

**From:** m.c. halvorsen [<mailto:teddy2halle@yahoo.com>]

**Sent:** Thursday, April 14, 2011 4:37 PM

**To:** Glowacki, Margaret

**Cc:** Conlin, Richard; Bagshaw, Sally; Burgess, Tim; Clark, Sally; Godden, Jean; Harrell, Bruce; Licata, Nick; O'Brien, Mike; Rasmussen, Tom

**Subject:** Seattle's Proposed Update of its SMP

Dear Ms. Glowacki:

I have now read the above-referenced draft and examined the sources that you supplied. I have other sources that are more recent and better qualified which I believe should be used instead and I am attaching their statements.

On page 12 of the Summary, DPD proposes increasing the setbacks from 25' to 35'. There has been no study to determine whether setbacks do or do not harm the shoreline. Thus the department's proposal is based on nothing scientific but on someone's prejudice. There is no need to increase the setback. In fact a lawsuit has just been filed in Superior Court for property on Bainbridge Island challenging these exorbitant setbacks and buffers.

On page 15 there is a reference about new piers. The inference is that docks and piers hurt fish. WRIA-9 which is the environmentalists' bible, states that there is no scientific evidence that docks hurt fish. In fact, there is some scientific evidence that fish like docks because they can hide from their predators and eat from the growth on the piers but no one has done a scientific study on that. If someone does do a study and finds that docks help fish, then DPD will have done more harm than good. Thus, there is no justification to require a reduction in the size of a dock should it need rebuilding. That would be the taking of property without due process of law and it is unconstitutional. See "Nollans v. California Coastal Commission" 483 U.S. 825 (1987)(Attachment 2)

C.1 Dredging. This proposal wants to prohibit dredging around residential docks. DPD shows an amazing ignorance regarding the action of tides, currents and wave action caused by wind regarding the movement of beds of waters. There are many reasons dredging may be needed whether it is a residential or commercial dock and not doing it could cause more damage than doing it. A channel can fill up to the point that a boat could not reach the dock to which it is supposed to tie up. Furthermore, DPD does not have jurisdiction over federal waters. As you are aware, any navigable body of water is a federal waterway. If federal law and state law conflict, federal law prevails. I am sure you are aware that the Army corps of Engineers has been in charge of U.S. waters since 1803 and it is that department that will determine whether or not dredging is needed. Prohibition of dredging at a residential dock would be the taking of property without due process of law and it is unconstitutional.

DPD's proposal on bulkheads is based on someone's theory that bulkheads are all bad for the environment. DPD cites a person, whose credentials are not disclosed, who made a statement in 1982 that bulkheads are an interruption to soil from land to water and calls that best available science. There is no indication of the occasion of this statement. I am attaching scientific excerpts of a 2009 conference specifically on Puget Sound waters from scientists with well-documented credentials that state that there have not been any scientific

studies to prove that assumption. Thus requiring people to put in soft bulkheads that will not hold a bank anyway is unscientific. Bulkheads are the best way to stabilize a bank and have not been proven to harm anything. Part of the problem is that there were states that allowed bulkheads at mean low water which were harmful, and which are no longer permitted. DPD seems to have confused that information with the fact that bulkheads in this state have always been at mean high water and has come to the wrong conclusion. Bulkheads at mean high water have not been scientifically proven to be harmful.(Attachment 1).

DPD's information regarding the Duwamish River is not accurate. The Duwamish River is 11 miles from the mouth to where it meets the Green River but the first 5.5 miles were straightened between 1911 and 1916 to become a commercial, industrial, federal waterway, which is what it still is today. The banks are fill, not dirt and nothing will grow in them. It would be like trying to grow flowers in cement. The rest of the 5.5 miles of the river is not navigable and is not a federal waterway. There is growth there. Your characterization that the river is one untouched unit is mistaken.

I am enclosing a copy of my letter to Port of Seattle Commissioner Albro regarding the ownership of the bed of the river and I wish to make that a part of the record, in case there is any doubt over who owns what.(Attachment 3.)

