

Note: This was the original document written which had to be cut by over 500 words. I did consult our attorney about disclosing mediation discussions. These meetings are not covered by attorney-client privileges. Diane

Bad Administration Advice Taints Council's environmental perspective potentially impacting pure drinking water!

Tragedy happened in California wildfires because of hurricane type winds and drought laden land. Intense weather patterns are happening and we must recognize its' impact our coastal communities. We are stewards of our watersheds and intense rain events have become the new challenge especially because portions of South Edmonds and Esperance relies on UIC (underground injection) wells. This watershed known as the Deer Springs Creek Watershed has some of the most sensitive soils.

This unique soil recharges into a drinking water aquifer or a critical aquifer recharge area (CARA)". Since this CARA is key for the water supplied to Olympic View Water and Sewer District (OVWSD), in 2021 OVWSD Commissioners sent Resolution #1149 promptly warning the City to update its' CARA code. The Council requested immediate action for Code development and money was put in the 2022 budget specifically for this code. OVWSD' s Resolution is found here <https://dianebackshnis.com/dianes-corner/>.

Staff dragged their feet until 2023 and Planning Board finally went through the very detailed process by working with the Director of OVWSD and holding five meetings, including two public hearings. This 2023 version followed Best Available Science (BAS), new laws and best management practices. The Planning Board recommended prohibiting UIC short wells in the CARAs so to prevent future contamination of the aquifer as the "forever chemicals" (PFAS) found in stormwater was becoming a concern.

Yet, after I left office, the attorney/staff called a highly irregular Planning Board Executive Session and now without any public hearing, the UIC short wells were allowed in the Deer Creek CARA. During the City Council public process, many contested this change and comments came from OVWSD's Director, citizen scientists and environmentalists. Another strongly worded resolution came from OVWSD's Commissioners. The agenda memo specifically states the change occurred as a result of guidance from the Attorney (<https://dianebackshnis.com/dianes-corner/>).

Two prominent reasons and examples were: EPA (Environmental Protection Agency) had lowered its allowance of chemicals known as PFAS "forever chemicals" (<https://edmondsenvironmentalcouncil.org/category/resources/reports/>); and PFAS chemicals were found at the new Madrona School which used UIC deep wells (<https://www.heraldnet.com/news/pfas-found-near-edmonds-school-sparks-concerns-about-wells/>). To understand Madrona Schools use of UIC wells in the CARAs, OVWSD contracted with Robinson Noble and this excellent report can be found here: <https://edmondsenvironmentalcouncil.org/robinson-noble-inc-olympic-view-water-and-sewer-district-wellhead-protection-area-delineation-deer-creek-springs-and-228th-st-wellfield/>. This firm also was ask to respond to the consultant firm Pacific Groundwater Group regarding using wells at Madrona School and their conjecture was that UIC wells are not conducive to best management practices and other alternatives were recommended: <https://edmondsenvironmentalcouncil.org/robinson-noble-letter-responding-to-pgg-letter-of-findings/>

So back to the Council meeting, lots of discussion occurred over the process and need for more data and finally one Council Member “tabled” ([https://en.wikipedia.org/wiki/Table_\(parliamentary_procedure\)](https://en.wikipedia.org/wiki/Table_(parliamentary_procedure))) the motion for this CARA code until more scientific data regarding PFAS was obtained. Unfortunately, at the next meeting, the Council President removed the CARA code from the table and the motioned passed 6-1 despite the City not providing any new scientific data or hold a public hearing.

Emails of the timeline and issues regarding the Planning Board executive session show that the Administration’s advice changed the trajectory of the prohibition of the UIC wells. Planning Board members brought up the “takings rules” which was mentioned as the City loss a tree code lawsuit from Nathan Rimmer. A “takings rule” is like eminent domain and the City was taking this person’s property by following the tree code (<https://mrsc.org/explore-topics/planning/takings/regulatory-takings>). The lawsuit filed by Mr. Rimmer is explained here: (<https://pacificlegal.org/case/rimmer-housing-forever-trees/>). These executive sessions cited as “potential litigation” seemed to center on allowing the UIC wells so as to prevent developers from suing.

Because scientist Joe Scordino and I felt the Council decision was reckless based on speculation of pending litigation, we took the next step and contacted a prominent environmental attorney and formed a non-profit known as Edmonds Environmental Council (EEC). Our attorney filed a petition to appeal this code with the Washington State Growth Management Hearings Board.

