



# Kala Point News & Views

January 2011

*Serving our Community with Information*

## ***cc&r member rights ignored*** **View Maintenance Requests Denied**

November 29, 2010

To: KPOA Board Secretary, KPOA General Manager and KPOA Board of Directors

From: The CedarView Group (CVG)

Subject: Reconsideration Hearings of November 16, 2010 Board Decisions.

Please be advised that the CVG is opposed to the decisions of the KPOA Board with respect to BMAC Cases 2010-01, 2010-11 (N-44 and -45) and 2010-11 (N-46 and -47). We consider your decisions to be inconsistent, capricious and discriminatory with respect to denying our right to view maintenance; a right implicitly supported and explicitly stated by the CC&Rs. The CC&Rs grant an implied negative easement to owners of marine view properties to retain their views. The community as a whole does not have the right to deny the exercise of that easement. Your actions effectively use the eminent domain process to deny view preservation rights of the marine view property owners. Homeowners Associations do not have the right to take through eminent domain, an authority reserved for governmental agencies.

Your, the Board's, decisions were not changed as a result of the reconsideration hearings despite the introduction of new information; an offer for compromise, in the interests of responsible bluff management, and identification of a potential bluff stability concern. Little interest was demonstrated during the reconsideration hearing regarding the CVG information. The conclusion is that the reconsideration hearing was merely a necessary completion of the established BMAC process and not a real opportunity for changing the previous decisions. The hearing really ended up as another opportunity to allow opponents of CVG view maintenance requests to denigrate the CVG. As an example, the CVG

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- ..... Jay Burcham .....
- ..... Don Meister .....
- ..... *Contributing writers include other* .....
- ..... *named and unnamed individuals,* .....
- ..... *all owners within the community,* .....
- ..... *expressing their own viewpoints* .....
- ..... *in this forum. Articles without a* .....
- ..... *byline are presented by the* .....
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- .....

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was accused of secrecy and a hidden objective with respect to the information provided to the Board in support of the reconsideration hearings. The Board did not correct this allegation. The CVG provided all information to the Board. It was the responsibility of the Board to disseminate the material if they thought it was necessary. The CVG fully met their responsibility. Our objective is to regain our view.

In the case of 2010-01 you, the Board, authorized the removal of trees that were encroaching on the view of a homeowner whose property was located on the crest of the bluff. The argument for this decision was based on the unqualified opinion of a BMAC member concerning the effect the removal, including the resulting bare spot, would have on the stability of the bluff. Also a detailed evaluation of the effect of the sanctioned removals on protecting the view of the homeowner was offered by the BMAC member. The Board's approval essentially ignored the bluff stability issue and recognized the right of an owner on the bluff with respect to view preservation.

Conversely, in the Case of 2010-11 (N-44 and -45), you, the Board, denied owners of marine view properties, located on Cedar View Drive, their right to maintain their views. You again relied on the unqualified opinion of a BMAC member that the removal of two trees would potentially adversely affect the stability of the bluff. You arrogantly made the decision that the view of the owners was adequate rather than addressing the issue of what the view was when the properties were purchased. Please be reminded the CVG is only requesting restoration of their original views,

not enhancement of those views. You ignored the professional findings of a reputable geo-tech firm which reported that removing the subject trees would have a minimal adverse effect on bluff stability. You ignored the professional advice of a certified, consulting arborist with respect to a mitigation process for sustaining the stability of the bluff after tree removal. You ignored the explanation that the sequence is tree removal first and mitigation second so mitigation will succeed. You allowed without protest the slanderous allegations, made during an official meeting of the Board, against the CVG and the geo-tech and arborist firms that they were merely hired guns and would consequently support the CVG rather than give unbiased, professionally supported findings.

You, the Board, have never recognized favorably that the CVG is the only requestor of view maintenance that has paid for both a geo-tech report and an arborist report to ensure that their actions would not significantly adversely affect the stability of the bluff and obtain a professional recommendation regarding mitigation of any actions on the bluff. You have chosen to ignore this valuable information, relying instead on the unqualified opinions of BMAC members. Remember that the geo-tech conclusions were both site specific to the trees involved in the request but also general for the bluff and identified some areas that should be of concern to bluff owners. CVG immediately shared the general conclusions with the Board so it could consider remedial actions.