On pages 17-18 the proposals in the "Public Access and Views" would increase public access in commercial areas. Most of these areas are hardhat areas. If DPD gives access, it incurs the liability. How is DPD going to distribute hardhats to these people and how much is this going to cost? What kind of security screening has DPD worked out with the U.S. Coast Guard for screening people in areas the Coast Guard deems security risk areas and how much is that going to cost?

Most cities understand that when access is given, liability is incurred. Most cities regulate access through city parks where they know the access is safe because the cities maintain them. Apparently Seattle does not mind the liability but as a taxpayer, I do. If the city has to settle, the property taxes are raised to pay for the settlement. I am sick and tired of having DPD listening to selfish, self-centered whiners and complainers who are too lazy to use the city parks. They want to abandon the parks with their lovely facilities, good parking and safe access to the water for a cramped streetend with no facilities, no parking and dubious to dangerous access to the water. I see no reason to incur increased liability and in the end have to subsidize these people. The access should be restricted to the safe parks.

This whole proposal gives the impression of persons not trained in nor knowledgeable of matters maritime and has wholly unworkable provisions; unconstitutional proposals; and in some instances, if instituted, creates hazards for those engaged in interstate commerce.

This taking of private property for public use without due compensation, in my day, was called Socialism. Today it is called environmentalism. I deem it unconstitutional.

M. C. Halvorsen

### 3 Responses to “What’s wrong with having a bulkhead?”

1 **Bruce Anderson** September 17, 2010 at 9:59 am

There are a host of papers available on line (at least their abstracts) from a workshop on May 12th-14th, 2009 titled “Puget Sound Shorelines and the impacts of armoring: state of science”.

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2 **bshadmin** September 17, 2010 at 11:15 am

Thanks, Bruce. We have written about the workshop several times. For example, in “There’s no proof that bulkheads harm beaches,” we quoted Dr. Peter Ruggiero, Dept. of Geosciences, Oregon State University. In his workshop presentation, he said...

“The debate about the influence of seawalls on beaches has not been resolved! A simple analytical model sheds light on the confusion found in the literature; but there is much more to do. The effect of seawalls on beaches appears to be most sensitive to the position of the seawall in the surf zone, the beach slope, and the reflection coefficient.”

Of course, bulkheads are no longer allowed to be built in the surf zone, but that’s not really the point. DOE does not refer to the workshop, but they do tout the article mentioned in this post.

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3 **Michael Gustavson** October 19, 2010 at 8:08 pm

I visited the maritime lab at Mobile Bay in May, after learning of the State’s endorsement of “The Tide Doesn’t Go Out Anymore”, to learn about their local issues. It turns out Mobile Bay, on average is about ten feet deep, surrounded by low lying sandy land areas.

A forty foot deep shipping channel is dredged up the middle of the Bay from the Gulf of Mexico to Mobile, at the head of the bay, perhaps 20 miles. Sand from the bottom of the bay continually sluffs into the channel, requiring re-dredging.

For years, the dredge spoils were dumped into the deep waters of the Gulf. This resulted in depletion of the islands at the mouth of the bay.

I could see evidence of minor (ten to twelve) feet of erosion along the beaches next to bulkheaded properties, but nothing I would consider serious. Much of this may ultimately be due to the dredging operation.

The State’s touted study in no way reflects our environment in Puget Sound.

3 1 Rate This

Reply

# What's wrong with having a bulkhead?

Published September 15, 2010 Bainbridge SMP Update , Best Available Science , Real Science 3 Comments

Probably the most readily available statement of Washington Ecology's view of the use of shoreline bulkheads is on the State web site which contains a broad criticism of bulkheads. In its discussion of bulkheads, Ecology cites two references. One is a 1994 report on shoreline armoring that is not generally available on the web. The second is a readily available study with the alarming title, "The Tide Doesn't Go Out Anymore."

We encourage you to read this article. It's fairly short, the body of the paper is 18 pages, but much of that consists of figures; it's not very technical, and it provides an illustrative example of the kind of scientific evidence Ecology is willing to use to support shoreline regulation.

When reading the paper, consider these points.

