Submitted by D. Gee

City of Sammamish Environmental Critical Area Review

Testimony to Sammamish City Council

May 8, 2012

David Gee

EXHIBIT NO. 121.

Citizen Participation and Coordination:
Encourage The Involvement of Citizens in the Planning Process

RCW 36.70A.140

Comprehensive plans — Ensure public participation.

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

Environ: Wetland Rating

Table 2. Summary of estimated wetland functions, rating scores, and ratings.				
Wetland	**Function**	**Score[1]**	**Rating[2]**	**Comments**
A	Water Quality	28		Closed depression but receives little pollutant loading
	Hydrology	7		Hydrologic functions appear limited by historical alterations
	Wildlife Habitat	12		Lack of structural complexity and diversity, high level of human activity, and poor connections to other undisturbed habitats
	Total	**47**	**III**	

[1] Depressional HGM types have maximum potential scores of 32, 32, and 36 respectively for water quality, hydrologic, and habitat functions, respectively.

[2] Overall rating for the combined scores of the wetland using the most recent version of the western Washington Rating System (Hruby 2004). The system is expected not to provide accurate ratings for wetlands smaller than 0.1 acre (see text for a more detailed explanation).

CFS Environmental Subgroup--Public Comment to Planning Commission [2/16/12]

Known Topics	Goals
Terms and definitions in state statute (RCW) and regulations (WAC) and local code, and clarification of state law requirements (bookends)	The ECA code and definitions should be consistent with state and federal laws and regulations.
Amendments arising from the updated Best Available Science (BAS) review and/or from changes in statute or case law, or the Sammamish Comprehensive Plan as a guiding document	•The ECA code should be based upon BAS derived from suburban environments (similar to Sammamish). • Unless dimensions are specifically prescribed by BAS or law, the ECA code should include setback and buffer dimensions that are appropriate for the site-specific environmental benefit achieved. • The ECA code should ensure that BAS is applied in a reasonable manner to develop and refine regulations that are proportionate to the functions and values of critical areas. • The ECA code should protect private property rights, consistent with the public interest. • The ECA code should provide a means of evaluating the function and value of regulated critical areas and balance the rights of property owners. • The ECA code should ensure that environmental policy adequately distinguishes between already developed neighborhoods and undeveloped land. • The ECA code should ensure that forest practices, and environmental science derived from non-urban settings, are applied in the manner and to the degree appropriate for our urban environments.
Restrictions on development in Erosion Hazard Near Sensitive Water Bodies (EHNSWB) overlay area	The ECA code should ensure that overlay maps are accurate and current.
Restrictions on development in Wetland Management Area overlay area	The ECA code should ensure that overlay maps are accurate and current.
Restrictions on development in Landslide Hazard area	The ECA code should ensure that land use practices in geologically hazardous areas do not cause or exacerbate natural processes which endanger lives, property, or resources. • The ECA code should designate geological characteristics for which development should be prohibited, conditioned, or otherwise controlled because of danger from geological hazards.
Mitigation requirements and options for development on sites with wetlands with low functions and values	**The ECA code should provide a means of exempting critical areas (wetlands) that offer little or limited ecological function.**
Review of existing and potential areas of flexibility and options for applicants	The ECA code should provide a means of exempting critical areas (streams) that offer little or limited ecological function. • The ECA code should conserve and protect functions and values of stream corridors to provide for natural functions and protect hydrologic connections between features.
Standards for human-altered or created features (e.g. ditches, altered and urbanized streams, constructed ponds, ponds historically created in wetlands)	The ECA code should distinguish natural hydrology from man-made sources of drainage and only regulate natural hydrology as environmentally critical. • The ECA code should ensure that storm water is properly managed to protect critical areas. (http://www.commerce.wa.gov/uploads/CA_Handbook.pdf)
Standards for new trails and other public development in stream or wetland buffers	
Clarification and housekeeping changes – nonsubstantive procedural and technical language	The ECA code should ensure that ECA code is explicit, consistent, and unambiguous.