Conversely, in the Case of 2010-11 (N-46 and -47) you, the Board, have again denied owners of

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marine view properties, located on Cedar View Drive, their right to maintain their views. You again relied on the unqualified opinion of a BMAC member with respect to bluff stability concerns rather than the professional conclusions of a geo-tech firm. You ignored the conclusion of an arborist, a certified Tree Risk Assessor, that the subject trees actually posed a threat to the bluff because of their susceptibility to wind throw and trunk configuration.

We agree with your decision to remove tree N-49 but object strongly to you, the Board, allowing the diatribe of the opponent of your decision to continue for over nine and one-half minutes before action by the Board's President to bring it to a conclusion. It was a vicious, sarcastic attack against one of the CVG members and by association the CVG, the BMAC and the Board. And it was without substance, based on emotion rather than applicable fact.

Since the word practicable was misused during the hearing for tree N-49, without correction by the Board, for the edification of some Members, Webster's definition is "capable of being put into practice or being done or accomplished. It is not a misspelling of practical when used in the CC&Rs and has no emotional connotations.

In summary, considering all of your, the Board's, decisions with respect to tree removal and alteration requests applicable to the northern sector of the bluff, we conclude the following:

- You value and base your decisions on the unqualified opinions of KPOA members rather than the professional conclusions of certified geo-tech engineers and certified arborists.

- Although required to manage the KPOA common properties in accordance with the CC&Rs you choose to ignore them or rely on invalid interpretations of their provisions.
- You place the value of retaining individual trees for the aesthetic pleasure of the community over the rights of marine property owners although the trees on the bluff are within the view of very few community properties.
- The pattern of your decisions has in effect established two levels of marine view ownership. Those properties located immediately on the crest of the bluff have an unqualified right to maintain their views despite considerations of bluff stability. Those marine view properties not located immediately on the crest of the bluff do not have a right to maintain their views.
- You have taken, without authority to do so, aesthetic pleasure and some measure of property value from the CVG.

We, the CVG, have followed the BMAC process to its conclusion, thereby exhausting our rights to appeal within the KPOA. We must now consider other means to recover our right to maintain our views.

Sincerely,

Hal Glantz for the Cedar View Group

Jay and Shirley Burcham (141 Cedarview Drive)  
 Glen and Fran Peterson (182 Cedarview Drive)  
 Pete and Min Fox (194 Cedarview Drive)  
 Ron and Linda Tacker (120 Cedarview Drive)  
 Pete Juliano (40 Cedarview Drive)  
 Hal and Eve Glantz (133 Cedarview Drive)  
 David Lambkin (83 Cedarview Drive)  
 Poul and Inge Oxenbol (150 Cedarview Drive)

## what's in a word?

### In Legal Contracts? Plenty!



Words matter profoundly in legal contracts, such as the wording in the contract by and between KPOA members, comprised of our governing documents (including CC&Rs), in which the term “practicable” is very prominent in connection with preservation of views. Great care is taken by legal document drafters, mindful of the legal impact of each and every word in a contract, both in specific choice and in the context of use.

The more words have been chosen for clarity of intent, to suppress any ambiguity, the more likely courts will strictly interpret the language. **The meaning of “Practicable” is, in a contract, entirely and profoundly different than “practical”.** Special interest supporters of the current KPOA board posture to selectively discriminate on the preservation of views, routinely misquote the governing documents; substituting the word “practical” for the actual contract term “practicable”.

When contracts reach a court in legal actions, judges interpret words very carefully, looking to the “plain meaning” to determine the intent of the original drafter(s). Creative self-serving word interpretations by one party or the other, AFTER execution of any contract, are routinely disallowed by the courts, which insist on interpretation consistent with the true legal meaning of each word, in context, as intended at time of drafting.

