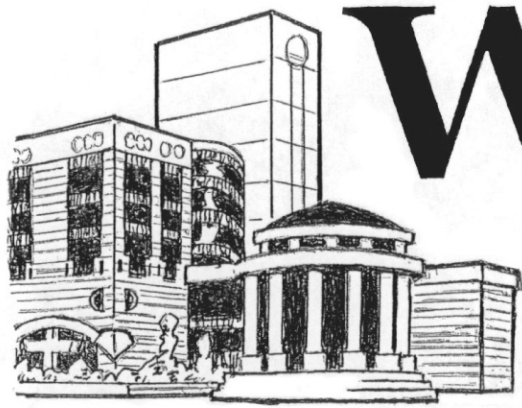
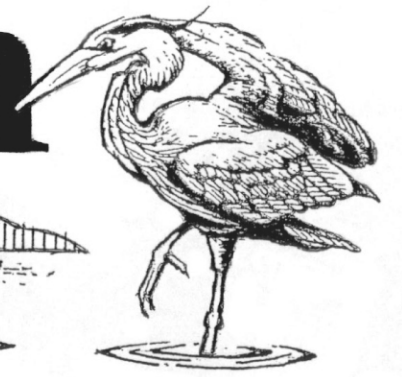




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The Reintroduction of the Olympia Oyster in Mud Bay

by Dean Longwell

Forgotten City of Bellingham obligations and a misinformed Bellingham Hearing Examiner have assumed a shellfish bed in North Chuckanut Bay (Mud Bay) is not protected by the tribes and/or city park regulations.

Since the inception of the 1855 Treaty of Point No Point, the Indian Tribes of Washington State have experienced a long, slow decline of resources guaranteed by treaty. A portion of the loss is attributed to a loss of fishery habitats and/or a loss of access to fishery habitats of ecological and cultural importance to the tribes. A once bountiful fishery has changed.

Olympia Oyster Restoration Project

In signing a Washington State Joint Aquatic Resources Permit Application (JARPA) in 2018, the City of Bellingham joined a collaborative partnership between the federal government, the state and the tribes for the purpose of restoring a delicate and sensitive fisheries ecosystem in North Chuckanut Bay.

A JARPA approval requires an extensive governmental review, which included a required appeal process before a living aquatic species is placed next to the property of an abutting landowner. At Chuckanut Bay, each shoreline property owner was notified and given the chance to appeal the city's decision to reintroduce the Olympia oyster on city-owned tidelands. (In this case, none appealed the city's decision.)

Since 1987, federally recognized Indian Tribes have been empowered by Congress with a "Tribes as State" (TAS) status or "Same as State" status for protecting a tribe's treaty rights or interests. This status allows a tribe to apply a more stringent Clean Water Act standard on non-Indians

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credit: Apple map

than those required by a state.

The Clean Water Act is a comprehensive statute which is designed to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" through the reduction and eventual elimination of pollutant discharges into those waters. Section 101(a), 33 U.S.C. 1251(a) of the "Act" anticipates a partnership between the federal government, the states and the tribes in cleaning up those waters.

Under Section 101(b), 33 U.S.C.: 251(b), a treaty tribe can enable "a more stringent water quality discharge standard" on non-Indians as a means of protecting a tribe's welfare and/or a tribe's cultural heritage. (City of Albuquerque v. Carol Browner, or her successor as Administrator, United States Environmental Protection Agency, No. 93-2315 United States Court of Appeals, Tenth Circuit. Oct. 7, 1996.)

City Council Resolution 37-1984 (Park Purchase)

In 1984, the City of Bellingham accepted a conditional donation (for a park purpose) from the Trillium Corporation to

purchase Chuckanut Bay tidelands from the Trillium Corporation in exchange for a reduced price. In following-up, the City Council directed the city to seek funding for purchasing the bay's tidelands with State of Washington money which had been exclusively earmarked for "outdoor recreation."

In theory, by picking Chuckanut Bay (Mud Bay) for a pilot restoration project, Washington Department of Fish and Wildlife (WDFW), Whatcom County's Natural Resource Department and Whatcom County's Marine Resources Committee (MRC) had stumbled onto an ideal shellfish bed for restoring an ecosystem because the bay as a whole is fully protected by multiple park regulations.

In Bellingham, every city park is protected by BMC 8.04.100.A, which prohibits litter, and BMC 8.04.100.D, which defines litter as "garbage, refuse, rubbish, or any other waste material, which, if thrown or deposited as prohibited in this section, tends to create a nuisance which annoys, injures, or endangers the health, safety, or comfort of the public. As a "trusted partner," it appeared a stormwater contaminant intervention by a stakeholder would never be required as a means of protecting a tribe's interests in a city park.

However, the city has forgotten its public health obligations to the public and its trusted partnership obligations with the tribes for restoring and maintaining a delicate and sensitive ecosystem in a city park. In this particular case, the city had become a creature of habit with allowing stormwater pollution into Chuckanut Bay and has taken a position that the

city will not change its behavior until the public and/or the tribes force a change in behavior.

With regards to the city misguiding the hearing examiner, the city erred in an open public hearing by stating "The city owns the tidelands, but the tidelands are *not* a city park." At the public hearings, due to the formal time constraints of a public hearing and the formal protocols of evidence submission, the hearing examiner never saw or reviewed the terms and conditions of City Council Resolution 37-1984 which created Chuckanut Bay Tideland City Park. As a result of this misstep, the hearing examiner stated: Chuckanut Bay is not a city park subject to the protections of park regulations.

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