

**Debbie Beadle**

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**From:** Evan Maxim  
**Sent:** Tuesday, May 01, 2012 1:11 PM  
**To:** Debbie Beadle; Kamuron Gurol; Susan Cezar  
**Cc:** Kathy Curry; Carl de Simas  
**Subject:** FW: Small wetlands exemptions guidance  
**Attachments:** Small wetlands exemptions guidance - McGraner 2012.doc

FYI – please post on the website.

*Evan Maxim  
Senior Planner  
City of Sammamish  
425.295.0523*

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**From:** McGraner, Patrick (ECY) [<mailto:patrick.mcgraner@ecy.wa.gov>]  
**Sent:** Tuesday, May 01, 2012 12:13 PM  
**To:** Evan Maxim  
**Cc:** Kathy Curry; Bunten, Donna (ECY)  
**Subject:** Small wetlands exemptions guidance

Dear Evan Maxim,

Please place the attached document into the public record for the City's CAO update review process.

Thank you,

Sincerely,

Patrick McGraner  
WSDOE/NWRO Shorelands and Environmental Assistance Program

EXHIBIT NO. 105

## **Recommended Regulatory Approach for Small Wetlands**

The language *immediately below* was developed a few years ago by Department of Ecology staff in an attempt to offer administrative flexibility to local governments in the regulation of some types of small wetlands. The language was intended to ease the burden on local jurisdictions of reviewing wetland impacts to small wetlands. This language was intended to apply to a subset of small wetlands and should not be misconstrued to allow impacts to *small portions* of larger wetlands.

### **An option for regulatory approach to small wetlands in Western Washington:**

This recommendation outlines a strategy for regulating small wetlands between 0 and 4,000 square feet (approximately 1/10 acre). This strategy provides flexibility by exempting the smallest wetlands and by providing evaluation criteria for other small wetlands that would allow staff to consistently determine what protection measures are required.

- 1) Exempt wetlands less than 1,000 sf where it has been shown by an applicant that they are not associated with a riparian corridor, are not part of a wetland mosaic and do not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife.
- 2) Evaluate the circumstances of wetlands between 1,000 sf and 4,000 sf in size. Ecology recommends the use of the 2004 Wetland Rating System to establish category and evaluate functions. Use the following criteria and local knowledge of natural resources to make an informed decision about whether to exempt wetlands between 1,000 sf and 4,000 sf from the requirement to avoid impacts.
  - a. The requirement to avoid impacts may be dropped for Category III and IV wetlands between 1,000 and 4,000 sf that meet all of the following criteria:
    - 1) Wetland is not associated with a riparian corridor and
    - 2) Wetland is not part of a wetland mosaic and
    - 3) Wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System and
    - 4) Wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife

(Staff may want to add a criteria here that includes locally identified wetlands where there is a desire to place high priority on water quality functions being provided (those wetlands that score high for water quality function in rating system); i.e. the wetland receives surface water drainage from surrounding landscape and improves water quality before discharging water to downstream water bodies. This approach could

include specific drainages where protection of water quality is given higher priority and there are significant wetland resources that provide high level of this function.)

- b. Impacts allowed under this provision to these wetlands will be fully mitigated as required in mitigation section.

The rationale for dropping the requirement to avoid impacts for certain wetlands is based on the premise that functions being provided by these types of Category III and IV wetlands can be adequately replaced by mitigation. In addition, this approach may benefit local wetland resources in the long term by providing part of the funding for larger local restoration projects that have the potential to provide higher functioning wetlands in the long term. This approach could be implemented thru development of an in-lieu fee system.

- c. All Category I and II Wetlands between 1,000 sf and 4,000 sf should be evaluated with full mitigation sequencing and buffer establishment. Any approved impacts should be adequately compensated by mitigation.

3) Wetlands larger than 4,000 sf will be evaluated using standard procedures for wetland review identified in Section XXX.

**\*\*\*END of Draft Regulatory Language\*\*\***

The draft language has several qualifiers that sometimes get overlooked when being considered by local jurisdictions and citizens for possible inclusion into their CAO. The term “riparian” is often not defined and adopted into the code which can cause issues with code interpretation and implementation. The language below defines “riparian” and is taken from the Washington State Department of Fish and Wildlife (WDFW) 2008 PHS Habitat Survey. The local jurisdiction may wish to adopt the WDFW definition below to assist in code implementation for consistency.