Our CC&Rs, the contract governing preservations of views, could not be clearer in terms of the prioritization of view preservation:

#### **CC&Rs Section 10. Building Height and Location.**

*In general, Dwellings will be single story, except on sites which lend themselves to daylight basements and/or will not block view from other Lots. **Views from all Lots will be safeguarded to the greatest extent reasonably practicable....***

So, when the matter actually reaches a courtroom, how will the term “to the greatest extent reasonably practicable” likely be interpreted? Most likely it will be interpreted consistent with its ordinary meaning; a meaning fully addressed here, including the contrast between the two terms in question:

**Prac-ti-ca-ble. 1. capable of being done:** capable of being carried out or put into effect.

**practicable or practical?** These two adjectives have overlapping meanings. Both indicate that something can be done, but practical also implies that it is appropriate, sensible, or useful: *It is practicable to do the calculation in the traditional way, but far more practical to use a computer. **The difference between impracticable and impractical is rather more clear-cut: impracticable means “impossible” and impractical means “not workable when put into practice.”***

**Encarta World Dictionary**

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As has occurred with many other governing document terms and language, successive KPOA boards have a long history of creative interpretation of the terms and conditions of the member contract to suit their purposes and agenda. This is but one more example; albeit an example that is very likely to land us all in expensive litigation.

## *blocking nosy web advertisers*

Most of us like cookies. Maybe your favorite is chocolate chip, oatmeal or peanut butter.



However some cookies are nosy. Yes we are not talking about cookies from the kitchen but rather cookies on our computer. In addition to being nosy, they can greatly slow down our computer.

As we visit various internet sites, click on ads or “google” search engines, advertising network firms are infiltrating and slowing down our computers. Their objective is “behavioral advertising”; evaluating you as a potential customer to produce customized ads to fit a person’s interests.

Fortunately privacy advocates have challenged this as our right to read in private. Another threat is that someone else could get hold of your data.

So if the Web has eyes, how do we draw the shades? Similar to signing up for the “Do Not Call” list on your phone you can opt-out of having any cookies sent to you from numerous ad network firms. Just log onto the Network Advertising Initiative internet site ([www.networkadvertising.org](http://www.networkadvertising.org)).

- Click on “Consumer Opt-Out” (red button).
- Scroll down to Opt-Out Status section which lists each company. Either check “Opt-Out” to select various companies. To opt-out of all companies just scroll down to bottom, click on “Select all” & “Submit”.

This site lists 62 ad network firms including Tribal Fusion, Tidal TV, Fetch Back and Bizo. One firm, Rocket Fuel, stated they were “a company full of rocket scientists building technology that delivers more relevant ads to consumers”. No wonder our computers are slowly chugging along.

This site is amble to determine how many of the 62 firms have placed cookies on your computer. Sad to state, my computer showed 46 of these firms had infiltrated my computer. However by following the above procedures to opt-out of accepting these firms’ cookies my computer privacy and speed has improved.

*Avalon*  
Hair Design

*Gail Dahlman*

260 Kala Point Drive  
Port Townsend, WA

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## *opposition member initiatives fall short*

### **Sizable; Growing Minority Opposes Board Policies**

Facing a board onslaught of interference in the member resolution process, view preservationists efforts to change the CC&Rs to align view policy with terms of the actual member contract, establish a one-tree-a-year owner self-authority to manage trees on their own lots, and another measure to force member votes on large capital expenditures, were defeated in balloting that closed December 10<sup>th</sup>. Results, listed on this page, clearly show a large and growing minority of members that disagree with board actions. More than 40% of members casting ballots rejected the board's heavily lobbied posture.

Unlike government entities, HOA boards are not required to adopt a "hands off" stance when it comes to referendums or member initiative efforts. The board can (and just did) spend considerable money to block the adoption of member resolutions that would have eroded their extra-legal authority extending beyond terms of the CC&Rs. Lawyers were hired by the board to "review" member proposals, printing and postage was spent lobbying members to vote no; all part of the effort to vest all decision-making authority with KPOA, regardless of owner desires.

**KPOA has, over the last several years, adopted a set of procedures entirely contrary to the governing documents, throwing up multiple obstacles to owners organizing opposition and**

advancing alternative policies or rules. These procedures attempt to position the board as the sole body to propose, evaluate and advance change. Governing documents actually position the board very differently, with member initiatives, resolutions and influence unfettered by board control and management. Supporters of greater owner self-management, and strict adherence to the actual terms, conditions and limits-of-control of the owner contract, have expressed great frustration with the "majority arrogance" posture of KPOA. Undeterred, board leadership continues to consolidate and expand their authority and control well beyond governing document authorities, even openly commenting that members don't have the experience or mental capacity to manage their own properties within terms of the CC&Rs or evaluate expensive capital proposals. The governing documents specifically direct owners seeking to appeal "final" board rulings to the Superior Court for review and redress.