- This paper is featured on Ecology's web site. It is the most accessible article Ecology cites in its strong criticism of bulkheads.
- The article was published in a very minor journal, "Shore and Beach", more than 25 years ago.
- The article is about Mobile Bay, Alabama, an area markedly different from Puget Sound (for example, the paper states the average tidal range in Mobile Bay is 1.8 feet (p. 8). In mid-Puget Sound the range is about 11 feet).
- The paper contains no direct science on how bulkheads affect intertidal habitat. It does contain a brief literature review but acknowledges that essentially all of the literature it cites deals with geographies and processes that are different from those found in Mobile Bay.
- Instead of presenting science on how bulkheads affect intertidal area, the paper simply states that the destructive effects of bulkheads have "long been understood by the coastal engineering community" (p. 1), citing an Army manual published in 1977.
- The paper does not contain any replicable methods or scientific data regarding how bulkheads have affected intertidal area in Mobile Bay – instead the authors base their findings and conclusions on what they describe as their personal "knowledge of bay shorelines" (p. 14).
- Using their private knowledge of shorelines, the authors estimate that along 100 miles of Mobile Bay coastline, from 10 to 20 acres of intertidal habitat may have been lost because of bulkheads. This small loss of beach somehow leads them to an "alarming concern for the long-term fate of urban estuaries" ( p. 17 and the worry that Mobile Bay may eventually turn into a "bathtub" ("Abstract", p. 1, "Summary", p. 18).
- As it turns out, Mobile Bay has not turned into a bathtub in the 27 years since this paper was written, but environmentalists in Alabama continue to cite the paper, arguing that bulkheads are creating "biological deserts" and are "killing our bay."

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Shoreline armoring, capital grants, and ecosystem restoration (PDF, 110 KB)

Paul Cereghino, Marine Habitat Specialist, NOAA Restoration Center

**Abstract**

The existing socio-economic system for implementing restoration with public funds has innate strengths and weaknesses. Ecologically meaningful management of sediment supply and transport provides a particular set of challenges that our current system is not designed to meet. Restoration and regulatory protection must become better integrated. Project selection will require accurate assessment of existing conditions, erosion risks, and patterns of future degradation. Achieving desired future conditions will require more elegant and precise outreach and communications strategies with a broader audience of private shoreline property owners.

**Paul Cereghino**

Paul Cereghino is a Marine Habitat Specialist with NOAA Restoration Center. He develops and manages the Estuary and Salmon Restoration Program (ESRP), in partnership with Washington Department of Fish and Wildlife, the State Recreation and Conservation Office, The Puget Sound Partnership, and the Puget Sound Nearshore Ecosystem Restoration Project. ESRP is a capital grants program developing networks and systems for increasing accountability and learning through publically funded grants, to enhance ecosystem restoration and stewardship.

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Developing design guidance for Puget Sound marine shore modifications

Human Dimensions of Nearshore Restoration and Shoreline Armoring (PDF, 992 KB)

Thomas M. Leschine  
School of Marine Affairs  
University of Washington

Human relationships with the natural environment are exceedingly complex. Commonly referred to quality-of-life definitions incorporate aspects of culture, lifestyle, personal health, and family and social relationships as well as people's "relationship to salient features of their environment". Ecosystems have both intrinsic and instrumental value to humans and activity that extracts direct social and economic benefits from nature may do so at the cost of unintended degradation of ecosystem services. From this perspective, the task of management is to strike a balance that maintains or restores sustainability, with restoration one of numerous available tools. Seawalls and other engineered features of occupied shorelines embody many contradictory aspects of the human relationship with nature. In that they prevent erosion or wave attack, and create or protect agricultural lands or areas of human habitation, they are generally regarded as making positive contributions to ecosystem goods and services. Improved scientific understanding reveals numerous tradeoffs across ecosystem functions, goods and services associated with the extensive armoring of Puget Sound shores, in association with altered patterns of sediment delivery to nearshore ecosystems. We have little understanding of how people in the region view such tradeoffs however. Dialogue with public stakeholders can enlarge understanding of the roles that removal of shoreline armoring can play in a restored Puget Sound ecosystem in which humans are considered to be integral elements. So can empirical social research.

