

From: "Desjardin, Catherine A NWS" <Catherine.A.Desjardin@usace.army.mil>
To: "Carol Lumb" <clumb@ci.tukwila.wa.us>
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Subject: Tukwila Shoreline Master Plan
Attachments: Tukwila SMP Comments for meeting.doc

Carol, here are my comments for tonight's meeting. I may be late, I will be in Yakima all day.

Cathie DesJardin
206-909-7937

3826 S. 116th St.
Tukwila. WA 98168

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Comments to the July, 2008 Draft Shoreline Master Program (SMP)

The right to own property is one of the important rights by which we as Americans secure our freedom. The Founding Fathers of the United States included the Fifth Amendment to the U.S. Constitution to prevent a "taking" or "land grab" of private property by government without just compensation to the property owner. The State of Washington also felt this was important and included similar protection in the state constitution to prevent government from taking private property.

The City of Tukwila intends to change my property use. This change is long after I have purchased the property. Indirect property value loss for my property translates into a "gain" for the government and is considered a "take" or "land grab".

How so you wonder? My constitutional rights assure me that when I purchased my property, I had an assumption of reasonable use. The City is now attempting to change that by limiting and regulating my property use, therefore it must compensate me, the property owner. If the City doesn't want to compensate me, then I am free to build and use my property consistent with the expectations I had when I purchased the property. In recent court cases, including *Citizens' Alliance for Property Rights v. Ron Sims* the appeals court made a landmark decision protecting property rights, declaring the actions of the County were in violation of State law. The City of Tukwila is now proposing a similar type of land use restriction. The Mayor and Council may very well find themselves in a court of law defending their actions through the development and implementation of the SMP.

The structures on my property were legally permitted and built in 1928. If you're wondering how the City's proposed changes will affect me, if I were to put my property for sale on the market, a buyer would not be able to secure a loan on the property for full value, since the structures would be considered non-conforming according to the City's proposition. The City has decided in 2008 to call the property nonconforming, with no formal rezoning hearing, just a sneaky way to regulate property use without giving me the ability to appeal. Rezoning would also include grandfathering in existing property usage such as structures. I view this as an attempt to reduce the value of my property and make it un-saleable; therefore it is a land grab. I would like to know from the City if this is intent - to reduce the property value in hopes of offering a lower price in the future so they can gain my property and others or hope my house falls and rots in place? Again recent court cases have found for property owners protecting their rights.

The US Constitution prevents the taking of private property by the government. If the City wants my property, they should make me a fair offer and buy it instead of trying to take it in this manner.

The Draft SMP states the purpose and background of the Draft SMP it is intended to update the existing SMP adopted in 1974 and that it is intended to guide new shoreline development, redevelopment and promote reestablishment of natural shoreline functions. It also states it is prepared in conformance with the WA St. Shoreline Management Act (RCW 90.58) and implemented regulations WAC 173-26.

WAC 173-26-181 gives an order of preference for implementation

(2) Preserve the natural character of the shoreline;

(5) & (6) discuss publicly owned shoreline properties and

(6) increase recreational opportunities for the public shoreline

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."

This indicates and implies that the shoreline is publicly owned and not currently developed for public access. It does not say anything about taking or limiting property that has been altered by development. In other words, I don't see the words "return to" natural character or "environmental restoration". Why are the taxpayers being burdened with a more aggressive plan than is required by the state? Are the taxpayers being allowed to vote on this?

WAC 173-26-191 discusses shoreline master programs are both planning and regulatory tools. Master programs serve a planning function in several ways. First, they balance and integrate the objectives and interests of local citizens. Second, they address the full variety of conditions on the shoreline. Third, they consider and, where necessary achieve the objectives of the RCW. Fourth, master programs address conditions and opportunities of specific shoreline segments by classifying the shorelines into "environment designations" as described in the WAC

The SMP states the shoreline should be re-vegetated with native vegetation, yet it also gives the idea that there would be physical and visual access along the shoreline. I've seen re-vegetated projects and I'm aware that there isn't access to the water and you can't even see the water through this vegetation. Is this contradiction intended? What about the intent to offer boat access? The SMP states "non-motorized boats" in one paragraph. Currently there is boat access all along the Duwamish, motorized boat access. There are shipping lanes marinas along with public boat accesses. Is there a plan to regulate the use of motorized and non motorized boats so they don't conflict – so someone doesn't get killed? Are these obvious contradictions in usage going to work?

