

Debbie Beadle

From: Evan Maxim
Sent: Wednesday, October 03, 2012 12:04 PM
To: Debbie Beadle
Cc: Kathy Curry; Kamuron Gurol; Susan Cezar; Carl de Simas
Subject: FW: Wetland related comments on ECA updates
Attachments: ECOLOGY REVIEW.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Public comment

*Evan Maxim
Senior Planner
City of Sammamish
425.295.0523*

From: McGraner, Patrick (ECY) [<mailto:patrick.mcgraner@ecy.wa.gov>]
Sent: Wednesday, October 03, 2012 9:53 AM
To: Evan Maxim
Cc: Kamuron Gurol; Susan Cezar; Stockdale, Erik (ECY)
Subject: Wetland related comments on ECA updates

Dear Evan,

You will be receiving a hard-copy in the mail. I am still coordinating with WDFW and Ecology's Water Quality staff for their comments. The goal is to have those comments to you before 10/18/12.

Patrick McGraner
Wetlands Specialist
Department of Ecology/NWRO
3190 160th Ave SE
Bellevue, WA 98008
425-649-4447
patrick.mcgraner@ecy.wa.gov

EXHIBIT NO. 220



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

October 3, 2012

Mr. Evan Maxim
Senior Planner
City Sammamish
801 228th Avenue, SE
Sammamish, WA 98075

RE: Ecology Review of Proposed Amendments and Evaluation Forms Amendments to
Environmentally Critical Areas Ordinance

Dear Mr. Maxim:

Thank you for the opportunity to provide comments on proposed amendments to the City's Environmentally Critical Areas Ordinance. The attached document addresses isolated wetlands, buffers, wetland mosaics, and several other issues.

I hope the Planning Commission finds these comments helpful. Please do not hesitate to contact me at (425) 649-4447 or patrick.mcgraner@ecy.wa.gov if you have any questions. You may also contact Donna Buntten at (360) 407-7172 or donna.buntten@ecy.wa.gov.

Sincerely,

Patrick McGraner
Wetland Specialist
Shorelands and Environmental Assistance

PM:DB:

ecc: Ike Nwankwo, Department of Commerce
Theresa Nation, WDFW
Donna Buntten, Ecology SEA Program
Erik Stockdale, Ecology SEA Program
Doug Howie, Ecology WQ Program



Isolated Wetlands (3-2, 3-7, 3-19)

The Department of Ecology has previously submitted comments to the City of Sammamish regarding the proposal to change the size of wetlands within the city's jurisdiction that would be exempt from the Wetland Development Standards of the SMC provided any impacts are mitigated pursuant to an approved mitigation plan. Ecology submitted a document on May 1, 2012 and responded to three questions from the planning commission on July 25, 2012. These documents already exist in the record and are not repeated here; however, some of the points are discussed or expanded upon for emphasis and clarity.

For emphasis: Ecology's preference would be to use the language in the Small Cities Guidance document. Ecology staff emphasizes that it is not possible to conclude from size alone what functions and values a particular wetland is providing. Sections 5.3.3 and 5.3.4 of *Wetlands in Washington State, Volume 1: A Synthesis of the Science* (Ecology Publication #05-06-006, March 2005) emphasize that small wetlands and isolated wetlands provide many important functions. Many of these small and/or isolated wetlands are biologically unique systems that are critically important to amphibians. The loss of small wetlands results in increased fragmentation of habitat and greater distances between wetland patches (See Chapter 4 of Volume 1). This can have a significant effect on the ability of a landscape to support viable populations of wetland-dependent wildlife, including amphibians.

For emphasis: The terms riparian wetlands and isolated wetlands should be clearly defined in code. 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. Isolated wetlands are generally defined as those wetlands that are hydrologically isolated from other aquatic features.

Clarification: By any definition, associated wetlands within the City's shorelands could not be and would not be considered to be isolated wetlands. Associated wetlands and shorelands are both defined in the City of Sammamish Shoreline Master Plan Update in SMC 25.02.010(77) & (97).

For emphasis: WDFW defines riparian areas as 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.

For emphasis: 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 specific criteria (as found in *Wetlands & CAO Updates: Guidance for Small Cities (Western Washington Version)* (Ecology Publication #10-06-002, January 2010). 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.