**Thomas Leschine**

Thomas Leschine is Director and Professor at the School of Marine Affairs and Adjunct Professor of Fisheries at the University of Washington. His research interests are in the areas of environmental decision-making in relation to marine environmental protection and the use of scientific and technical information and expertise in environmental decisionmaking. He has served on numerous National Research Council panels and chaired the NRC Committee on Remediation of Buried and Tank Wastes, 1996-2000. In Washington State he serves on the Nearshore Science Team of the Puget Sound Nearshore Partnership, a multi-agency consortium developing a major program of environmental restoration for Puget Sound, and recently served as advisor to the Joint Legislative Audit and Review Committee of the Washington State Legislature. He served on the Washington State Pilotage Commission from 1992-98. Earlier, he led the U.S Coast Guard team that produced the Federal On-Scene Coordinator's

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Report following the 1989 T/V Exxon Valdez oil spill, and following service in 2007-08 on an NRC panel examining the risk of oil spills in the Aleutian Islands, he was appointed to the Marine Board of the National Academy of Sciences. Dr. Leschine received his PhD in mathematics from the University of Pittsburgh. His transition to a career in marine policy came by way of a post-doctoral position in marine policy, and later as a policy associate, at The Woods Hole Oceanographic Institution in Woods Hole, Massachusetts.

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Impacts of shoreline armoring on sediment dynamics (PDF, 2.12 MB)

Peter Ruggiero  
Department of Geosciences  
Oregon State University

The shores of Puget Sound are rapidly being hardened and covered with artificial structures. While shoreline armoring often succeeds in protecting upland investments, shoreline armoring activities are hypothesized to represent a significant source of nearshore morphodynamic and marine habitat modification in Puget Sound.

Shoreline armoring is believed to affect physical processes in many ways, primarily by causing beach narrowing, sediment coarsening, and a decrease in the natural sediment supply from eroding bluffs. Shoreline armoring is also thought to affect biological processes through loss of upper intertidal habitat, changes in sediment composition, and decreased organic input. However, it has not been confirmed in the field or the laboratory whether currents and sediment transport rates will increase or decrease in front of a hardened shoreline, as compared to a non-armored section of beach, and whether the sedimentary environment will be significantly modified. The effect of seawalls on beaches has been found to be most sensitive to the position of the seawall within the surf zone, the beach slope, and the reflection coefficient. This talk will describe a conceptual model of seawall impacts on sediment dynamics and suggest pilot investigations specific to the Puget Sound consisting of beach monitoring, field experiments, and modeling efforts.

**Peter Ruggiero**

Peter Ruggiero is an Assistant Professor in the Department of Geosciences at Oregon State University. Peter's current research interests include applied coastal geomorphology and developing methodologies for assessing vulnerability to coastal hazards particularly in light of a changing and variable climate. Peter Ruggiero earned a bachelors degree in Civil Engineering from Lehigh University in 1991 and a Ph.D. in Coastal Engineering from Oregon State University in 1997. Following his graduate work, Peter worked for the state of Washington as a principal investigator of the Southwest Washington Coastal Erosion Study. This multi-year effort developed a quantitative understanding of the regional sediment dynamics of the Columbia River littoral cell. Peter then worked for the US Geological Survey in Menlo Park, CA between 2001 and 2005 getting involved in coastal studies in Alaska, North Carolina, and Sumatra. Since 2006 Peter has been at Oregon State University focusing on a variety of projects quantifying and assessing the vulnerability of communities to coastal hazards.

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Ecological effects

## Issues & Cases

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### Coastal homeowners shouldn't be held hostage to erosion

**Luhrs v. Whatcom County**

**Contact:** [Brian T. Hodges](#)

**Status:** The Parties settled with the County. The case was voluntarily dismissed March, 2011.

**Summary:**

Victoria Luhrs purchased property on the east shoreline of Lummi Island in Whatcom County, Washington, in July, 1992. She lawfully expanded a 1925 cabin to create her dream retirement home, and built a garage and greenhouse. Shortly after she built her home, however, Ms. Luhrs noted increased wave erosion. From 2002 to 2006, Ms. Luhrs' property lost up to 13 feet from wave attack in certain areas. The home, which was 70 feet from the bluff in 2000, was only 60 feet from the bluff in early 2006.