### **Voting Results:**

1. Regular Assessment:  
**PASSED**, Vote count: **353 - 47**    **86.1%**
2. Right to alter/remove one tree per annum.  
**FAILED**, Vote count: **185 - 224**    **45.1%**
3. Members Approve Capital Improvements:  
**FAILED**, Vote count: **172 - 225**    **42%**
4. Maintenance of Views From Member's Lots:  
**FAILED**, Vote count: **174 - 234**    **42.4%**
5. Members Must Be Owners:  
**FAILED**, Vote count: **164 - 241**    **40%**

## *neighbor-to neighbor classified ads*

### **Kala Point for Rent:**

Waterfront Condominium, 3 bedroom, fully furnished, \$950.00 per month. (425) 641-6676 or cell (425) 444-685.

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# board meeting to address bmac tree appeals turns nasty

## Neighbors Verbally Attack Neighbors



On Nov. 16, the Board held a Special Board Meeting for several residents that live on Cedarview (requestors) that appealed the decision

to deny their request for view maintenance.

**Each requestor had ten minutes for each of four presentations, which was an insufficient time** frame to present a very in depth presentation. Even with the limited allotted time, the presentations were well done, reflecting in-depth research and supporting data from geo-tech & arborist studies. It was obvious a lot of time and effort went into preparing the presentations.

After the presentations, the meeting was open to comments from attending Members. There were several supporting statements that were given in a reasonable and respectful tone of voice and manner.

**Unfortunately, meeting decorum was not followed** by those that were against the requestors view maintenance request, some of the individuals opposing the requestors presented arguments that were personal, hateful and attacking.

**One Kala Point resident, Adele Lowe, got so carried away** with her loud and shrill tirade attack on Pete Juliano's view maintenance request; she had to be stopped by the Board President. She made reference to a made-up definition of 1st tier and 3rd tier views. The distinction of 1<sup>st</sup> tier and

3<sup>rd</sup> tier views does not exist. She inferred that those that live in the 3rd tier corridor (Cedarview owners) were somehow not entitled to the same quality view as the so called 1st tier owners, (those east of the Cedarview homes and the area where Adele Lowe lives). Such a statement is unfounded, arrogant and totally false. It is unsettling to see how hateful some of these radical members can be in their efforts to stop home owners from maintaining their views, while preserving their own.

**In addition, Board Member Lindeman joined in with an invalid accusation** that the reputable data supporting the tree removals for view maintenance was not factual, and designed just to support the requesters. This was a personal attack on the requester's integrity and honesty by a Board member. Many of the attacks were more personal than about trees, yet in most cases they were allowed to continue by the Board.

**It is sad that our Board does not follow the CC&Rs on View Maintenance**, which is clearly spelled out in our CC&Rs, and that they did not uphold meeting decorum which allowed person attacks on fellow neighbors trying to preserve their views and have the CC&Rs followed.

**Significant data was presented by the Cedarview Group that challenged the Board findings.** The Board simply chose to ignore the data. It was the same story only the dates were changed. In summary, **the board ignored the data** supporting the requests and voted to uphold their original unsupported refusals.

## from michelle at evergreen fitness center:

### Healthy is the new Wealthy

2011; wasn't it just a year ago that it was going to be a new millennium and we thought our computers were all going to crash and the electricity was going to shut off? No wait-a-minute that was 11 years ago!

**We all agree; time flies.** When I was 18, a senior gentleman told me that the older I get the faster the years go by. I thought he was nuts. He wasn't, and most of you are having a nice laugh about now; my treat; don't mention it. That reminds me of another quote that didn't make sense to me until I hit about 40; 'Youth is wasted on the young.'

