

Debbie Beadle

From: Reid Brockway <waterat@comcast.net>
Sent: Thursday, September 20, 2012 3:32 PM
To: Debbie Beadle
Cc: Kathy Richardson
Subject: Submittal to this evening's meeting
Attachments: 2-11 Evaluation Form Brockway Submittal.docx

Follow Up Flag: Follow up
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Debbie,

Attached is the third of three marked-up evaluation forms on my amendments that the PC invited me to submit. This one is for 2-11. I just finished it, and am sorry it is so late, but it was the best I could do considering other obligations. If at all possible, please provide this to the PC for reference in this evening's meeting. I will bring hardcopy to hand out as well, just in case.

Thanks,
Reid 868-7899

EXHIBIT NO. 214

Ratings are either: large positive (P), small positive (p), neutral, large negative (N), small negative (n)			
Environmental	N Neutral ¹	Implementation	N n ²
<ul style="list-style-type: none"> Decreased on-site protection of streams Neutral protection of public assets and resources (e.g. streets, water quality) Increased cumulative impacts to streams Negative potential to restore damaged stream channels or buffers Increased chance of damage to streams Increased potential to damage high quality, unique streams Net loss of stream functions and values <p>The proposed amendment will result in the reduction or elimination of buffer areas in developed sites, decreasing the protection of on-site streams and increasing the cumulative impacts to streams or buffers. In the case of areas that have low value buffer functions in a developed condition, BAS would suggest increasing buffers rather than elimination or reduction. The proposed amendment creates increase in unpermitted alterations, which increases the risk of damage to streams, including unique streams corridors, and results in a net loss to stream functions and values. The amendment also reduces opportunities for future buffer restoration.</p>		<ul style="list-style-type: none"> Less clear regulations, increased chance for unintended consequences Decreased ability for consistent, efficient implementation by the staff Decreased likelihood of support/approval by other agencies Less effective mitigation, harder to monitor <p>The amendment effectively creates two sets of stream standards for the city to administer and for applicants to use in the application process, which reduces overall efficiency and consistency in application. Determining which set of standards to apply to a particular site will likely prove to be a source of controversy between applicants and the city. Two sets of standards increases the chances for unintended consequences. Further, as this amendment does not appear to be supported by Best Available Science, there is a decreased likelihood of support or approval by other agencies.</p>	
Property	p P ³	Overall Effect	
<ul style="list-style-type: none"> Increased flexibility and options for property owner's use of property Decreased predictability for permit applicants and neighbors Increased recognition of site improvements and existing uses in standards Neutral effect on expense / time <p>The proposed amendment will generally increase the flexibility and options for property owners in the use of their property by basing the stream buffer on the developed condition of the lot. Some buffer widths will be increased or decreased based upon the developed condition of the site, which decreases the predictability and equity in permitting for property owners and neighboring properties. The permit review requirements will be increased to determine the sites existing development condition status (i.e. developed or undeveloped).</p>		<p>Negative<u>Positive</u></p>	

Existing Regulation(s)	Proposed Amendment & Description
<p>Stream buffers do not vary depending on the surrounding property development pattern (i.e. if the surrounding property is developed or undeveloped).</p> <p>Stream buffers are established based upon the edge of the stream (ordinary high water mark) and extend a specified distance (between 50 and 150 feet). The stream buffer is based upon type of the stream, and may encumber land that is already improved in some fashion (e.g. house, driveway, landscaping, etc). <u>The sizes of these buffers derive from forest practices, not science based on urban settings.</u></p> <p>Current code recognizes previously established buffers recorded as a notice on title or in a tract if the buffer is at least 50% of the current buffer width.</p>	<p>Stream buffers on developed property would be distinguished from stream buffers in an undeveloped condition. Stream buffer protection standards would be substantially different for developed properties when compared with undeveloped properties.⁴</p> <p>Amendment would result in one set of stream protection standards for stream corridors in a developed area of the city, and a different set of stream protections standards in an undeveloped area of the city.⁵</p> <p><u>ECA code will define “development” and “maintenance” and distinguish between these in imposing regulations and associated procedures.</u></p>
<p>Desired Result of Amendment:</p> <p>Provide stream protections based upon expected impacts in urban / suburban (i.e. developed) or undeveloped settings based upon expected development activity impacts. Nature of development in a developed area will have a different impact to a stream than development in a relatively undeveloped setting.⁶</p>	

Amendment Source:

Public comment

Best Available Science Support: Not supported ?⁷

- Best Available Science Report “Streams and Fish and Wildlife Habitat Conservation Areas” by AMEC Environment & Infrastructure, Inc.
- AMEC Report Issues 3-5, Issue 3 & 4