In 2006, Ms. Luhrs filed for an emergency permit to slow down the ongoing erosion and protect her home. The County denied the permit, stating that erosion due to wave attack is an anticipated seasonal occurrence and cannot constitute an emergency. The County's letter denying the emergency permit instructed Ms. Luhrs to apply for a Shoreline Development Permit, which she did. But the County denied that permit too. This time, the County explained that it had adopted a policy of prohibiting any hard armoring on erosional bluffs to protect the natural cycle of shoreline erosion.



In 2008, Ms. Luhrs appealed the decision to the trial court, arguing that Whatcom County's shoreline management rules conflict with state law, which mandates that counties "shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion." RCW 90.58.100(6).

Court of appeals agreed that Ms. Luhrs has the right to demonstrate the need to build a protective bulkhead based upon a showing that erosion is threatening her home and that less rigid means would be inadequate. The appeals court remanded the case to the trial court to determine the necessity of shoreline protection.

Private counsel and PLF attorneys were able to reach a settlement with the County that allows the Luhrs to build a revetment to protect their home. The revetment was installed and the case was voluntarily dismissed.

"Nollans v. California Coastal Commission" 483 U.S. 825 (1987), United States Supreme Court

This is a case where the Commission granted a permit to the Nollans upon the condition that the Nollans allow a public easement to pass across their beach. The United States Supreme Court held the Commission's imposition of the access-easement condition was not an exercise of land-use power since the condition does not serve public purposes related to the permit requirement. That is the taking of property without due process of law and is unconstitutional.

Requiring uncompensated conveyance of an easement outright would violate the fourteenth amendment (of the United States Constitution). The purpose (requiring the giving of a public easement a condition of obtaining a building permit) then becomes simply the obtaining of an easement to serve some governmental purpose but without payment of compensation. In short such requirements are not valid regulations of land use but "an out and out plan of extortion."

10002 Aurora Ave. N., 5546  
Seattle, WA 98133  
October 28, 2010

Commissioner Tom Albro  
Port of Seattle,  
P. O. Box 1209  
Seattle, WA 98111-1209

Dear Commissioner Albro

Thank you for your letter of October 8, 2010 responding to my testimony at the May 4, 2010 Port of Seattle Commission meeting. I will answer your letter by taking your paragraphs as they are and answering in that order. Although you are the Commissioner who signed the letter, it was regarding my testimony at the May 4, 2010 Meeting before all of the Commissioners; therefore, I will send a copy to all Commissioners.

I did not imply that the Port of Seattle was ignoring my letters. What I said was that I had no way of knowing if the Commissioners received my letters and if they did, I had no way of knowing if they read them. I then proceeded to present what was in the letters.

Commissioner Bryant's reply to my letter was to reject an invitation for the Commissioners to personally visit the premises and properties of the Duwamish to see for themselves and make up their own minds regarding the feasibility and practicality, even before you consider the harm, of the Port Staff's proposed fish restoration plan. We have found that when the City sends a notice of a proposed project that we feel will not work in an industrial area, we call the person/persons in charge of the project, invite them down for their own inspection, which invitation they have always accepted, answer any questions they have and let them make up their own minds as to the feasibility and practicality of the project. Without exception, the person/persons conclude on their own that the proposed project will not work. Usually the project was formulated because the person/persons were working from faulty maps provided by DPD. I was confident that if the Commissioners physically inspected the area of the proposed fish plan they would conclude by making up their own minds that this plan will not work. Unfortunately, Commissioner Bryant, speaking for the Commissioners, rejected the invitation. Apparently, the Port Commissioners do not favor fact finding excursions.

I did meet with Mr. Tanaka. I did not agree with him. He does not know what a baseline is and has the quaint but untenable idea that states can do as they please within their borders and do not have to pay any attention to the federal courts or federal laws. If you carried this notion to its logical end, the United States Constitution would not be in effect in Washington State and the opinions of the United States Supreme Court can be totally disregarded. I was unaware that this was the position of the Port of Seattle but if it is, we can just proceed directly to the Ninth Circuit Court of Appeals and let them explain to the Port of Seattle the jurisdiction of the federal government in all of the states.