While Ecology recognizes an administrative desire to place size thresholds on wetlands that are to be regulated, the City needs to be aware that it is not possible to conclude from size alone what functions a particular wetland may be providing. Filling of a wetland of any size has a negative environmental impact for which mitigation is required. Hydrologic isolation is not a determinant factor in the function of wetlands. Isolated wetlands in Washington perform many of the same important functions as other wetlands, including recharge of aquifers, storing flood waters, filtering pollutants from water and providing habitat for a host of plants and animals.

There are regulatory advantages to exempting small isolated wetlands especially with regards to buffer requirements as proposed in the *Small Cities Guidance*. For example, it is not uncommon for an applicant on a small or highly constrained parcel to avoid filling a small isolated wetland or a portion of the wetland because the proposed structure is no longer confined by buffers.

This may seem slight and relatively inconsequential, but the financial burden of impacting wetlands, even small portions of small isolated wetlands, can be significant with regards to mitigation costs, especially when on-site mitigation is not feasible. One of the tools being considered by the City is that of *In-Lieu-Fee*, a concept which is supported by Ecology. Research into financial costs associated with all types of acceptable mitigation strategies can quickly lead some landowners back to the path of avoidance of impacts, even where avoidance is not required on a small isolated wetland.

Additional Discussion: As stated above, the Department of Ecology previously submitted comments to the City of Sammamish regarding the proposal to change the size of wetlands within the City's jurisdiction that would be exempt from the Wetland Development Standards of the SMC provided any impacts are mitigated pursuant to an approved mitigation plan.

Regardless of whatever language the City adopts, the Department of Ecology still has a regulatory role when isolated wetlands are filled. In order to help the citizens of Sammamish, City officials and City staff understand that role, we provide the information below.

Ecology Regulation of Isolated Wetlands

The State Water Pollution Control Act (90.48 RCW) and associated regulations (WAC 173-201A) make no distinction between isolated or non-isolated wetlands. All “waters of the state” are covered by the law, and that includes isolated wetlands.

Isolated wetlands perform the same important environmental functions as other wetlands, including recharging streams and aquifers, storing flood waters, filtering pollutants from water, and providing habitat for many plants and animals.

Thus, the Department of Ecology is continuing to regulate isolated wetlands and to apply the water quality standards called for in state law. However, the department’s process for reviewing projects involving isolated wetlands is different from the process for other types of wetlands.

Instead of using the 401 Water Quality Certification process (triggered by a 404 permit from the Corps), Ecology uses administrative orders to regulate projects involving isolated wetlands. The review standards remain the same.

Using the Surface Water Quality Standards for Activities Involving Wetlands

Ecology regulates wetlands, whether isolated or not, by ensuring that projects are in compliance with the State Water Quality Standards (Chapter 173-201A WAC). The State Water Quality Standards consist of three main elements: characteristic uses of surface waters, numerical criteria for conventional water quality parameters that are not to be exceeded (173-201A-130), and an antidegradation policy (173-201A-070). As stated in the Ecology publication, *Water Quality Guidelines for Wetlands: Using the Surface Water Quality Standards for Activities Involving Wetlands* (Ecology Publication # 96-06, April 1996), the primary means for protecting water quality in wetlands is through implementing the antidegradation section of the water quality standards. This is, in part, because of the difficulty of establishing specific numeric criteria for wetland water quality.

The antidegradation policy establishes the bottom line for water quality protection in the state: “Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed.”

Beneficial uses are more or less equivalent to wetland “functions and values” and include: water supply, surface and groundwater treatment, stormwater attenuation, fish and shellfish migration, rearing, spawning, and harvesting, wildlife habitat, recreation, support of biotic diversity, and aesthetics.

Essentially, applying the water quality standards to wetlands means that all existing beneficial uses (or functions and values) of wetlands cannot be disturbed or must be adequately replaced or compensated if wetland impacts are unavoidable. This is clearly broader than just replacing the water treatment functions of a disturbed wetland.

Therefore, compliance with the City of Sammamish's CAO does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, in addition to the processes in the CAO. The City should encourage applicants to submit information (such as permit applications or special studies) to other agencies for critical areas review.