**WDFW description for Riparian Area from the 2008 PHS Habitats:**

**Riparian  
Priority Area Description**

The area adjacent to flowing or standing freshwater aquatic systems. Riparian habitat encompasses the area beginning at the ordinary high water mark and extends to that portion of the terrestrial landscape that is influenced by, or that directly influences, the aquatic ecosystem. In riparian systems, the vegetation, water tables, soils, microclimate, and wildlife inhabitants of terrestrial ecosystems are often influenced by perennial or

intermittent water. Simultaneously, adjacent vegetation, nutrient and sediment loading, terrestrial wildlife, as well as organic and inorganic debris influence the biological and physical properties of the aquatic ecosystem. Riparian habitat includes the entire extent of the floodplain and riparian areas of wetlands that are directly connected to stream courses or other freshwater.

**\*\*\*END of WDFW Language\*\*\***

Small wetlands that are nearby or adjacent to standing freshwater typically meet the definition of “riparian” wetlands. This would include wetlands adjacent to streams, lakes and ponds.

### **Abbreviated Small Wetlands Exemptions Language from Small Cities Guidance**

The draft language above was further condensed and included in the recent publication by Ecology called "*Wetlands and CAO Updates: Guidance for Small Cities*" which can be found on Ecology's web-site. The revised small wetlands exemptions draft language guidance reads as follows:

#### **XX.040 Exemptions and Allowed Uses in Wetlands**

A. The following wetlands are exempt from the buffer provisions contained in this Chapter and the normal mitigation sequencing process in Chapter XX.XX. They may be filled if impacts are fully mitigated based on provisions in Chapter XX.070. In order to verify the following conditions, a critical area report for wetlands meeting the requirements in Chapter XX.060 must be submitted.

1. All isolated Category III and IV wetlands less than 1,000 square feet that:
  - a. Are not associated with riparian areas or buffers
  - b. Are not part of a wetland mosaic
  - c. Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance identified in Chapter XX.XX.

**\*\*\*END of Small Cities Language\*\*\***

This language includes one key-word that is important to consider when drafting a local ordinance: *isolated*. The term "*isolated wetland*" refers to those wetlands that are not regulated by the federal government under the Clean Water Act (CWA). The U.S. Army Corps of Engineers regulates wetlands as waters of the United States except for isolated wetlands which the Corps generally considers to be those wetlands without sufficient hydrologic connection with, or location next to, a navigable water (such as a river, lake, or marine water). Most *riparian wetlands* would not be considered to be *isolated wetlands*. This is an important distinction to understand when crafting language for a local ordinance.

For a more detailed discussion of isolated wetlands, please visit Ecology's web-site for a link to *Focus on Regulating Isolated Wetlands*.

Also, please note that the suggested draft language from the *Guidance for Small Cities* cites only isolated Category III and Category IV wetlands less than 1,000 sf that meet specific criteria – not wetlands less than 4,000 sf as found in the original draft language provided above. It is important to understand that best available science does not support exempting small wetlands from regulation. The *Guidance for Small Cities* states on page 7:

The scientific literature does not support exempting wetlands that are below a certain size. While we recognize an administrative desire to place size thresholds on wetlands that are to be regulated, you need to be aware that it is not possible to conclude from size alone what functions a particular wetland may be providing. However, Ecology has developed a strategy for exempting small wetlands when additional criteria are considered. This language is present in the sample ordinance.

Proposing thresholds over 4,000 sf becomes increasingly more difficult to support because of the federal and state thresholds associated with federal nationwide permits and state general conditions which often are based upon one-tenth of an acre of fill (1/10 acre) or 4,356 sf.

Additionally, it is worth noting that the *Guidance for Small Cities* draft language proposes to exempt small wetlands that meet the specific criteria from buffer requirements as well as mitigation sequencing; i.e. avoidance and minimization of impacts.

In summary, there is no support for exempting small wetlands in the scientific literature. If exemptions are proposed as a matter of flexibility, then it should be clearly stated that the exemptions would only apply to isolated Category III and Category IV wetlands that meet the criteria provided in the two examples above. A critical areas study is required to demonstrate that the wetland meets the criteria to be filled and to assure that all impacts are fully mitigated.

The terms *riparian wetlands* and *isolated wetlands* should be clearly defined in code.

The draft language was intended to apply to a subset of small wetlands meeting specific criteria and should not be misconstrued to allow for the filling of *small portions* of *larger wetlands*.

<http://www.ecy.wa.gov/biblio/1006002.html> *Guidance for Small Cities*

<http://www.ecy.wa.gov/biblio/0106020.html> *Focus on Regulating Isolated Wetlands*