Assuming that Mr. Tanaka's mistaken ideas were not those of the Port of Seattle, I elected to testify at the May 4, 2010 meeting thinking that the Commissioners would grasp the concepts that Mr.

Tanaka did not. I am sorry that you did not grasp the concepts I presented and I will attempt to explain them in another way. I have been accused of being too lawyerly and cite cases which the average person does not understand, hence does not understand the concept.

Your next paragraph deals with an easement that had to be obtained by the 8<sup>th</sup> Avenue River Access project. Since I am unsure of which easement to which you are referring, I have no comment. If you believe it to be important to this issue, please explain it to me further.

In regard to your last paragraph, I must say there is no need for a meeting as the Port of Seattle owns the riverbed up to mean high water only.

The Title search papers you included with your letter I already have. (Remember, I am a trained Historian and the Historian's cardinal rule is: go back to original sources.) I can see that no one of the people I have encountered at the Port of Seattle is in real estate. The legal description that you provided is one that is called a legal description by metes and bounds. Before platting, it was widely used. It describes the property by known objects or markings and would not necessarily mention mean high water. It would direct a person from one identifiable object to another. I only measured one measurement because at that time, it was the only one I was interested in. There is a chain link fence put up by a previous owner on the north side where my property adjoins my neighbor's property. I measured from the road allowance proceeding east 100 feet as the description on the legal states, following the fence to the top of the bank, actually a few inches over the top, exactly 100 feet. If I had followed the directions of the metes and bounds description, I would have proceeded along the line just over the top of the bank to the next point. However, I was not interested in the other measurements because I already knew the federal law regarding where the government interest stops, which I will discuss further after I dispose of the maps.

The Parcel Map which you included is by an unknown cartographer without a date. I have seen this map many times. It is mistaken. I learned to treat maps with caution back in 1978 when I started selling real estate. My first sale took four months to close because a surveyor's map and the legal description were at odds. It turned out the map was wrong. Maps do not control but, if accurate, can be a help. The map I included with my letters showing the straight lines to be baselines, another concept I will discuss further, was a 1925 map by the Army Corps of Engineers, who, I am sure you know, have been in charge of the United States rivers since 1803. I trust the Army Corps of Engineers map more than an unidentified map from people who probably don't know admiralty law, another concept I will discuss further.

As to the last map you included, from an Historian's perspective, it has no credibility. There is no identification for the source nor is there a date on it nor any purpose stated. Anyone could have drawn up that map. In regard to maps, I obtained from the Washington State Archives in Bellevue, the original engineer's report on the straightening of the Duwamish River. It has baselines and sub-baselines and discusses the processes that were used. I would recommend that the Port of Seattle also obtain a copy. It is the official report and does not contain anywhere a line drawn as the "Commercial Waterway Boundary". I could go into this further but prefer to return to the federal legal concepts that govern a federal waterway.

Since I have mentioned baselines marked on the Army Corps of Engineers (ACOE hereafter), I will start with that concept but do keep in mind that this is a concept Mr. Tanaka does not know. Baselines are measuring lines. They are used essentially to designate the channel. They are always used in irregular bodies of water because a channel could not be obtained by following the banks. The most recognizable body of water that uses baselines for this purpose is Chesapeake Bay. Baselines can be 2 or 3 miles inland but everyone in the area knows baselines are strictly measuring lines and have nothing to do with property lines. In the case of the Duwamish River two lines 500 feet apart were drawn for the purpose of designating a navigable channel. Once the middle of the 500 feet was found, 125 feet on either side was measured from the mouth of the river up to Spokane Street and that was the designated channel. Beyond Spokane Street, the channel was narrowed and 50 feet on either side of the middle line was measured narrowing the channel to 100 feet. These baselines as shown on the ACOE's map are clearly identifiable and have nothing to do with the property lines. I will be referring to Baselines later in the letter when I relate the history of the mistake made confusing the 500 foot measuring baselines with the property line.

The concept that a government's interest in waterways stops at mean high water developed in the English Common Law, the basis for United States and Washington State's laws, in the time of King Henry VIII in the 16<sup>th</sup> century. It has been this way for 500 years. It is still that way.

