

#1

My name is Megan Gee and I live at 22201 N.E 28<sup>th</sup> Place in Sammamish;

I would like to see two essential improvements to the existing CAOs.

First, a review of storm water to critical area determinations.

Second, a provision for mitigation in the form of wetland banking.

Storm water can create wetland conditions. The current CAOs fail to determine if storm water is the source of hydrology in connection with a wetland review. "Storm water detention facilities" are expressly excluded from the definition of a wetland. At present, the only expert evaluation the City will accept in determining wetlands is that of a wetland biologist. Regrettably, wetland biologists lack the training, expertise (and inclination) to determine whether the hydrology in question was caused by storm water.

The City's refusal to exclude, or even to consider, the effect of storm water, has placed an enormous and unjust burden on Sammamish citizens. Seven years ago, we purchased a one acre parcel on Beaver Lake that had no wetlands mapped or indexed. 2 years ago when we began to develop the property, we were told the city found a category 3 wetland in the middle of our property, requiring 50 foot buffers. With no mitigation allowed, we lost the use of 78% of our property and over 60% of its tax assessed value!

The City has refused to recognize the several reports we commissioned from storm water engineers and hydro-geologists who have identified the source of water coming onto our property. Based upon their evaluation and extensive verification, these scientist and engineers concluded that without the storm water running on to our property, there is not enough hydrology to sustain a wetland.

To clarify for the council, the storm water flowing onto our property comes from other drainage basins outside our own. This is not merely a natural flow of drainage down grade, but collected and DIVERTED storm water from other drainage basins that is sent through an outdated ditch system along the road. The storm water was originally diverted onto my property so it could flow into Beaver Lake. Over time, neighbors brought in fill and planted lawns and the path to the lake was blocked thus an unintended storm water detention facility was created. We are now required to accept and filter storm water from other drainage basins. Not only does this violate my right to use my property, but it is not a sound environmental policy. To the contrary, EPA guidelines indicate that even if I did have a natural and properly designated wetland on my property, diverting large amounts of untreated storm water into such a small wetland should be avoided because it will degrade the natural resource.

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Finally, we need the ability to bank or mitigate wetlands, to assure fairness, and require the use of common sense. With a banking system and clear guidelines for its application, when disputes arise as to the existence, source or extent of a wetland, banking provides an avenue for resolution that will assure optimal preservation (and no net loss) of critical areas while also affording landowners reasonable opportunities to use or dispose of their land and avoid costly litigation to the taxpayers of Sammamish.

Erica Tiliacos  
1130 Lancaster Way SE  
Representing Friends of Pine Lake

June 1, 2010

Much work needs to be done before re-opening the Critical Areas Ordinance (CAO).

The sunset provision should be eliminated from the ordinance and the current required buffers on wetlands and streams should remain in effect.

Audio of the Dec.20, 2005 City Council meeting finalizing adoption of the CAO provides background on how this provision came about.

Community Development Director, Kamuron Gurol said staff supported the sunset provision for lake buffers, but not for wetlands, streams and mitigation ratios.

Councilor Don Gerend introduced the sunset provision on all stream and wetland buffers saying that on class 3 and 4 wetlands, NP&S streams, and mitigation ratios he wasn't comfortable with the relationship of proposed buffer sizes and function. He goes on to say that the Council would be addressing a Low Impact Development ordinance, the Pine Lake Study, and several other ordinances in the next 2 years and "we may find that some of these buffers are not necessary based on new code that we've put in".

Kathy Huckabay was concerned that in 30 months the city would be involved in an unnecessary update when "it may not be on the priority list".... "I think about our calendar in the next 2 years, we're going to be doing...the Town Center and the Shoreline Management Act and I just don't want to put an artificial timeline on if we don't have the resources to dedicate to it."

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Mark Cross had reservations as well, not wanting for people to think that the buffers for class 1 and 2 wetlands and all streams was totally open for review in 30 months.

Nancy Whitten thought that she could support it because “I’m hoping the wonderful promise of the innovation of Low Impact Development, the plans we can put forward with Pine Lake Management, Ebright Creek Basin Study (Thompson Basin), all the updates we’re going through for the Surface Water Management, the information we’ve heard about a way to tightline that might be safe for water quality of Lake Sammamish, all of these things, I’m hoping we can re-visit and say do we need these extensive buffers?”

