

2019 Environmental and Land Use Law Section

MIDYEAR MEETING & CONFERENCE

agenda

**THURSDAY – SATURDAY
MAY 2 – 4, 2019**

Alderbrook Resort and Spa
7101 E State Highway 106
Union, Washington 98592

**WASHINGTON STATE
BAR ASSOCIATION**



2019 Environmental and Land Use Law Section MIDYEAR MEETING & CONFERENCE

WSBA CLE #19739UNI

CREDITS

Approved for 13.5 CLE credits
(12.25 Law and Legal Procedure
+ 1.25 Ethics.)

TUITION

\$429 - Standard

SECTION PARTNER

WSBA Environmental and Land
Use Law Section

DATES

Thursday - Saturday,
May 2-4, 2019

REGISTRATION

Online at wsbacle.org
enter 19739UNI in the
search field.

VENUE

Alderbrook Resort and Spa
7101 E State Highway 106
Union, Washington 98592

Environmental and land use laws continue to shift in response to state and national politics. As the federal government works to roll back certain protections, Washington state strives to balance conservation and preservation efforts while maintaining sustainable development and a thriving economy.

Join the Environmental and Land Use Section May 2-4 at the Alderbrook Resort and Spa to engage in lively discussions about the shifting legal and political landscape impacting our practices, including:

- The latest updates on significant state and federal case law
- Navigating homelessness issues in Washington's urban areas
- The federal government's redefinition of Waters of the United States
- Washington's efforts to save the Puget Sound orca population
- Environmental roll-backs at the federal level
- An overview of the state of Washington's water infrastructure
- Tips on practicing before the Growth Management Board

Enjoy further conversation and networking during the breaks and at Thursday's cocktail reception featuring Keynote Speaker Washington State Attorney General Bob Ferguson.

CO-CHAIRS

Aurora R. Janke

Washington State Office of the Attorney General, Seattle

Alexandra Kleeman

Stoel Rives LLP, Seattle

LODGING INFORMATION:

Room block cutoff is April 1, 2019 after which reservations are based on availability and the room prices may increase. Rooms are for attendees of the Midyear Conference. If a non-attendee would like to stay in the area, please find accommodations outside of the WSBA room block.

TO RESERVE YOUR ROOM:

Please call 360-898-5477 and let reservations know you are with WSBA Environmental and Land Use Law Section. The room block is for Thursday and Friday evenings at the rates below:

- Thursday rate: \$175 for standard rooms, \$225 for cottages
- Friday rate: \$175 for standard rooms, \$245 for cottages

For more information on Alderbrook accommodations, please visit:
<https://www.alderbrookresort.com/guestrooms/>

**11:30 a.m. Check-in • Walk-in Registration
Coffee and Pastry Service**

**12:25 p.m. Welcome and Introductions by
Midyear Co-Chairs**

12:30 p.m. Environmental Case Law Update

Get an overview of the top federal and state environmental cases of the past year, with a focus on significant developments in NEPA, ESA, CWA, CAA, Indian law, and climate change case law, put into context for Washington practitioners.

Erica Doctor - Vandenberg Johnson & Gandara, Tacoma

1:30 p.m. Land Use, Permits, and Politics

This session will address developing and managing land use entitlement strategies for complex urban projects. Topics covered will include: development agreements; vesting post-*Snohomish County v. PCHB*; affordable housing incentives and opportunities; potential public-private partnership challenges such as gifting of public funds, prevailing wage, community benefit agreements, and labor peace agreements; strategies for council-initiated local improvement districts and other political issues that can arise with large and highly-visible projects.

