

Theresa Rice

From: Jo Vanderlee and Rick Robertson [loon3103@hotmail.com]
Sent: Thursday, September 15, 2011 3:32 PM
To: PCD
Cc: Jo Vanderlee and Rick Robertson
Subject: Comments on proposed SMP
Attachments: SMP ltr (9-15-11).doc

Please see our attached letter of this date. It is directed to the Planning Commission meeting this evening, but bears on City Council action as well.

Thank you.

Rick Robertson and Jo Vanderlee

Thomas Herrick Robertson
Johanna Vanderlee
8901 Woodbank Drive NE
Bainbridge Island, WA 98110

September 15, 2011

Bainbridge Island Planning Commission
City of Bainbridge Island
280 Madison Avenue
Bainbridge Island, WA 98110

Re: Shoreline Master Program

Dear Planning Commissioners,

This letter is written in anticipation of your meeting this evening regarding the Shoreline Master Program (SMP) update project. We are island residents and own a home and abutting tidelands in Fletcher Bay. We also have a mooring in Port Madison, which was grandfathered under the City's buoy permit process and is licensed by the Department of Natural Resources.

Our home has a deepwater dock, which we value highly and is regularly used by our family, friends, and neighbors (particularly children). The dock serves as a platform for swimming and other recreational activities, provides summertime access to a variety of small boats (the longest of which is 15 feet), allows friends to visit our house by boat, and makes possible off season moorage for our sailboat that is now in Port Madison. Having an outboard motorboat on the dock makes us able to travel in Puget Sound by boat (visit friends/Brownsville/Poulsbo/Suquamish/Indianola, etc.), engage in recreational fishing and crabbing, and generally enjoy water-oriented activities on Puget Sound. Our dock and tidelands have also long been used to for non-commercial aquaculture, and two sets of trays designed for raising oysters are currently suspended from it.

The part of Fletcher Bay that has been proposed for designation as Aquatic Conservancy is fully navigable, can be entered by deep draft vessels, and is home port to various boats, both power and sail, which are used by waterfront and non-waterfront island residents. However, there is relatively little boat traffic in the bay, which is attributable to its location and limited access at low tidal stages. The bay is also too small for water-skiing or operation of most powerboats at anything but low speed. Consequently, Fletcher Bay has basically none of the boat-related problems (wake damage, noise, collisions, etc.) that may occur in more congested or popular harbors.

The map of important marine habitats published by the city planning department shows nothing in Fletcher Bay.

We are very concerned with the current effort to update the SMP. Because it has been quite difficult to catch up with the process, obtain up-to-date documents, and assess the changes to be made from existing law, we are including a summary of our concerns below. This summary is not exhaustive, and we would be happy to discuss more specific issues with you or your staff.

Designation of Fletcher Bay

Fletcher Bay does not meet the City's criteria for designation as an aquatic conservancy. It does not meet the City's definition of tidal lagoon. However, Fletcher Bay does meet the definition of tidal inlet, which need not be designated aquatic conservancy.

As far as we know, the City has not undertaken any site-specific studies to confirm that aquatic conservancy is an appropriate designation for Fletcher Bay or, for that matter, to determine what regulatory actions should be taken to protect it. It is common knowledge that the primary threat to the health of the bay is stormwater and road runoff, which is regulated by the City and which is not related to or caused by waterfront properties and boats.

The proposed SMP designation would nonetheless bar us and our neighbors from raising oysters on tidelands that we own and that are well suited to that function. We know of no reason why recreational aquaculture should be barred from Fletcher Bay. In fact, filter feeders such as clams and oysters help to clean the water in the bay.

The proposed SMP does not seem to say anything about use of powerboats. However, city planning staff has "administratively interpreted" the aquatic conservancy designation "to generally mean that only non-motorized activities, such as kayaking and canoeing, are allowed." There is no reasonable connection between such a determination and the needs of Fletcher Bay.

We ask that the Planning Commission require staff to identify specific values that the proposed designation would promote, and to suggest alternatives to such designation. These might include such simple matters as speed limits, if that is perceived to be the problem, or limitations on dock length/materials, prohibition of commercial aquaculture, or the like.

Regulatory controls

Even if the Planning Commission retains the designation, it should tailor the corresponding regulations to those that make sense in the context of Fletcher Bay. Leaving the development of restrictions to discretionary decisions of planning staff not only constitutes an unlawful delegation of legislative authority, but would cause uncertainty and confusion, inappropriate use of staff resources, and invite unnecessary conflict, civil disobedience, litigation, and significant financial cost to the City.

Nonconforming structures and uses

City planning staff has suggested that nonconforming structures and uses can continue. This is not clearly stated in the original SMP policies, and we urge you to do whatever is needed to clarify the City's intentions in the text of the proposed update. For example, we are told that existing docks can continue to be used as they were used in the past, even if nonconforming. This should be made explicit in the SMP policies and regulations.

SMP development process

Please take the time and actions needed to make the product of this process understandable to the public in a manner that provides for comment on the entire proposal presented in a coherent fashion. Doing so would enable the public to provide input on specific language. Please do not hesitate to direct staff to develop alternative proposals. Like many others on the island, we have legal training and experience and can be of help to you if you give us the opportunity. It is no answer to say that the current drafts were prepared by so-called citizen workgroups. Secret meetings by non-elected officers in which votes are taken to determine city policy is hardly a way to generate public trust or confidence.

Restoration of Fletcher Bay

We and many of our neighbors are much more interested in working to improve the ecological health of the shores and waters of Fletcher Bay, particularly with respect to siltation caused by stormwater and road runoff, than in fighting with the city over adoption or enforcement of unneeded and confusing shoreline regulations. It also appears that many of the restrictions that would attend an aquatic conservancy designation could prohibit or impede such restoration efforts, particularly if they involve dredging, and should be revised for this reason as well.

Thank you for your consideration.

Sincerely,

Thomas Herrick Robertson and Johanna Vanderlee

cc: Bainbridge Island City Council