If the intent is to restore the natural shoreline as the SMP states, why put the effort into repairing the Section 205 levee? Why partner with the Corps and have them put over \$16 million into levee repairs since the SMP clearly states the intent is to remove riprap and revetments? Would it be the intent of the City to continue to keep up certification for the levee? If the City feels that the levee and certification is important, then why would usage on my property and all the others who own shoreline property expect to be treated differently? Is there some special treatment for the City that the rest of us aren't good enough to receive? I don't understand, please explain.

In general the SMP document seems to include a tone that indicates future development of public property including the goals and aspirations of the community. There is no mention of restricting usage of property rights for privately owned property that has been fully developed.

The whole tone of the document suggests that the entire shoreline within the City is a giant environmental restoration site. The RCW and WAC don't suggest that in their tone. Why is the City of Tukwila implying this mood and emotion in the SMP? Who is choosing to spend my tax dollars in this fashion? What kind of agenda does staff at the City have and who is hiring these people?

WAC 173-26-231 states the differences between shoreline modifications and uses. Modifications include physical changes in the landscape including earthwork or significant vegetation changes. WA State's examples of uses are fill for cargo terminal, dredging for marina.

Neither of those examples are residential. There is no implication of changing the existing character of privately owned residential property.

173-26-201 states use of scientific and technical information shall be incorporated into the master programs. The Tukwila SMP should include the technical and scientific information instead of the irrational emotional discourse. There is a great deal of conflicting ideas and suggested implementation.

In the case of the existing residential structures, instead of stating that all existing structures be deemed nonconforming, state that all remodeling, repair, replacement of structures be in same location or landward only from the water. After all these structures were legally permitted at the time they were built. To deem them non-conforming is a sneaky, conniving attempt to regulate land usage without having to compensate the landowner and still allows the government to collect full taxes. Yet if I want to sell my property, the value of the structures would not be included as they are "non conforming" and prospective buyer would be able to get a loan.

If the DOE wants 200 feet for their jurisdiction, what stops the City from stating tomorrow that they want the whole 200 feet? My property would be unusable. **Please explain this to me. How does the City believe that they can legally take property like this?**

If the community wants to regulate my property and intends to have access to privately owned residential property, then the community should be willing to step up and purchase that property instead of determining the existing use should be changed so the property value is lost and the property owner cannot sell the property. If the community wants to tell me what I can plant in my yard, and add a requirement for maintenance, then the community must compensate me.

I am asking the City come to their senses and recognize the rights of property owners. There is nothing in the WAC or RCW that suggests, implies or requires that existing residential or commercial structures should be designated as non conforming, nor is there any indication that property owners should be penalized. Why is that language and intent in the SMP?

Property rights are important to the American people, and as an American citizen I have a right to own property. My right to own what I have purchased, built, inherited or been given as a gift, with the knowledge that the government cannot take it from me, without rigorous and strict legal

procedures, provides me a tangible security similar to the freedoms of privacy and speech. This right is secured by the Fifth Amendment.

It is a blow to the rights of the American people when their economic rights are threatened by a despotic government in the same manner as curbing the expression of speech or religion. By changing my property usage and claiming my structures are nonconforming, my property value is reduced and therefore indirectly, it is a "take" action by the City. How would you feel if suddenly your property usage was changed, therefore reducing the value of your property with no compensation? Especially if these changes were made by people you elected? What if through those changes you were still required to pay taxes on the value of the property as if it had no restrictions Pacific Legal Foundation recently won the land use case against King County where the County attempted a similar restricted usage action against rural property owners. If the City wants my property, step up make me an offer and buy it like anybody else would be required to do.