At the request of the consultant, staff has provided additional comments for each bullet point to more fully describe the issue, concern, or opportunity within that section.

* * * * *

2. Mitigation requirements and options for development on sites with wetlands and streams with low functions and values.

Questions:

- **Does Best Available Science support the current regulations / standards?**
- **Could Best Available Science support an increase to the 1,000 square foot isolated wetland exemption (SMC 21A.50.320)?**
- **Could Best Available Science support the filling of a small- sized, non-hydrologically isolated wetland, similar to the exemption provided for isolated wetlands? If so, what would be the appropriate size? Please identify any risks.**
- **Does Best Available Science support alternate standards for low function, human-modified wetland or stream features? Please identify any risks of using alternate standards (i.e. lost future restoration opportunities, downstream or downslope sedimentation or erosion, habitat loss or fragmentation, water quality degradation, increased flooding, etc.)? Could the risks, if any, be reasonably and reliably mitigated?**
- **Would any edits to these standards conflict with other agency requirements?**

* * * * *

Request to Planning Commission from David + Megan Gee [March 28, 2012]

Dear Commissioners:

Among the materials posted to the City website on Friday, March 9, was a document titled, "Known Topics-Additional Questions." As pointed out by the March 13 letter from Citizens for Sammamish, we were unaware of the Consultant's request to the City staff to elaborate on the list of "Known Topics." Because several of the "Additional Questions" concerning wetlands and streams relate directly to concerns and questions we have discussed with the City staff very recently, we request that the Consultant also address the following questions as part of its review of the "Additional Questions" on the topic, "Mitigation requirements and options for development on sites with wetlands and streams with low functions and values."

Additional Questions:

- **What is the Best Available Science regarding development of sites with wetlands and streams with low functions and values?**
- **What is the most commonly accepted BAS definition of an "isolated wetland"? Is there a statutory definition?**
- **Are there other cities or municipalities in Western Washington that have size-based exemptions for isolated wetlands? If so, what is the size range?**
- **Please identify any BAS studies that have quantified or otherwise determined the hydrological function (i.e., water quality impact studies, flood control and ground water recharge benefits) of isolated wetlands that are smaller than 5000 sf.**
- **Could Best Available Science support the exemption of isolated wetlands based upon factors other than size? Are there other cities or municipalities in Western Washington that recognize such exemptions?**
- **Could Best Available Science support the exemption of a small-sized (up to 5,000 sf) Class III or Class IV wetland, with low functions and values, similar to the exemption currently provided by the SMC for isolated wetlands?**

We appreciate the City's efforts to keep citizens informed of the work that is being performed by the Consultant. It is our understanding that the list of Known Topics within the City Council's resolution authorizing the present ECA review was drawn from concerns that we and other citizens raised through public comment and dialogue with the City staff over the past few years. Accordingly, we ask that we and others whose concerns were identified in the approved "Known Topics" list also be given the opportunity to help to "more fully describe the issue[s], concern[s]" referenced categorically in the "Known Topics." We hope that we will also be given fair opportunity to submit additional questions related to the "Known Topics" that may assist to identify potential options and areas of flexibility for Sammamish citizens and property owners.

Sincerely,

Megan and David Gee

Cooperation and Assistance of City Staff

Follow up Public Comment by David Gee [4/24/12]

From: Kamuron Gurol [mailto:kgurol@ci.sammamish.wa.us]
Sent: Tuesday, April 24, 2012 4:24 PM
To: David Gee
Cc: ECA; Evan Maxim; Debbie Beadle; meggee@comcast.net
Subject: RE: PDF Copy of Presentation to Sammamish Planning Commission April 19, 2012 -- Prepared by David and Megan Gee. Follow up Public Comment by David Gee.