Jeremy M. Eckert - Tharsis Law PS, Seattle

Ian S. Morrison - McCullough Hill Leary PS, Seattle

2:15 p.m. BREAK

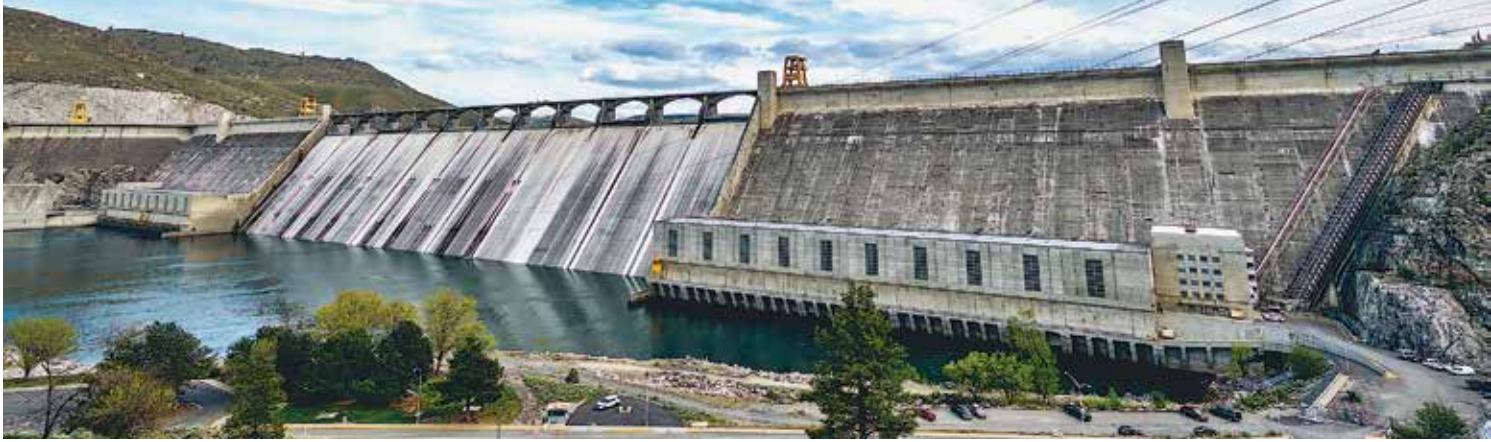
**2:30 p.m. Waters of the United States – Implications and
Legal Challenges to the Proposed Redefinition**



The scope and coverage of the Clean Water Act has been the subject of litigation and ever-changing regulatory proposals for over a decade following fractured U.S. Supreme Court decisions in the *SWANCC* and *Rapanos* cases in the early 2000s. That trend continues with a new proposal from the current administration to sharply curtail the number and types of waters that will receive protections under the Clean Water Act. Find out what has been proposed, how that may affect ongoing litigation over the 2015 version of the “waters of the U.S.” rule, and what that may mean on the ground.

Janette K. Brimmer - Earthjustice, Seattle





3:15 p.m. State of Water Infrastructure – Dams in Washington

The Washington State Dam Safety Office, along with several federal entities, regulates more than 1,200 dams within the state of Washington. Nearly 90 percent of those dams fall under the state’s jurisdiction. What are some of the challenges the state faces in overseeing this many dams? What types of activities require review and approval by the Dam Safety Office? How is dam safety assessed? This presentation will address these and many other interesting dam safety and regulatory issues.

Stephanie Duvall – Washington State Office of the Attorney General, Ecology Division, Olympia



4:15 p.m. Hot Topics in Environmental Law

Over the past two years, environmental policy has changed drastically, with the federal government systematically rolling back longstanding environmental protections and Washington state seeking to maintain, enforce, and enhance federal and state environmental protections and to lead in the fight against climate change. This session will cover recent and pending legislation at both the federal and state level as well as important developments in environmental case law.

Jay J. Manning – Cascadia Law Group PLLC, Olympia



5:15 p.m. Adjourn DAY 1

5:30 – 7 p.m. No-Host Cocktail Reception and Hors D’oeuvres

5:45 p.m. Keynote Speaker

Bob Ferguson
Washington State
Attorney General



**7:30 a.m. Late Check-in • Walk-in Registration
Coffee and Pastry Service**

**7:55 a.m. Welcome and Introductions by
Midyear Co-Chairs**

**8:00 a.m. You Stonewalled My Gravel Mine!
Hmmm...LUPA Appeal or Damages Action?**

LUPA governs appeals of “land use decisions,” but what does that really mean? We’ll talk about the interplay of LUPA and damages actions, starting with the statute’s history and language. We will then work through the cases, with particular focus on the curious contrast between *Maytown Sand & Gravel, LLC v. Thurston County* and *Community Treasures v. San Juan County*.

Steven J. Gillespie - Foster Pepper PLLC, Seattle



**9:00 a.m. “High-Level” Issues in
Nuclear Waste Management**

Federal law requires high-level radioactive waste to be disposed of in a deep geologic repository. But what exactly makes radioactive waste “high-level”? And what if there is no deep geologic repository? This presentation will address the U.S. Department of Energy’s proposal to re-interpret the statutory definition of “high-level waste,” the current status of the Yucca Mountain licensing process, and recent developments at the Waste Isolation Pilot Plant.

