

Debbie Beadle

From: Evan Maxim
Sent: Thursday, April 26, 2012 10:05 AM
To: Kamuron Gurol; Susan Cezar; Debbie Beadle
Cc: Carl de Simas; Kathy Curry
Subject: FW: King Co. comments on Sammamish ECA code (re: mitigation)
Attachments: Samm-Code-MitigationIdeas_murph_25-Apr-12.docx

Please post on the website.

*Evan Maxim
Senior Planner
City of Sammamish
425-295-0523*

From: Kathy Curry
Sent: Thursday, April 26, 2012 9:58 AM
To: Murphy, Michael (Michael.Murphy@kingcounty.gov)
Cc: Darren.Greve@kingcounty.gov; Evan Maxim
Subject: King Co. comments on Sammamish ECA code (re: mitigation)

Michael: Thank you so very much for your efforts to supply this information. We will forward your attached and below information on for our Planning Commission's review.

It is anticipated that there will be Sammamish permittees interested in utilizing the County's mitigation reserves program. Therefore, Sammamish may have an interest in having a representative sit on the Interagency Review Team (IRT) for Sammamish projects. When appropriate, please let us know how and when to best coordinate with the County on this item. As well, please let us know what next steps are needed to implement an Interlocal Agreement for future coordination efforts between the City and the County related to the mitigation reserves program.

Lastly, I would like to share with the County some of the work I have completed for the City in investigating potential mitigation banking sites that may be appropriate for consideration as future King County Roster sites that provide for a Sammamish service area in the County's mitigation reserves program. I suggest that we meet in late June to go over this information.

Regards,

Kathy Curry, P.W.S.
Senior Environmental Planner & Wetland Biologist

City of Sammamish
Community Development Department
801 228th Avenue SE
Sammamish, WA 98075

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EXHIBIT NO. 102.

*"May the footprints we leave behind show that we've walked in kindness toward the earth and every living thing."
~ Author Unknown, Inspired by American Indian Philosophy*

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From: Murphy, Michael [<mailto:Michael.Murphy@kingcounty.gov>]
Sent: Wednesday, April 25, 2012 5:05 PM
To: Kathy Curry
Cc: Greve, Darren
Subject: King Co. comments on Sammamish code (re: mitigation)

Kathy –

In the attached document I've offered some suggested code language regarding the potential use of alternative aquatic resources mitigation measures within the city of Sammamish (primarily mitigation banks and in-lieu fee mitigation programs).

I need to say upfront that I'm neither a code writer nor a lawyer, so these suggestions are merely ideas for you and others at the city to consider. (I suggest a careful review by your legal folks familiar with state and federal mitigation rules/regs). Also – I didn't spend a lot of time wordsmithing, and as you know, getting the words right in code is extremely important, so please scrutinize thoroughly. Finally, please keep this email with the attached doc as you go through your code development process so these disclaimers are clear to others working to revise your code.

In my suggested new section **21A.50.155 Alternative Mitigation**, I suggest language that would allow use of authorized mitigation banks and in-lieu fee programs. Presently there is one mitigation bank serving Sammamish, but the available credit supply is essentially spoken for, so the bank isn't really available for use; service areas of other approved mitigation banks in the state do not cover Sammamish. But it's certainly conceivable a mitigation bank could be established somewhere that would serve Sammamish, so I think it makes sense to include this as an option.

As for in-lieu fee programs, King County's Mitigation Reserves Program (MRP) (see www.kingcounty.gov/mitigation) is the only authorized in-lieu fee program in the state as of April 2012, and one of this program's service areas *does* cover the City of Sammamish. In the Program Instrument (contract establishing terms and technical guidance document, available on website), Appendix T describes how the MRP may be available for use within incorporated cities. There is also a description of the Sammamish Service Area (see Appendix H, Section 4.0). The information in the instrument is necessarily short on detail (we wanted to allow as much flexibility as possible).

Here are a few notes related to potential use of the MRP within the City of Sammamish:

- City of Sammamish Code must allow the use of the program
- Though not required by federal rules, an Interlocal Agreement between the county and city would likely be necessary
- City of Sammamish permit reviewers must approve of the use of the program, as well as the number of "credits" a permittee would be required to purchase to meet their mitigation need (and other regulatory agencies must concur, e.g. WDFW, Corps, Ecology, etc.)
- If a Sammamish permittee uses the program, a Sammamish representative will have the opportunity (but not the obligation) to sit on the Interagency Review Team (IRT) - a group of regulatory agencies ensuring King County meets mitigation requirements. Participation on the IRT would be limited to reviewing mitigation projects offsetting impacts within Sammamish (i.e. a Sammamish rep would not have a review/approval role for a mitigation project in the Green River system)
- Impacts within the City of Sammamish would have to be mitigated within the Sammamish Service Area as defined in the Program Instrument. It is important to note that the Sammamish Service Area includes all basins draining to Lake Sammamish and the Sammamish River; it is broader than the watersheds encompassing city boundaries.
- There are currently seven sites (comprising 59 parcels) on the Roster in the Sammamish Service Area; these sites are likely to be appropriate mitigation sites, but additional screening will be necessary before committing to any given site.

- The MRP allows flexibility for off-site out-of-kind mitigation to occur when doing so is consistent with best available science and fits within “watershed context.” However, not all mitigation sites will appropriately offset specific mitigation needs; in other words, there may be particular impacts for which off-site, out-of-kind mitigation is not appropriate. For example if impacts occur to habitat in Stream A affecting depressed fish population X, mitigating for those impacts in Stream B with benefits to fish population Y may not be appropriate.
- The Program Instrument requires careful tracking of impacts and mitigation, and has provisions for ensuring a balance of functions lost and functions gained through time.
- In cases when existing King County Roster sites (or new KC sites) aren’t appropriate to meet a particular mitigation need or certain types of impacts in certain locations, the MRP allows for additions of new sites onto the Roster; these could be sites within a city and could be on public or private land (though all sites must be permanently protected with a conservation easement or similar restrictive covenant).

