

Phyllis Dickey

From: Public Council Inbox
Sent: Friday, April 16, 2010 8:54 AM
To: 'Burien Shoreline'
Cc: David Johanson
Subject: RE: Shoreline Master Plan/ BULKHEADS

Dear Mr. Zimmerman,

Thank you for your email. The email and attached letter will be included in the next Council agenda packet as Correspondence for the Record.

Phyllis Dickey

From: Burien Shoreline [mailto:burienshoreline@yahoo.com]
Sent: Thursday, April 15, 2010 1:22 PM
To: Public Council Inbox
Subject: Shoreline Master Plan/ BULKHEADS

Attached is a letter for the City Council regarding the Shoreline Master Plan and currently bulkhead language. Please include it in the public record. Thank you.

John Zimmerman

CFTR: 4/26/10

Dear Council Members,

March 29th, 2010

I would like to express my confusion and concern about the current language in the Shoreline Master Plan as relates to bulkheads. My research indicates that the current language is needlessly prohibitive and exceeds the Washington's Shoreline Master Act, the law upon which the Shoreline Master Program is based.

The Shoreline Master Act specifically requires that master programs include language that provides for "the protection of single family residences and *appurtenant structures* against damage or loss due to erosion." RCW 90.58.100

Also, WAC 173-26-231(2)(a) states, that shoreline modification is allowed where there is a need to protect "*a legally existing shoreline use that is in danger of loss or substantial damage...*"

Burien's master program contains no language with regard to protecting "appurtenant structures" or "legally existing uses" and we urge you to correct it.

Current draft language puts forth soft shoreline stabilization as the remedy to an eroding shoreline. However adopting these methods as a prescriptive measure for shoreline stabilization and ecological restoration is doomed for failure because there are simply too many circumstances where these methods are not effective. In fact, the Department of Ecology concludes this in its own publication "**Alternative Bank Protection Methods on Puget Sound Shoreline**" (publication 00-06-012). The authors state that alternative erosion techniques are new, experimental, and have not been monitored sufficiently to firmly conclude anything close to documented science, nor success.

Excerpts from the DOE's **Alternative Bank Protection Methods on Puget Sound Shoreline**" (publication 00-06-012)

Preface: PG v

"Unfortunately, little technical guidance is available to those interested in recommending, designing, or constructing alternative erosion control measures and no formal demonstration projects exist. Numerous projects have been carried out, however, but they have received no systematic review or documentation. Hugh Shipman, Department of Ecology"

Project Performance PG 123

"Most of the projects examined in this report were built recently and there has been too little time to allow assessment of their success. In addition, few are being actively monitored (see previous section), so there is little information from which to evaluate performance, other than qualitative observations of distinct features such as erosion scarps, exposed anchor cables, or movement of placed logs. With

beach nourishment projects we are finding that success is relative -- for example, a project may be viewed as successful in addressing past erosion, yet fail to achieve biological restoration. Also, standards of success vary. Most nourishment projects gradually erode and generally require renourishment. Some individuals accept this as part of the design whereas others see this as an indication of a project that cannot be naturally sustained. Some soft-bank projects succeed locally in reducing the biological impacts that might have resulted from a traditional seawall, yet do not address more systemic ecological concerns, such as the long-term supply of sediment to the littoral system. **Perhaps in an area of innovation and experimentation such as alternative erosion control, we should view as successful those projects where the documentation of the project is sufficiently rigorous so that *we can learn from our mistakes.***"

Conclusions PG 124

"Few of these projects have been in existence long enough for final conclusions to be drawn about their success."

"Finally, this report should be used with caution. The inclusion of a shoreline project here is neither an endorsement of the design for application elsewhere nor a guarantee of a project's likely success."

"The fact that alternatives may be applicable in some situations does not mean that an alternative is appropriate in all situations. Many of the measures described in this report entail significant modifications of the shoreline and of natural shoreline processes. Many will require ongoing maintenance and few guarantee that a property will never experience erosion or storm damage."

With the DOE freely (and frequently) stating that they believe alternative shoreline stabilization methods to be an "area of experimentation" with "no systematic review or documentation", it is unconscionable and clearly unacceptable to create prohibitive bulkhead regulation based upon this science.

The DOE concludes that they want the opportunity to "*learn from their mistakes*". As representative members of our community we urge you to stand opposed to this outrageous and irresponsible guinea pig experimentation on private property. We urge you to insist that city staff provide clearly substantiated science for any prohibitive bulkhead regulation that is proposed. We urge you to insist that DOE "learn from their mistakes" on *public* land, monitor long-term results on *public* land, document their mistakes on *public* land, and then create designs, implementation techniques and standards for residential application that actually work and are fully supported by "documentation that is sufficiently rigorous". Then, *and only then* should changes to current bulkhead regulation be considered for **private** property. Anything less is negligent and will result in lost property values and expensive lawsuits.

One such Washington lawsuit that illustrates this situation is the *Luhrs vs. Whatcom County*. In this ten year long case, a homeowner's shoreline property has suffered severe erosion due to wave action. Whatcom county regulation only allowed for soft shore stabilization, which has been dangerously insufficient and ineffective for the circumstances. Still, the city refused the resident's bulkhead permit request on the grounds that bulkheads were simply prohibited. In an unpublished ruling, the court found that government regulation that prohibits a homeowner from being able to protect their property from erosion or damage can constitute a "government taking", with all financial reimbursements applicable. It is the very act of mandating alternative stabilization methods that **do not** work while prohibiting methods that **do** work that has been deemed a "government taking". I urge you to review this ongoing case.

As City Council members it is your responsibility to ensure that the citizens of Burien are treated fairly and that tax dollars are being spent wisely. That means ensuring that citizens are provided with conclusive evidence that alternative stabilization methods actually work, that they are a proven no-net loss alternative to current methods, and that the scientific evidence will stand up in court. To be clear, DOE maintains, "little technical guidance is available to those interested in recommending, designing, or constructing alternative erosion control measures and no formal demonstration projects exist." Where some research has been done, DOE further states, "few are being actively monitored, so there is little information from which to evaluate performance". In recognition of this gross lack of science, as well as Attorney General Rob McKenna's Advisory Memorandum to state agencies and local governments entitled, "Avoiding Unconstitutional Takings of Private Property"- the Shoreline Management Act and the WAC *require* that SMP language provide for the protection of "appurtenant structures" and "legally existing uses, against damage or loss due to erosion".

We believe that due to 1) the "experimental" nature of alternative shoreline stabilization methods, 2) the lack of "systematic review or documentation", as well as the 3) clearly stated Shoreline Master Act laws, and 4) the ongoing litigation in this area, there is overwhelming reason for the City Council to mandate that SMP regulations allow all shoreline property owners to replace existing shoreline stabilization with a similar structure in order to protect "appurtenant structures", to protect "legally existing uses", and most importantly to protect property values and the substantial revenue that it creates for the entire community of Burien.

Thank you,
John Zimmerman
Seahurst, Wa. 98166