friday Harbor, WA 98250
Call: 378-7040 for information

Knowledge is power



Environmental, Ecological,
Hydrogeology, and
Engineering Geology
Consultants

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These are my words, thoughts and interpretation of this class as I sat and listened on March 19, 2011 at the Doubletree Hotel in Tukwila, Washington.

- No "Best Available Science" for Buffers and Set Backs
- Cannot take without paying includes wet and water lands
- No definition of "Stream" in Forest Practice Act (1974)
 - Term misidentified
 - They make everything a "Stream"
- Dock repair can lead to arrest
- GMA (Growth Management Act) started CAO
- Infrastructure cost less per person with high density for government
- All manmade ditches were made tributaries
- State paying for code
- WRIA = Water Resource Inventory Areas
- GMA & SAO (Sensitive Area Ordinance) started in 1990
- CAO is a vehicle for Municipals to make \$ from you
- \$142.25/hour Washington King County DDES fee for permits
- Great money maker for counties
- DDES claim do not meet state and federal regulation
- Muni's discharge storm water into local lakes causes them to flood lake residents
- Citizen law suits against Olympia, 5 law firms gone through, \$37,500/day X 13 = \$800 million in fines
- Anything you do can trigger CAO
- Comprehensive Plan is required by GMA every 5 years

- You disturbed the wetlands or stream even from 3 neighbors away to get code violations.
- Low volume wetlands class IV to high value (bogs) class I
- Corp. of Engineers Regional Manual now used for jurisdictional wetlands in NW. Does not meet BAS but new version out.
- Federal government dominates the State
- 11,000 years ago had 1 KM of glacial ice sheet. We are in an active glacial low land, e.g. peat bogs
- CAO can only regulated "streams" which are not defined.
- Rivers are regarded as under SMA
- Streams vs. ditches vs. drainage vs. perennial vs. temporary surface water flow vs. ground water flow
- Key – stream – does it have ground water
- Mill creek is a storm water conveyance
- Old historic water irrigation, drainage, storm water conveyance, the county will label them "tributaries"
- Storm water detention facility
- None of state or fed manuals have BAS!
- "Wetland Scientist" has no licenses or requirements.
- CFR = Code of Federal Regulations
- Unsaturated zone flow pass flow Not saturated soil conditions, i.e. all soil filled with water @ one atmosphere
- Not common to have near surface saturation
- Storm water system created most problems in Auburn and Kent Washington

- **Washington King County uses soil color chart to type soils which can't be used because...**
 - Andic soils most here in Puget Sound and Basic mostly black, i.e. color does not make difference.
 - Color of soil does not make difference, need more refined methods.
- “What is wetland?” – defined by Fed but nothing about soil!
 - See Steve Neugebauer pitch (LINK TO PITCH)
- MS4 storm water retention facility
- NR CS Soil maps are totally inaccurate especially if they take your rights away
- 4 New Citizens law suit in process in Federal Court
- Extremely hard to defend by Muni's
- Muni's still trying to figure out!
- Wetland scientist shot down in Legislature because he/she was not licensed
- Citizens law suit is first in 2000 to file in 60 days, clock starts ticking
- Government is facing fixed + trespass clauses with treble damages with intent to trespass
- Lot easier to get law changed
- No alternative, you go to law suit
- Lots of legislators are scared to breach the long history of bad science, e.g. since 1972.
- Key – New stream definition submitted by Steve Neugebauer, if passed would eliminate 98% of property owners problems
- Congress never had intension of CAO to apply to pasture, was for bog part of wetland definition
- CAO codes conflicts with Surface Water codes

- SMA last change in 1972
- Organic soil are not hydro soils
- NTCHS are good guys
- Wetland "scientist" have NO qualifications , e.g. Pierce County has minimum
- There are 500 licensed Hydro geologist in Washington State
- Commerce clause used to take property
- Swamps, marshes, bogs are Class I
- Kettle Lake is storm water drainage
- Reasonable Use clause for power, roads even if wet
- **They (government) are clueless on hydrology**
- Wetlands are **deep water** habitats
- Police power & reverse condemnations are used
- Adverse possession is quieting title common law
- Diverting storm water
- Commerce Clause Federal – almost shot down, used for taking everything, e.g. waters of U.S.
- GMA yielded CAO
- Shorelines are only regulated by SMA not CAO
- Corp {of Engineers} refusing to USGS, Geology & NTCS, i.e. Turf War
- Lakes are ponds which are greater than or equal to 20 acres
- Rivers are streams with specific sustained flow and width
- Discharge into Kettle Lakes is against Safe Water Drinking Act
- Storm water surges in 75% of adjoining cities runoff and floods lake home owners
- Muni's have so many, e.g. 55, violations in their back yard Steve can find in one day

- Government agencies have no Hydrologists
- King County aquatic is not natural, it is manmade.
- Rare to find "wetlands" around lakes and streams here
- Fish strand themselves often in any ditch
- Steve Neugebauer definition of "Stream" in peer review and in CD handout
- Just because area is "inundated" doesn't make it a wetland
- EPA regulates TES and ? TES = Threaten and Endangered Species
- DOE considers rain as "Waters of the State", i.e. they own the rain
- Saturation does not mean inundation
- Interflow is not ground water or saturated soil
- Hygrophyte label is used and abused to classify more than technical definition
- Soils and soil typing is misused to determine "wetlands"
- 14th amendment started Bill of rights into States
- Bill of Rights only applied to Federal in first 100 years
- 1897 case to apply rights to states
- Most incorporated Bill of Rights in the 1960's and 1970's
- Don't have to indict with a Grand Jury in Washington
- Sovereign power is NOT given in United States or Washington Constitution but is assumed
- Washington case law is out of date and moving toward federal law