Thanks David, I agree we have a number of potentially fruitful ideas to pursue. We will give your email and materials thoughtful consideration and may have follow up questions. Thanks again for your participation in this process. -Kamuron

From: David Gee [mailto:dgee@gsblaw.com]
Sent: Tuesday, April 24, 2012 4:07 PM
To: Kamuron Gurol
Cc: ECA; Evan Maxim; Debbie Beadle; David Gee; meggee@comcast.net
Subject: PDF Copy of Presentation to Sammamish Planning Commission April 19, 2012 -- Prepared by David and Megan Gee. Follow up P

Donna J. Bunten
CAO Review Coordinator
Dept. of Ecology
PO Box 47600
Olympia, WA 98504-46700
(360) 407-7172
donna.bunten@ecy.wa.gov

Dear Kamuron—

* * * * *

Second, with regard to the Code amendment that we proposed to the Planning Commission on [illegible], interested to review the April 18, 2012 email from Kathy Curry to Evan Maxim regarding "Sugge[illegible]d regulatory approach to small wetlands," that transmits information provided by Department of Ecology's Donna Bunten, apparently in response to Sammamish City staff requests. (This correspondence is posted as Exhibits 67-70 at the Sammamish City ECA Review site).

In particular, it is very encouraging that the DOE recommendation is substantively the same as the recommendation that we made in our Presentation to the Planning Commission.

Cooperation and Assistance of City Staff [conti

Follow up Public Comment by David Gee [4/24/12]

Donna J. Bunten
CAO Review Coordinator
Dept. of Ecology
PO Box 47600
Olympia, WA 98504-46700
(360) 407-7172
donna.bunten@ecy.wa.gov

Here is the pertinent excerpt from the DOE email:

Page 10 discusses exempting small wetlands. The City's existing code is currently consistent with our recommended language on exempting small wetlands. **We have included Ecology's language below** if you wish to consider using it. Alternatively, an abbreviated version can be found in the *Guidance for Small Cities* on page A-3 and -4.

1. Exempt wetlands less than 1,000 sf where it has been shown by applicant that they are not associated with a riparian corridor, they 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:

Wetland is not associated with a riparian corridor and

Wetland is not part of a wetland mosaic and

Wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System and

Wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife

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

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.

Cooperation and Assistance of City Staff [continued]

Follow up Public Comment by David Gee [4/24/12]

For your convenient comparison, **here is the recommendation that we made to the Planning Commission**, at page 5 of our Presentation:

[Option 2---Size + Function] Proposed Revision:

21A.50.320--Small and isolated wetlands with low functions or values.

A. Wetlands and associated buffers of less than one thousand square feet may be displaced when the wetland meets all of the following criteria, as documented in a wetland sensitive area study:

1. The wetland is not associated with a riparian corridor; and

2. The wetland is not part of a wetland mosaic; and

3. The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife; and

4. Impacts of displaced wetlands shall be mitigated pursuant to an approved mitigation plan.

B. Category III and IV wetlands between one thousand and four thousand square feet may be displaced without meeting the provisions of this Code regarding avoidance, minimization, rectification, and reducing and eliminating the impact over time that the criteria in subsection (A) are met and the wetland does not score twenty points or greater for habitat in the 2004 Western Washington Rating System.

As you can see, our proposed change to the Sammamish Code tracks squarely the guidance that City Staff requested and received from DOE. As Megan testified on Thursday night, we agree that the focus of the Code and its application should be on the function and value of a small wetland, and we believe that the Code should give the City and property owners much more flexibility vis a vis a site like ours that has been determined to be of low function and value under the Western Washington Rating System.

We will continue to work with the Planning Commission to encourage such a revision to the Code.