In their review of the regulations, the Dept. of Ecology (DOE) wrote that they were concerned the city’s proposed buffers for streams and wetlands were not large enough and their recommendation was to increase buffers as intensity increased.

The City responded that Wetland Management Overlays gave further protections to Class 1 Wetlands even though the Council had already eliminated the Town Center area from being regulated by the Overlays. These areas actually represent the highest density that is being planned in Sammamish. The sunset provision was inserted after DOE had commented on the proposed regulations.

Where are we 4 years later?

1. The city must now comply with the National Pollution Elimination Standard Permit (NPDES Permit) and the city joined other cities in litigation against DOE. Now the city is struggling to comply.
2. The Surface Stormwater Manual has not yet been updated or adopted; all development continues to be vested to the 1998

standard. This will lead to increased costs to all stormwater ratepayers and future retrofitting costs by the city.

3. The LID ordinance is a voluntary ordinance that has no requirements. No project has been planned with LID except for the Library. This was a condition of a legal agreement between the City, Friends of Pine Lake, & Lancaster Ridge Homeowners Association.
4. The consultants have done the Pine Lake study, but the study remains in draft form pending review by staff and their comments for completion of the report. Council has not yet formally adopted the management plan.
5. No other ordinances have been adopted since Dec. 2005 providing protections to environmental resources.
6. Basin plans were to be updated, a basin each year. Four years later, we have only updated the Inglewood Basin, and are not yet finished updating the Thompson Basin. Both basins will be impacted by the Town Center.
7. The updates for the Monohon and Panhandle Basins are not planned yet and are the areas the Erosion Hazard Near Sensitive Waterbodies Overlays are currently protecting landslide hazard areas. Staff recommended and Council voted last year to “minor code” amendments that now allow point discharges (releasing water) into the Erosion Hazard Area by exempting remodels and commercial development, thereby loosening stormwater controls. King County wasn’t willing to risk development in these areas as they had had very destructive and costly experiences in areas of Coal Creek Parkway and Newport Way. They therefore placed additional development restrictions in these areas as part of their urban zoning and stormwater regulations.

8. If development is desired in these areas, investment in municipal tightlines with detention ponds at the bottom of the slopes will be needed, and the city has not yet investigated this possibility or its feasibility. On-the-ground analysis and stormwater modeling should be done and retrofitting previous stormwater controls may also be required. The Inglewood tightline and inability for property owners to come into compliance with code violations along Inglewood Hill is an indication of how difficult and challenging these areas are to develop in.
  
9. The Critical Areas Ordinance, as referenced in the Shoreline Master Plan, now forms part of the city's adopted SMP and any changes to it require approval by DOE. As it is unlikely DOE will allow reducing buffers on streams and wetlands in the shoreline areas, the city could find itself administering 2 Critical Area Ordinances, one for shorelines, and one for the rest of the city.

In conclusion, the city should not make revisions to the CAO at this time. The current amount of \$65,000 budgeted for this work can be saved and allocated to other work. The Council should eliminate the sunset clause and give staff the time and resources to complete all this unfinished work.

#3

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**Public Testimony to the Sammamish City Council and Planning Commission July 13, 2010**

I would like to comment tonight on the Critical Areas Ordinance Review. I think it is great that the City is considering the effect of these rules on its citizens. I have two personal experiences I would like to share with you:

I got a call from a fellow who was ready to start an addition on his home, which was built in 1984. All his ducks were in a row: his plans were done, financing secured, construction contract signed, his family had moved into an apartment, the permit was ready to pick up Friday and the Contractor would start Monday, or so he thought. He knew he had a wet area behind his house, but he did not know it was a regulated wetland and that his entire property was in a wetland buffer. City Staff caught it at the last minute and could not approve his permit. By using the CAO allowance for additions to non-conforming structures, he could build an addition to the side of his house, but could not build to the rear as he had planned. The net effect on the environment was the same either way as both areas were already lawn, but the code would not allow his structure to be any closer to the wetland. When I asked whether this made sense or not, the answer was that it didn't matter—no way was he going to be allowed to build the addition where it was designed. It was time to start over with a new design.