Affected Code Section(s) (includes duplicative and overlapping sections):

- 21A.50.330 - Streams – Development standards
- 21A.50.340 - Streams – Permitted alterations
- 21A.50.350 - Streams – Mitigation requirements

Public Comment Reference(s):

5, 22, 73, 122

Notes:

¹ The effect of this amendment on the environment would be negative only if a) the changes are written in a way that **does not** preserve the actual protection (not constraints that offer no real protection) in already developed areas, or b) if the unstated objective is to restore these areas to a pre-development state. Neither should be the case. The intent is merely to recognize in the code that applying forest practices, where 150 foot buffers may make sense, to developed neighborhoods, where viable habitat may have been reduced to 25 feet, is unreasonable. As the Department of Commerce GMA Update (in city's Resource Guide) states:

The modeling system used to assess stream types was designed to address higher elevation forested areas, and not low lying and urbanizing areas.

In turn, requiring a resident to fund studies and obtain permits for actions that are totally within the rights of most other residents, or preventing him from doing something altogether, **when there is no real benefit to the environment**, is unfair. But this is the nature of our current code, designed as it is for undeveloped land. It imposes restrictions indiscriminately and places an unnecessary burden on our citizens. (See "Overview of restrictions associated with streams", separately submitted.)

If this amendment is carefully crafted it will preserve the features of value to a watercourse on developed land while removing prohibitions that have no true benefit. The overall effect on the stream will be neutral, or even positive by removing the incentive for people to do things covertly because they perceive the regulations as overreaching. (My offer stands to help craft these changes.)

² Note that we have yet to see science addressing the protection of streams or other environmental features in urban settings, where houses, driveways, walls, landscaping, etc. are present. The consultant should be asked to identify such research if it exists. If it does not, the city should not default to forest practices but should apply common sense instead.

² This rating needs to take into account both the effect on Staff and on the property owner. It is true that simple prohibitions and onerous requirements to discourage activities, both based on fixed width buffers, can mean less workload for Staff than more insightful regulations tailored to urban realities. But requiring studies and permits for actions the homeowner should be free to do, because they have no impact on a stream, increases cost and effort for both the homeowner and the city. By the same token, regulations perceived as unreasonable that prompt citizens to do things "under the radar" can lead to more work by Staff and actual environmental harm. A key point here is that there are actions – like changing a shrub – that constitute maintenance, not development, and should not trigger review. There is a strong practical benefit for the property owner and Staff from recognizing these in the code.

As stated in my testimony, a simple way to deal with this in the code is to distinguish "maintenance" from "development" and use the presently empty paragraph 21A.50.080, "Modification or waiver of sensitive area requirements – Urban lots", to address maintenance and minor improvements to yards, residences, and outbuildings, which activities are substantially different from clearing and grading and installation of infrastructure as takes place for new development.

The bottom line here is that while there will be work to define these distinctions and more complexity in administering the associated regulations, there will also be less work associated with unnecessary studies, permitting, and review. On the whole I believe this equates to a slightly negative implementation rating.

³ A small positive rating here reflects a lack of appreciation for the magnitude of the problem the current code can pose for the resident with a watercourse on his or his neighbor's property, at least if the code as written is enforced. An example is the "dramatization" I presented at the 4/19 PC meeting. Further, the inability to expand the footprint of a house within range of a watercourse can decrease property value with no significant environmental benefit. Regulations are needed that take into account actual conditions typically present in developed neighborhoods. That will provide major relief for overburdened properties and a very positive human benefit.

⁴ The standards for stream protection would be preserved by this change; but actions that are of no consequence to a stream due to the realities of built-out neighborhoods – such as replacing an ornamental shrub or adding a small garden shed beyond the range of viable habitat – would be permitted without the hassle and expense of studies, plans, and permits designed for raw land.

⁵ This is not necessarily a bad thing for the environment, and it is definitely a good thing for residents now burdened with overreaching restrictions and permitting requirements. Both sets of standards should be designed to provide adequate protection given the realities of the respective settings.

⁶ This statement of desired result misses the point somewhat, and has a predominant "development" flavor. I offer the following alternative statement:

Code will distinguish maintenance activities from development activities and impose restrictions and procedures for the former only to the extent that they are necessary given the nature of the activity, the value of the stream and associated habitat, and the potential of the activity to impact those given the current state of development.

⁷ This assertion itself is not supported by any BAS the consultant has provided. As stated above, applying forest practices to developed neighborhoods is highly questionable. The consultant should be asked to provide solid

science addressing the kinds of controls that are necessary and effective in established urban settings with houses, driveways, walls, landscaping, etc. as well as what kinds of restrictions have been found to have little or no benefit. Common sense should be the fallback in the absence of such science.