In King Henry's time, the mean high water test applied only to salt water. In the United States, the United States Supreme Court, the final arbiter of what is the law in the United States, extended the doctrine to rivers in "Propeller Genesee Chief v. Fitzhugh" 12 Howard 443 (1851) stating that the test is navigability of waters, not just ebb and flow of the tide. I think this concept is clear but if there some part of that that you do not understand, please let me know.

I would like to refer you to page 1 of my letter to the Port Commissioners dated February 14, 2010, third paragraph, a letter you claim the Commissioners read. The case cited here is "Howard v. Ingersoll" 54 U.S. 381 (1857) wherein the United States Supreme Court stated in clear English that the right of the state to a riverbed was limited to the line of ordinary (mean) high water and not to the line of highest water. This was reaffirmed in "Montano v. United States" 450 U.S. 544 (1981) and in Washington State in "Harkins v. Del Pozzi" 50 Wash.2d 337 (1957)! That means that the United States Supreme Court has clearly stated that States cannot claim beyond mean high water. The Washington State Supreme Court has agreed with the United States Supreme Court in "Harkins v. Del Pozzi". This means that both federal and state Supreme Courts are in agreement : the right of the state to a riverbed was limited to the line of mean high water. Even if the Washington State Supreme Court had wanted to give more land than mean high water in 1946 it could not give what it did not have. But that Court did not intend to do so. It was a mistake which I will explain later. However, the concept is that the Port of Seattle only owns the riverbed to mean high water. It seems crystal clear to me but if you are having difficulty understanding it, I will be glad to explain it further.

All cases involving federal waterways are Admiralty Law. Admiralty Law is defined in "The New Oxford American Dictionary", Second Edition, Erin McKean, Oxford University Press, 198 Madison Avenue, New York, New York, 10016, 2005 at page 20 as:

Admiralty...2. Law – the jurisdiction of courts of law over cases concerning ships or the sea and other navigable waters (maritime law)

There is a much more detailed definition in the Law Dictionary but it does involve citing federal cases and I am reluctant to do that as being too lawyerly. I think the simple definition in the New Oxford Dictionary will suffice. It means that all cases regarding the navigable waters whatever the subject matter is a case in Admiralty. The United States Constitution confers the jurisdiction of all cases in Admiralty to the federal government as enunciated in the second section of Article Three. I do refer you to page 1 of my letter to the Commissioners dated February 14, 2010 when I cited the United States Supreme Court cases "Governor of Georgia v. Madrazo" 26 U.S. 110, "Scranton v. Wheeler" 179 U.S. 144, and "Borax Consolidated v. City of Los Angeles, 296 U.S. 10. The quotation is from the "Governor of Georgia" case. Admiralty is very general and encompasses anything to do with navigable bodies of water. Thus a state has no jurisdiction to hear a case in Admiralty, Mr. Tanaka notwithstanding. I find it written in perfectly understandable English but if you have trouble with the meaning, please let me know what your concerns are.

Now that we have covered the concepts that baselines are measuring lines used to chart the navigable channel, not property lines; that federal waterways as decided by the United States Supreme Court cases explicitly state that the state's right to the bed of the river is limited to ordinary (mean) high water; that no state has admiralty jurisdiction, jurisdiction resting with the federal government; which I hope you have now grasped, we can proceed to examine how the mistake was made. First there is the Washington State Constitution and second, there is the state law establishing a commercial waterway district.

The Washington State Constitution is the highest state law in the state and binds everyone in the state, including the Washington State Supreme Court. Any law or action that conflicts with that document is unconstitutional. I refer you to my letter of May 18, 2009 to the Commissioners of the Port of Seattle, which you claim the Commissioners have read, page two, wherein I quoted directly Article XVII TIDELANDS of that document which states that the waters of Washington State are to ordinary (mean) high water. Thus, the Port of Seattle's position is unconstitutional on its face.

The law establishing the Commercial Waterway Districts was passed in the 1911 Session of the Washington State Legislature. I refer you to my letter of May 18, 2009 wherein I enclosed relevant portions of that law stating that the property obtained was to be to ordinary (mean) high water! The Port of Seattle's position breaks that law.