Not long ago I met with City Staff and a family who wanted to build a new home on a waterfront lot with an existing cabin. Their next door neighbor had a sloping lawn that is spongy in the winter, and it was identified as a low value wetland. The buffer from this "wetland" encompassed the whole of my client's property. Our drainage path did not go in that direction and our site was fully landscaped, with no sensitive areas on it. Whether or not that was truly was a "wetland" is debatable, our affect on it being nil was not questioned. My client was not allowed to apply for a building permit because of this adjacent squishy grass area. When I asked the City Staff whether this made sense or not, they agreed that there would be no impact from our development on the adjoining property. The comment was made that the rules may not make sense, but "we need to enforce them."

These are just two examples where our citizens have been thwarted from using their properties, with no commensurate benefit to the environment. I know of others. I respectfully request that you review the Critical Areas Ordinance and that specific rules be amended to allow use, enjoyment, and improvement of private property especially when no environmental benefit is gained by a strict enforcement of the code. I hope that you will define minimum wetland sizes, allow for relocation of low value isolated wetlands, and build additional flexibility into the code.

Thank you very much,



Dwight K. Martin

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Item # 3: CAO update

#4

James Osgood  
19661 SE 24<sup>th</sup> Way  
City Council Critical Areas Ordinance Public Input  
July 13, 2010

Along with our neighbors, we have made numerous comments before you over the past 2 years regarding our challenge related to the Critical Areas ordinance. As I hope most of you are already aware, our properties have been designated in the **Erosion hazards near sensitive water bodies – Special district overlay - No disturbance area**. We find ourselves in this overlay despite not having any steep slopes or erosion hazards. The no-disturbance area is defined in the Sammamish code by a location on a map. It does not specify conditions that must exist to include properties in the overlay. It just states that if you are located in that area, you have lost the right to make use of your property other than using the home that is currently located on the property. Subdividing is prohibited. It is unreasonable.

While much of the area within the no disturbance area could be argued to be properly designated because of steep slopes, there are other properties, like ours, that should not be designated as such. The “no disturbance” overlay does not allow for exceptions to the code. PERIOD.

A code that designates a large geographical area to having an absolute development prohibition, such as the overlay, will always have properties in which exemptions should apply. There needs to be a process of evaluation on the merits of these exceptions on a case by case basis. If the purpose of the code is to protect Lake Sammamish from erosive materials, a landowner should be able to demonstrate that development of their property would cause no more harm to the lake than any other development that is not in the no disturbance area. If, as I have heard others speculate, it is means to to slow growth; it is dishonest policy and should be revised to meet its true purpose.

We would like to see a change in the code to eliminate absolute prohibitions and permit site specific evaluations. The concerns to protect the environment should be taken into account on a case by case basis, not with an overly broad designation on a map.

I encourage the City Council to designate the **Erosion hazards near sensitive water bodies – Special district overlay no disturbance area** as an important part of the Critical Areas Ordinance to be reviewed and hopefully modified through the review process to allow common sense and fairness to prevail.

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Testimony to 7/13/2010 Sammamish City Council  
by Reid Brockway  
167 E Lk Sammamish Sh Ln NE

Subject: ESA buffers

Let's say you live in a neighborhood of closely-packed houses and a neighbor a couple doors down has a small creek running thru their yard. It doesn't have salmonids in it, but it conceivably could given a sufficient stretch of the imagination, so it's categorized Type F. That means it has a 300 ft buffer around it. And let's say you decide to move a shrub in *your* yard. Another neighbor of yours – the nosey kind who makes everyone else's business their own – sees you doing that and reports you to the city for not getting a permit. He's right, technically, given the way the ESA code is written now, and even tho what you are doing with the shrub is of no consequence when it comes to that little creek, suddenly you are given grief for doing something you should have a perfect right to do in an developed urban neighborhood.

Much of Sammamish consists of established neighborhoods. But small watercourses and wetlands and other features that the code defines as Environmentally Sensitive Areas are found there. For a given type of feature the ESA current code imposes a one-size-fits-all buffer and places severe restrictions on what can be done within it. It makes no allowance for where the feature is found. No distinction is made as to whether these pockets of habitat exist in a pristine forest or in a built-out subdivision. But there are profound differences as to the value and sensitivity of these habitats, their range, and the effect normal human activity can have on them. The code needs to be revised to take into account these differences.