I know this is a lot o information, and truthfully, this is just scratching the surface. I look forward to talking with you and others at the city about the use of this program. Please get in touch if you have any questions.

-Murph

PS – CC’d Darren Greve, my supervisor.

Michael Murphy

Transfer of Development Rights & Mitigation Reserves Program
King County DNRP
201 S. Jackson St. Suite 600
Seattle, WA 98104
206.296.8008
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Suggestions for City of Sammamish code covering aquatic resources mitigation

Michael Murphy, King County DNRP

April 25, 2012

Here's some language from the KC Code (from 21A.24.133 Off-site mitigation) re: onsite vs. offsite:

To the maximum extent practical, an applicant shall mitigate adverse impacts to a wetland, aquatic area, wildlife habitat conservation area or wildlife habitat network on or contiguous to the development site. The department may approve mitigation that is off the development site if an applicant demonstrates that:

1. It is not practical to mitigate on or contiguous to the development proposal site; and
2. The off-site mitigation will achieve equivalent or greater hydrological, water quality and wetland or aquatic area habitat functions.

And here are a few thoughts on changes to Jan 2012 Sammamish code that I think would open the door to using mitigation banks and ILF programs (see tracked changes):

21A.50.140 Mitigation, maintenance, monitoring and contingency.

(1) When mitigation is required by this chapter to compensate for adverse impacts, unless otherwise provided, mitigation, maintenance, monitoring measures and contingency plans shall be in place to protect critical areas and buffers from alterations occurring on the development proposal site.

Comment [mm1]: I think this might be enough of an "offramp" to allow the use of banks and ILF programs, but it lacks specificity

(2) Where monitoring reveals a significant deviation from predicted impacts or a failure of mitigation or maintenance measures, the applicant shall be responsible for appropriate corrective action which, when approved, shall be subject to further monitoring.

(3) Mitigation shall be in-kind when practicable and sufficient to maintain critical area and buffer functions, and to prevent risk from a hazard posed by a critical area.

(4) Mitigation shall not be implemented until after the City of Sammamish approves the applicable critical areas study, mitigation plan and any required permits, unless mitigation requirements are met through use of approved alternative mitigation methods authorized in this section. Following City approval, mitigation shall be implemented in accordance with the provisions of the approved critical areas study and mitigation plan. (Ord. O2005-193 § 1; Ord. O99-29 § 1)

21A.50.145 Mitigation plan requirements.

When mitigation is required, the applicant shall submit, for approval by the City of Sammamish, a mitigation plan as part of, or in addition to, the critical areas study. For alternative mitigation, a complete description of the proposed alternative mitigation may substitute for a mitigation plan. The mitigation plan shall include, or be accompanied by a report with, the following information, as determined to be applicable by the director:

Comment [mm2]: E.g. a "bank use plan" or In-lieu fee use plan" (there are templates for both).

- (1) Existing Conditions and Proposed Impacts. A description of existing critical area(s) and/or buffer(s) conditions, functions, and values and a description of the anticipated impacts;
- (2) Proposed Mitigation. A description of proposed mitigating actions and mitigation site selection criteria;
- (3) Environmental Goals and Objectives. A description of the goals and objectives of proposed mitigation. The goals and objectives shall be related to the functions and values of the impacted critical area(s) and/or buffer(s);
- (4) Best Available Science. A review of the best available science supporting proposed mitigation, a description of the plan/report author's experience to date in restoring or creating the type of critical area proposed, and an analysis of the likelihood of success of the mitigation project;
- (5) Performance Standards. A description of specific measurable criteria for evaluating whether or not the goals and objectives of the mitigation plan have been successfully attained and whether or not the requirements of this chapter have been met;
- (6) Detailed Construction Plans. Detailed site diagrams, cross-sectional drawings, topographic elevations at one- or two-foot contours, slope percentage, final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. In addition, plans should include specifications and descriptions of:
 - (a) Proposed construction sequence, timing, and duration;
 - (b) Grading and excavation details;
 - (c) Erosion and sediment control features;
 - (d) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
 - (e) Measures to protect and maintain plants until established;
- (7) Monitoring Program. Mitigation plans shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included that outlines the schedule for site monitoring and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met. The monitoring period shall be five years; provided, that the director may approve a greater period when needed to ensure mitigation success or lesser period for minor mitigation; and
- (8) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met. (Ord. O2005-193 § 1; Ord. O2005-172 § 4)

21A.50.150 Financial guarantees.

Financial guarantees shall be required consistent with the provisions of SMC Title 27A. (Ord. O2005-193 § 1; Ord. O99-29 § 1)

21A.50.155 Alternative Mitigation

- (1) The director may approve the use of alternative mitigation measures including, but not limited to
 - a. Mitigation Banks that serve the location where the impact requiring mitigation will occur:
 - i. Mitigation Banks established after June 2008 must comply with federal rules for compensatory mitigation for losses of aquatic resources (33 CFR Part 332 and Part 230).
 - b. In-Lieu Fee mitigation programs that serve the location where the impact requiring mitigation will occur.
 - i. In-Lieu Fee programs must comply with 2008 federal rules for compensatory mitigation for losses of aquatic resources (33 CFR Part 332 and Part 230).
 - c. Other off site or out-of-kind mitigation approved by the director.

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Comment [mm3]: This opens the door pretty wide. Consider carefully...

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