**Our minds stay youthful and the body moves onward,** some parts downward, and we can't seem to stop it. Can we stop it? No. Can we lessen the rate of decline; at least slow down the process? I say a whole hearted 'YES' we can and the sooner we start the more it becomes part of your life and therefore seems 'easier', but we can and should start at any age. And, yes, we can make improvements at any age. I am so thankful for many of the members that have been part of Evergreen

Fitness for over a decade now; what a great crowd of witnesses for the benefits of continued exercise and stretching. I have always been pretty self motivated when it comes to running, biking, snowboarding, weight lifting etc... but it wasn't until I became part of Evergreen Fitness over a decade ago that I realized my self motivated attitude was really rather a minority. People have asked, 'When will I start to enjoy this?' It's a lot about the attitude. **Look** for the benefits and remember them. A most common excuse for exercise is 'I don't have the time.' Or, 'I don't have the energy.' Funny thing is, if you ask people who have just starting working out, or resumed after a long period of time; 'What benefits are you initially experiencing from your exercise?' and most will come back with, 'More energy.' Imagine that. I think you all know my response to; 'I don't have enough time.' I just don't believe it. Exercise, like anything else, needs to be scheduled into our lives. We have to schedule exercise in just like we do going out to dinner, going to the movies, watching a video or favorite sitcom. How about Facebook, Twitter, etc... or just searching the internet because there is so much cool stuff out there to look at, read, email to our friends, forward those jokes to our acquaintances, reading the newspaper online and KAZAM

2-3 hours have passed! There are so many distractions out there that we hardly **think** we have any free time. We do, we just have to make it a priority; make ourselves a priority. Another frequent line I hear is; 'I can not afford it.' Please; you can't afford NOT to. Americans spend millions of dollars a year on medications that can be reduced or stopped once they make exercise a habit. Medications aren't cheap at all; gym membership by contrast is a



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FREE TRIAL MEMBERSHIP

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whole lot less. I would like to challenge any of you that think you can't afford it to think again. I am ready to offer any of you who have never joined Evergreen Fitness, or haven't been here for several years, to call me and talk about a 1<sup>st</sup> year special joining rate. Seriously; give exercise a chance to work for you. Call me to schedule a meeting; my cell phone number is 360-302-1132. If I do not pick up, leave a message, I will get back to you soon.



*Evergreen Fitness Staff*

Many of you that are reading this are and have been members of Evergreen Fitness for years. **Tell your neighbors!** Invite them in for a class! Alan did, and now almost everyone in his cul-de-sac comes in, works out, and enjoys it! If you make a habit of it; just 3 times a week for an hour; not 7 days a week, not 5 days a week, just 3 days. Before you know it you will be hooked. You will have more energy; you'll meet some really fascinating people and have fun. Your health; the cost is not a luxury item; it's necessary in order to have a full, vital, healthy life.

**We're located just on the other side of the Fort Townsend Park** (they took out 'Old' in the name!) and all those lovely trails. I hope you all had a very Merry Christmas and a safe New Year Day. I look forward to meeting more of you in 2011. Blessings to all of you for a safe and healthy new year. As always, please feel free to contact me at [www.evergreenfitness.net](http://www.evergreenfitness.net) or email at [evergreenfitness@qwestoffice.net](mailto:evergreenfitness@qwestoffice.net). *Michelle*

## the sea glass odyssey

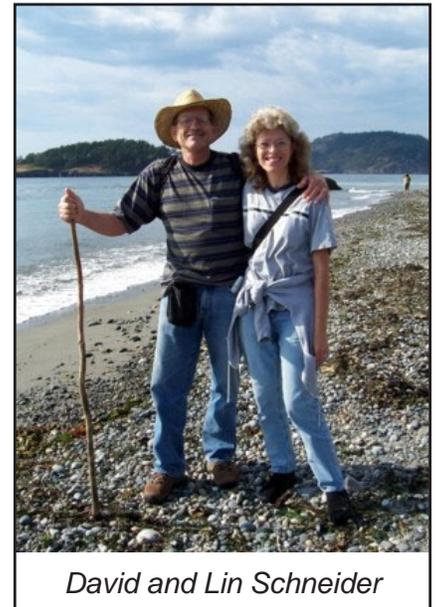
### A Journey into Sea Glass (Part I)

"It happened late one afternoon. I had been walking slowly along the shore near my mother's house on the Chesapeake Bay looking for beach treasures... "Wanting to make one last trip down the small beach, I turned around and **wow!!!**" Tumbling up the beach pushed by a small wave was an **orange piece of sea glass!**" I couldn't believe it at first. Then I started jumping up and down. I just had to run home and show it to **everybody...**"



#### The Thrill of the Hunt:

Have you experienced the thrill of finding a deliciously-frosty and perfectly-tumbled piece of sea glass? Although most are not orange, each piece is an exciting find in itself.