The stipulation of buffers along streams and around other presumed habitat places significant restrictions on what can be done in those areas. Alterations to buffers are not allowed except as defined by the exemptions and exceptions of Sections 21A.050, 060, and 070, which for the most part do not offer relief to the resident. For example, per the letter of the ESA code, one cannot remove vegetation within 150 feet of a Type F stream without first submitting a restoration or enhancement plan to the city and getting it approved. Realistically this should not be required for weeding one's garden, but taken literally it is. And the addition of even a minor structure like a garden shed is prohibited within 165 feet of a Type F stream (150 ft buffer + 15 ft building setback -- see 21A.50.210.) These activities and improvements would be unimpeded rights of urban resident were it not for the imposition of buffers.

The one-size-fits-all treatment of buffers in the existing code is part of the problem. The sizes of the current buffers and the nature of the restrictions may be appropriate for land in a natural state that is being considered for development, but they may not be necessary or appropriate for urban neighborhoods that have long-since been developed. They make assumptions that may not be valid, such as that all land within a stream buffer drains into the stream, or that viable habitat exists in other than a narrow band along the stream. At least there is recognition that a man-made structure like a street may effectively bound a buffer (e.g., see 21A.50.330 (1)(a) ), but there is no similar provision for other features of adjoining properties – like houses and driveways and walls – that may constitute effective barriers to any influence on a stream from what occurs on the other side of such barriers.

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There needs to be provision in the code for the realistic establishment of buffer boundaries based on the physical features that actually exist in a developed urban setting. If a public street can be deemed the boundary of a critical area, so, too, should features like a house or wall that constitute a de facto boundary on habitat, or a change in topography that diverts drainage away from a stream or wetland. In developed neighborhoods the boundary should reflect the band of habitat that actually exists along a stream or wetland, not some arbitrary figure (like 150 feet for a Type F stream) that bears no relationship to the actual range of influence. A 330 foot swath through an established neighborhood in which the property owners are subject to the same restrictions that would apply in a forest is simply unreasonable. But that is the way the code is now. This needs to be fixed!

Critical Areas Comment Letter #6 – Inadvertently submitted into the record twice.

See comment letter #5

## Stream Buffers and Best Available Science

The current Critical Area Ordinance (CAO) requires 50, 75 and 150-foot buffers along streams depending on stream type. While it is very important to protect our streams, even the 50-foot buffers required for a seasonal stream on a property makes the typical R4 lot in Sammamish unsuitable for development. The sad reality is that people who own property with or near streams do not know that development is restricted or prohibited until they apply for a permit.

According to the Washington State Growth Management Act (GMA) the width of stream buffers is required to be determined by Best Available Science (RCW 36.70A.172(1)). How should this be done?

The steps of the scientific method are to:

1. Ask a Question; what is the purpose of stream buffers?
2. Do Background Research; establish a list of reasons for stream buffers.
3. Construct a Hypothesis; a stream buffer of x feet is required.
4. Test Your Hypothesis by Doing an Experiment; this is the hard part, test results seldom exist.
5. Analyze Your Data and Draw a Conclusion; stream buffer of x feet is required or not required.
6. Communicate Your Results; change stream buffer width in CAO.

While the planning commissioners cannot be expected to use the entire scientific method to determine the appropriate buffer widths, they surely can establish the reasons for stream buffers and then look for scientific evidence that justify a buffer width.

The following are NOT best available science:

1. More is better; this is conventional wisdom.
2. The City has not been sued; most people are unaware of current regulations.
3. Redmond requires x feet of buffer; did Redmond use best available science?
4. Buffer widths of x feet are required in our forests; different reasons exist for these buffers.
5. Environmental consultant says x feet is required; can consultant provide evidence that the recommended width was established by best available science?

I suspect that the planning commission will find that the width of the buffers is not as important as the vegetation immediately adjacent to the streams. However, I have not looked into the best available science to justify my belief.

George Toskey

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Sammamish, WA 90874