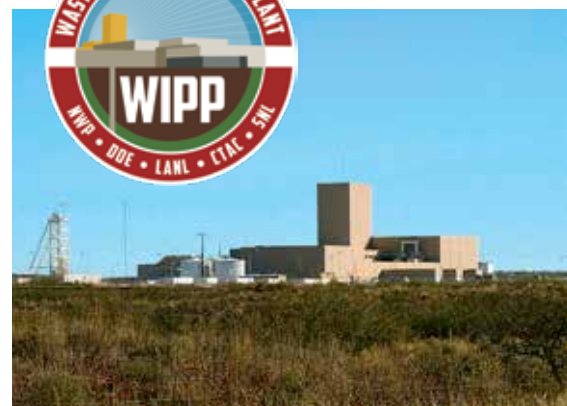
Caroline E. Cress - Washington State Office of the Attorney General, Olympia

10:00 a.m. BREAK

**10:15 a.m. Environmental Rollbacks at the Federal Level—
What’s Happened and What’s Next?**

In recent years, federal agencies have engaged in a broad effort to delay, weaken, and repeal environmental protections. In addition, regulatory oversight bodies like the Council on Environmental Quality (CEQ) and the Office of Information and Regulatory Affairs (OIRA) have sought to change the rules by which rules themselves are made. What’s happened, and what are the implications?

Bill R. Sherman - Washington State Office of the Attorney General, Seattle



11:00 a.m. Homelessness and Land Use in Washington's Cities

City leaders from Olympia will discuss the legal and logistical challenges of addressing homelessness in Washington cities, while facing rising costs of living and growing urban populations.

Mayor Cheryl Selby - City of Olympia, Olympia

Michael M. Young - City of Olympia, Olympia



12:00 p.m. Southern Resident Killer Whale Panel

During this moderated and interactive panel, speakers will discuss developing strategies from governmental, tribal, and scientific communities to save the Puget Sound Southern Resident Killer Whale. Speakers will also address the challenges of preserving this population in the face of a growing population in the region and increased vessel traffic.

Giulia Good Stefani - Natural Resources Defense Council, Mosier, OR

David Herrera - Skokomish Indian Tribe, Shelton

Christian Nilsen - Geosyntec Consultants, Seattle

Sheila D. Lynch - NOAA Office of General Counsel, Seattle

MODERATOR: *Alexandra Kleeman - Stoel Rives LLP, Seattle*



1:30 p.m. ELUL Section Annual Meeting

1:40 p.m. Adjourn DAY 2

**7:30 a.m. Late Check-in • Walk-in Registration
Coffee and Pastry Service**

**7:55 a.m. Welcome and Introductions by
Midyear Co-Chairs**

**8:00 a.m. Climate Change: Adaptation and Increasing
Resilience and How to Incorporate Climate
Science into Decision Making**

Climate change creates new risks and exacerbates existing vulnerabilities. How can we avoid the worst damages? What can be done to prepare for the impacts we can no longer avoid? When damages do occur, how can we recover more quickly and rebuild better? These questions require governments and citizens to integrate science and community values into decision-making. This session will explore how that integration is occurring and can be supported.

T.C. Richmond – Van Ness Feldman LLP, Seattle

**9:00 a.m. Practice Tips for Shoreline Hearings Board and
Pollution Control Hearings Board Appeals**

A board member shares practice tips for litigating appeals before the Shoreline Hearings Board and Pollution Control Hearings Board. Employ these strategies and increase your chances of a successful case before the Boards.

Neil L. Wise – Environmental and Land Use Hearings Office, Tumwater

10:00 a.m. BREAK

**10:15 a.m. Emerging Legal and Ethical Issues in
Sustainable Design and Development**

Increasing demand for sustainable development and “green” buildings has generated a variety of unique issues, from marketing sustainable attributes to the built environment’s impact on human health and wellness. Attendees will learn about the relevant regulatory landscape, explore opportunities and best practices, and consider their own ethical obligations.

Nicole L. DeNamur – Pacifica Law Group LLP, Seattle

11:00 a.m. Ethics in Environmental and Land Use Practice

This session will explore challenging situations we face in environmental and land use practices and provide practical pointers on key ethical issues.

James T. Graves – Stoel Rives LLP, Seattle

Andrew T. King – Foster Pepper PLLC, Seattle

12:00 p.m. Adjourn Conference



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