*David and Lin Schneider*

Perhaps you have wondered:

- What is "sea glass?"
- Where can I find it?
- What colors are the rarest?
- How to identify a good seaglass beach?
- Could I use my collection to do something artistic?

Those questions and more will be answered in a series of articles about sea glass. More information can be found at [www.odysseyseaglass.com](http://www.odysseyseaglass.com)

## is trader joe's coming?

### Boutique Grocery Store Popular



According to an unconfirmed announcement that appeared in the Kitsap Sun, Trader Joe's is coming to Silverdale. Kitsap County is expected to issue a

commercial building permit soon that will allow the store to go in at 9991 Mickelberry Road N.W., in the structure formerly occupied by Circuit City. Renovation work will appear after permits are in hand.

According to information filed with the permit application, Trader Joe's plans to demolish most of the building's interior except for the restrooms. The new interior will feature storage and rooms around the perimeter. Shelves and freezer cases in the center will run diagonally. The area covers 26,388 square feet of space with a demonstration room.

The outside will change, too, with a big cantilevered canopy planned over the entrance and a new exterior of stone, stucco and steel shown in drawings. The old curved Circuit City facade will be removed. Making the changes will cost about \$500,000 according to permit-application papers.

While a traditional grocery store may have 50,000 items, a Trader Joe's only has 4,000. Many are store brands, not expensive, but of good quality. Employees sport Hawaiian shirts to build on the ocean-breezy feel. The company's website [www.traderjoes.com](http://www.traderjoes.com) offers recipes and consumer tips.

Commercial real-estate sellers struggling with high vacancy rates in Silverdale were elated at the news of Trader Joe's. The store will add another destination store to Silverdale's retailing mix.



*The Circuit City building in Silverdale will be the new home of Trader Joes*

California-based Trader Joe's has 349 locations in 26 states, about half of them in Southern California. It employs 5,500 people and enjoyed \$8 billion in revenues in 2009. The privately held chain began as Pronto Markets in the Los Angeles area; the first Trader Joe's opened in 1967 in Pasadena. Go to: [www.kitsapsun.com/news/2010/nov/08/trader-joes-coming-to-silverdale/](http://www.kitsapsun.com/news/2010/nov/08/trader-joes-coming-to-silverdale/) to read further information.



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**Avalon Hair Design-** Gail Dahlman. Located just outside the Kala Point gate at 260 Kala Point Drive.. Call **385-2640 or email gdahlman@cablespeed.com** for an appointment.

**Castle Key Seafood and Steakhouse-** Located in the historic Manresa Castle, with an exciting menu featuring fresh local seafood & all natural steaks. Experience great food, atmosphere, and service. On Saturday nights the Castle Key features great Live Jazz shows. **379-1990.**

**The Village Barber- "...Because life's too short for a bad haircut!"** 741 Ness' Corner Rd, Port Hadlock. Brad Garrison Gray & Mike Clark. Tues thru Fri-9-5, Sat-9-4. **Call 385-6865.**

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## Kala Point News & Views



### *kala point hiking club*

#### **Snowshoeing at Hurricane Ridge: February 18th 2011**

Come join us for our annual snowshoe walk at Hurricane Ridge and experience the wonders of winter on the Olympic Peninsula. If you can walk, you can snowshoe! No experience is necessary. **Snowshoes and cross country skis are available to rent** up at Hurricane Ridge if you don't have your own. We plan to go on Friday, February 18th, when the slopes will be a bit quieter than on a weekend or holiday.

Contact Allen Vaa at [allenvaa@hotmail.com](mailto:allenvaa@hotmail.com) for more information and to get on the carpool list for this event as well as other upcoming events.



Ming taking a break in the snow on previous trip.