Sincerely,

David Gee

BAS to be included in Update...
But should not outweigh Statutory GMA Goals

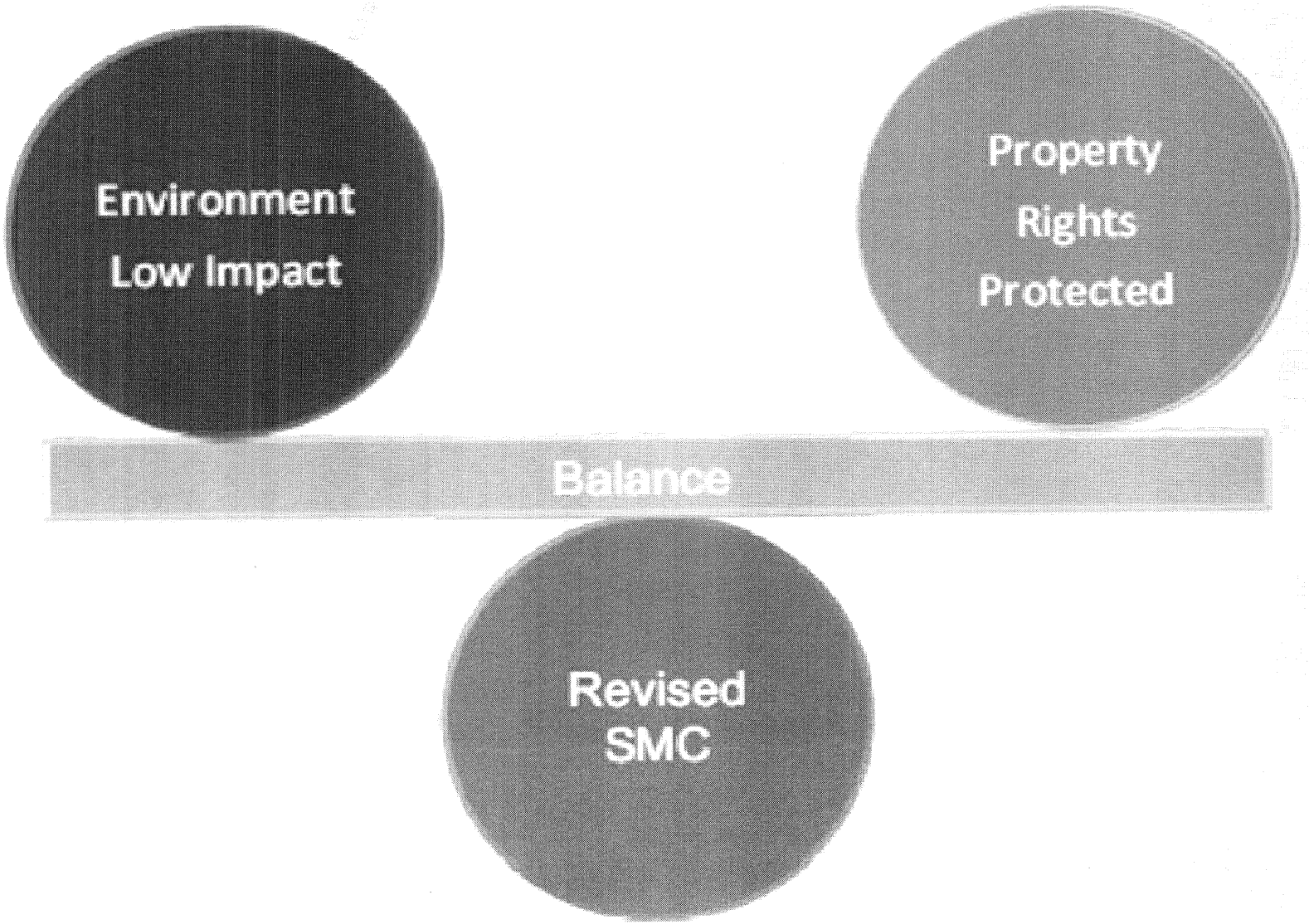
WAC 365-195-900

(1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Every five years they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of the Growth Management Act. RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas ....

RCW 36.70A.172

Critical areas — Designation and protection — Best available science to be used.

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

Growth Management Act Planning Goals (RCW 36.70A.020)