Now with that background, the next step is the history of a mistake by the Washington State Supreme Court. In "Commercial Waterway District No. 1 v. Larson", 26 Wash.2d 219, 173 P.2d 531, a case of a person tying up a houseboat in a federal waterway, the Commercial Waterway District No. 1 filed suit in the Washington State Courts. This is a case in Admiralty Law wherein the jurisdiction rested with the federal courts and the state court had no jurisdiction. Either a court has jurisdiction or it does not. If it does not, all of its actions in that case are null and void. In addition to the wrong court, two land-lubber attorneys who did not know any Admiralty Law and never should have been handling the case, did not know what a baseline was and told the Washington State Court that the Commercial Waterway was 500 feet all the way down! Since they were attorneys and since the Washington State

Letter to Commissioner Albro  
Dated October 28, 2010  
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Supreme Court did not know any Admiralty Law, nor are they expected to, the Washington State Supreme Court accepted their statements that the Commercial Waterway was 500 feet all the way down and so proclaimed. Two other cases followed wherein the mistake was pronounced again. Why the Washington State Supreme Court, a state court, thought it could give a state governmental entity a right of way in a federal waterway is beyond my comprehension. The Commerce Clause of the United States Constitution guarantees free use of federal waters to everyone. A right of way to anyone is unconstitutional. It is, however, an illustration why admiralty cases must be heard in a federal Admiralty Court.

Since the Port of Seattle claims that 500 feet is the extent of its ownership, then where the river is 600 feet at the junction where the East and West Waterways meet, the Port only owns a 500 foot strip of that area and does not own the banks. Where the East and West Waterways are 750 feet respectively, the Port only owns a 500 foot strip which incidentally does not touch the bank. Since the Port doesn't own that section of the waterway the Port cannot touch the banks in either section of the river. Does this really work out when the Port actually examines exactly what the Port ends up owning?

Even the Washington State Supreme Court must obey the Washington State Constitution and had they wanted to give the Commercial Waterway District land beyond mean high water they are prohibited from so doing by the Washington State Constitution and by the rulings both of the United States Supreme Court and the Washington State Supreme Court's own rulings. It is clear from reading the Larson case that it was not their intent to break the law or act unconstitutionally; they believed the waterway actually was 500 feet all the way down.

Fortunately for everyone, the mistake of the Washington State Supreme Court was nullified by the 1991 decision of the Ninth Circuit Court of Appeals in "United States v. Pend Oreille Public Utility District No. 1" 28F.3d 154 when it ruled that "Austin v. Bellingham" 69 Wash. 677 (1912) was controlling in Washington State. "Austin v. Bellingham" states what the Washington State Constitution states; i.e., the waters of the State of Washington are to mean high water. If you do not understand that ruling, please let me know so that I can explain it further.

The Ninth Circuit Court of Appeals is a federal court and a Court in Admiralty. It has jurisdiction over federal waterways, which is what the Duwamish River is. Despite Mr. Tanaka's mistaken opinion that federal courts can be disregarded, the Port of Seattle as well as Washington State is bound by this decision and it is controlling.

That means even if the Port of Seattle owned what the Port unconstitutionally claims, which it did not, the Port of Seattle would be compelled to comply with the Ninth Circuit's decision and give up that land. It is immaterial what was done in the past. This is the latest ruling and it is the one everyone must obey.

If the Port of Seattle persists in its mistaken, unconstitutional and illegal position and goes above mean high water, the Port of Seattle will find itself in the Ninth Circuit of Appeals explaining to that

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Court why the Port is defying the Ninth Circuit Court and refusing to comply with their decision in  
"United States v. Pend Oreille Public Utility District".

Very truly yours,

M. C. Halvorsen

cc: Commissioner Bryant  
Commissioner Creighton  
Commissioner Holland  
Commissioner Tarleton  
Tay Yoshitani, CEO, Port of Seattle  
Craig Watson, Port of Seattle Counsel  
Tom Tanaka, Senior Port counsel  
Boyer Towing  
Independent Metals  
Pacific Pile & Marine  
Delta Marine  
Duwamish Marine Center  
South Park Marina  
Riverview marina  
Lisa De Alva  
Hal Hurlen