EEC (www.edmondsenvironmentalcouncil.org) consists of concerned members from Edmonds, Woodway, and Snohomish County that care about the environment and following best available science, especially since pure drinking water is at stake.

The Mayor and Council agreed to mediation and EEC was asked to submit a brief to the Snohomish County Land Use Judge who took on the mediation case. The Brief can be found at <https://diane buckshnis.com/dianes-corner/> and a separate agenda memo went to Council as a discussion topic for their executive session to allow guidance during City’s mediation negotiations. Respecting the executive session laws, the agenda memo was excluded from my source material.

At the first mediation meeting, not even one Council Member was present; EEC felt it was necessary to have a legislative representative and had requested it. The Attorney gave reasons: the City rarely used Council Members on mediation; the CARA area was built out leaving only remodels or detached dwelling units as potential changes; OVWSD could buy water elsewhere if the aquifer became tainted with PFAS.

I disputed his claims: the last land use mitigation had Strom Peterson and I as Council Representatives for the Haines Wharf’s one-day mediation; the Edmonds School District could surplus the old Madrona School allowing for affordable housing; in 2023, major home builder DR Horton purchased two homes and built 11 (Brackett’s Reserve) with lists price well over one million dollars. Joe Scordino replied that EEC felt it necessary that a representative from the legislative branch be present to listen to the discussion first hand and report back to the Council.

After recess, Mayor alleged “trust” concerns and that this team sans a Council Member had the knowledge and authority. But the Council’s Legislative Assistant was allowed to join for a few hours despite the mediation taking all day. Many times, the conversation returned to the issue of the loss tree code case to Nathan Rimmer and potential costs to City as insurance does not cover and the City would have to reimburse Rimmer for two years of hardship.

Our environmental attorney reminded the City that CARAs are critical areas exempt from the “takings law” (<https://mrsc.org/explore-topics/environment/regulations/critical-areas>). The Snohomish County Land Use Judge acting as mediator agreed, CARAs are exempt. At day’s end, both parties reached a settlement agreement with an interim ordinance prohibiting the UIC wells (as before) or a moratorium until 2025 pending best available science for PFAS was obtained. To save money, EEC indicated that the 2018 Robinson Noble report could be utilized with an update of the PFAS. EEC checked with OVWSD to ensure that the firm (Robinson Noble) did have the expertise and manpower to update this report.

City Council rejected the first agreement as City staff stated that Council did not want to dissuade developers to develop. A second settlement agreement excluded the interim ordinance/moratorium but kept in the Robinson Noble report updated to save taxpayer money. At next mediation meeting, again without a Council Member, despite EEC’s request, the City stated they wanted to select the contractor so second agreement was dejected. The third settlement agreement requested a “bona fide” scientific report to cover PFAS. Third settlement agreement rejected as City did not like the term “bona fide”. Finally, a fourth agreement was reached with a \$60,000 set aside and it can be found here <https://edmondsenvironmentalcouncil.org/>.

In the interim, the code still allows UIC short wells in this small, but very important area (320 acres). As Paul Harvey would say now that you know “the rest of the story” should the City publicly announce to the 13,000 utility users of the OVWSD why the City Council is allowing a development code in its CARA prior to understanding the impacts of PFAS? Pure drinking water is at stake which impacts Woodway, South Edmonds and Esperance and it’s the future generations that will see the impacts (<https://doh.wa.gov/community-and-environment/drinking-water/contaminants/pfas-drinking-water>). More importantly, shouldn’t Council request of staff to apologize publicly for the bad code advice which could prove costly to OVWSD’s water supply?

From a financial perspective:

And costs? EEC ended up outlying over \$20K and it’s estimated the City’s costs were five or six times more. Was it worth it to the taxpayer? City Council is gambling this code with the allowance of UIC wells because of bad advice. And now taxpayers are burdened with additional costs to prove science is right. The Nathan Rimmer lawsuit case could have been averted completely as Council knows the current tree code is inadequate and never finished properly as promised by the administration. So, today, it still remains susceptible for another lawsuit. Instead the City is now appealing the lawsuit?

<https://dianeckshnis.com/dianes-corner/> has lots of source data.