Links to select documents discussed above:

<http://www.ecy.wa.gov/programs/sea/wetlands/isolated.html> *Isolated Wetlands Information*

<https://fortress.wa.gov/ecy/publications/SummaryPages/1006002.html> *Guidance for Small Cities*

<https://fortress.wa.gov/ecy/publications/SummaryPages/9606.html> *Water Quality Guidelines for Wetlands: Using the Surface Water Quality Standards for Activities Involving Wetlands*

Flow Part of Stream Definition (2-12)

While WDFW has the primary role with regards to regulating streams, Ecology notes that this proposed change would be extremely difficult to administer. Additionally, this proposal appears to ignore the movement toward standardization of stream typing throughout the state as embodied in WAC 222-16-030. State agencies require that streams be typed per state code when preparing a joint aquatic resources permit application (JARPA) or Hydraulic Project Approval (HPA).

215-foot Critical Areas Study (3-2)

The Department of Ecology notes that on this issue, it can often be very difficult to accurately assess sites with regard to the location and extent of off-site critical areas. Forested cover, lack of access to adjoining properties and other factors contribute to the complexity of site assessment. While the City may choose to specify that Critical Area studies are required to include the area out to 215 feet beyond the project area boundary, the Department of Ecology believes that the flexibility of the current code language found in SMC 21A.50.100(1) remains acceptable as is currently written.

Fee-in-lieu Mitigation (3-3)

The Department of Ecology supports the concept of fee-in-lieu mitigation. We recommend using the following language in your ordinance:

An in-lieu fee program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.
5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.
6. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

As a reminder, this form of mitigation, as in all other forms of mitigation, still requires that mitigation sequencing be applied to the proposed impact. In addition, the proposed wetland fill activity would require authorization from either or both state and federal agencies.

Wetland Mosaic (3-7)

The City of Sammamish currently rates wetlands within the city using the Washington State Wetland Rating System for Western Washington (as revised) per SMC 21A.15.1415. Therefore, this section already addresses the concept of wetland mosaics as described on page 15 of the rating system and the corresponding Figure 4 found on page 16. Because the City is not proposing to change the way it rates wetlands within its jurisdiction, the Washington State Wetland Rating System for Western Washington already provides a method for determining whether a wetland area is part of a mosaic or is to be rated separately. Ecology does not believe that it is necessary to provide additional code language on how to determine whether a wetland is part of a wetland mosaic.

Stormwater Discharge to Wetlands (3-21)

Stormwater discharge to wetlands is strictly regulated through the most current state stormwater manual for Western Washington. The City should not propose any changes that would be inconsistent with *Appendix I-D, Guidelines for Wetlands when Managing Stormwater* as found in *Stormwater Management Manual for Western Washington: Volume I, Minimum Technical Requirements and Site Planning, August 2012, Publication No. 12-10-030*.

In addition, please see the guidance language found at the top of page A-11 in *Wetlands & CAO Updates: Guidance for Small Cities (Western Washington Version)* (Ecology Publication #10-06-002, January 2010).

Site Specific Wetland Buffer Location (3-17) and Variable Regulations for Wetland Areas (3-18)

The Department of Ecology does not support the changes as outlined in these two proposed revisions. The GMA requires jurisdictions to designate and protect wetlands. The scientific literature is unequivocal that buffers are necessary to protect wetland functions and values. The primary factors to evaluate in determining appropriate buffer widths are:

- The wetland type and function
- The types of adjacent land use and their expected impacts
- The characteristics of the buffer area

Therefore, *buffers should be based on what is necessary to protect the resource*, not on previously existing development. The Washington State Wetland Rating System for Western Washington already takes into account the condition of existing buffers when determining the wetland rating. If the wetland function scores are low, then the required buffers are narrower to begin with.

Most of the land in developed areas is no longer in a natural, open state but becomes managed with landscaping (including lawns) and/or covered with impermeable surfaces. Landscaping results in a higher pollutant load from the residential use of pesticides and fertilizers. The larger area of impermeable surfaces results in altered hydrology plus pollutants from driveways, treated roofs, etc., which may not be captured and treated in a stormwater system. The scientific literature indicates that more densely built developments pose a greater risk of degradation to wetland functions and values from the introduction of pollutants, increased noise and lights, and intrusion of humans and pets.

The buffers recommended by Ecology assume that the buffer is well-vegetated with a relatively intact, native plant community in order to protect existing wetland functions. If a buffer area is not well-vegetated, then the buffer should either be widened or restored with appropriate vegetation. The scientific literature does not support establishing buffer widths based on “the actual width of viable habitat” etc.

Legally established existing uses within buffers should be allowed to continue. *Any expansion* of existing uses should be regulated according to SMC 21A.