## Debbie Beadle

**From:** David Gee <dgee@gsblaw.com>
**Sent:** Wednesday, October 17, 2012 7:34 PM
**To:** Debbie Beadle
**Cc:** David Gee; Glendon2David-home David and Megan Gee
**Subject:** GEE Public Comment 10.18.12--->Please Distribute to the Planning Commission for Tomorrow's Meeting. Thank you.
**Attachments:** SEA_DOCS-#1078292-v1-FINAL VERSION 10-8-12 PLANNING COMMISSION PUBLIC COMMENT.pptx

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

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**DAVID W. GEE**

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EXHIBIT NO. 230

# City of Sammamish Environmental Critical Area Review 2012

## RESPONSE TO

**STAFF DRAFT EVALUATION FORM ITEM 3-19b**
**STAFF DRAFT EVALUATION FORM ITEM 3-19c**
**D.O.E. VERSION 4.0 RE: ECA UPDATE ITEM 3-19**
**AND OUR CONCERNS WITH THE PROCESS**

**October 18, 2012**

David and Megan Gee - 22201 NE 28th Place-Sammamish, WA 98074

# I. Substantive Response

## A. Staff's Revised Evaluation Forms:

**Isolated Wetland Exemption to 2,500 sf Item 3-19c—**

- Staff has provided no evidence or scientific support for rating 4,000 sf more harmful than 2,500 sf to Environment.
- *"The proposed amendment will bring the Sammamish Municipal Code into alignment with peer jurisdictions, which generally provide exemptions of up to 2,500 square feet."* – This statement is contrary to the record and survey of numerous Western Washington jurisdictions. (See slide 6 and Appendix A below).
- 2,500 sf exemption not responsive to any known stakeholder issues, and not among the Major Items advanced by Planning Commission. (See Appendix B below

**Isolated Wetland Exemption to 4,000 sf Item 3-19b—**

- Certain of Staff's proposed rating of 2,500 sf isolated wetland apply just as well to 4,000 sf:
  - **Increased** effect on potential to restore damaged wetland buffer areas**[City's 3-19c]**
  - **Neutral** effect on net loss of wetland functions and values **[City's 3-19c]**

## B. D.O.E. Version 4.0

- D.O.E. has provided 3 prior comments in this update process, not 2.
- D.O.E.'s "preference" of no exemption for small isolated wetlands is not the legal standard
- Sammamish has elected to challenge or disregard other D.O.E. "preferences"—i.e., SMP, and recent appeal of state stormwater guidelines
- D.O.E. suggests Sammamish add definition of "isolated wetland" and "riparian wetland"
  - Sammamish has already defined "isolated wetland" in current SMC
  - D.O.E. has not defined "riparian wetland" – no statutory or regulatory precedent

# A. Revised Evaluation Forms-Item 3-19c and 3-19b

## Staff's 10/8 Evaluation Form: Isolated Wetland Exemption to 4,000 sqftItem 3-19b

**vs**

## Staff's 10/8 Evaluation Form: Isolated Wetland Exemption to 2,500 sqftItem 3-19c ?

### Environmental N

- Decreased on-site protection of wetlands
- Decreased protection of public assets and resources (e.g. streets, water quality)
- Increased cumulative impacts to wetlands
- **Neutral**effect on potential to restore damaged wetland buffer areas
- Increased chance of damage to wetlands
- Neutral potential to damage high quality, unique wetlands
- **Increased**net loss of wetland functions and values

The proposed amendment would allow for more wetlands to fall under the exemption, thereby allowing more cumulative impacts and net loss of overall wetland functions and values. Also, the potential for damage to wetlands, including smaller high quality wetlands would be greater as ~~the city~~ more wetlands would be exempt from protections~~review~~. Although this amendment is ~~supported~~ not opposed by Department of Ecology, it ~~does not appear to~~ is not ~~be~~ based on BAS, it is suggested as a potential policy alternative for small municipalities ~~with less review capacity~~.

### Environmental n

- Decreased on-site protection of wetlands
- Decreased protection of public assets and resources (e.g. streets, water quality
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- **Neutral** effect on net loss of wetland functions and values

The proposed amendment would allow for more wetlands to fall under the exemption, thereby allowing more cumulative impacts and net loss of overall wetland functions and values. Also, the potential for damage to wetlands, including smaller high quality wetlands would be greater as more wetlands would be exempt from protections. Although this amendment is not opposed by Department of Ecology, it is not based on BAS, it is suggested as a potential policy alternative for small municipalities.

# D.O.E. Wetlands in Washington State, Chapter 5, Volume 1– A Synthesis of the Science, March 2005

### 5.3.3 Small Wetlands

No definition of small is provided here because **what constitutes "small" varies between jurisdictions and scientific studies**(see also Section 5.3.2). In some contexts, small is determined exclusively by size. **Small may mean less than 0.10 acre; in others, it maymean less than 10 acres.**

Some jurisdictions, however, also differentiate small wetlands using criteria that reflect function and values. Small wetlands can have outlets, be in a floodplain, or be otherwise associated with a larger aquatic system. These characteristics are often used in rating systems and, combined with size, determine what is considered a small wetland. For example, a jurisdiction may include language in their regulations such as "Category 2 wetlands larger than 0.25 acre cannot be altered." **For each of the studies below, we haveincluded the authors' definition of small.**

In addition to the obvious loss of habitat for wildlife, fragmentation of habitat increases as small wetlands are eliminated, resulting in greater distances between wetland patches in the landscape. Semlitsch and Bodie (1998) found that creating greater distances between **wetlands of 0.5 to 10 acres in size**can have a significant effect on the ability of a landscape to support viable populations of amphibians, as juveniles dispersing from a source wetland may not be able to travel far enough to recolonize other surrounding (now distant) wetlands. Management priorities have focused on larger, semi-permanentwetlands, with the least emphasis on protecting the smaller, seasonal wetlands (< 1.2acres) that are critical components of wetland complexes (Naugle et al. 2001).

# D.O.E. Wetlands in Washington State, Chapter 5, Volume 1– A Synthesis of the Science, March 2005 (cont'd)

The following sections describe studies of the use of small wetlands by wildlife, and the role that small wetlands play in maintaining connections between habitats. **For each of these studies, the authors' definition of small is described.**

Studies of the relationship between wetland size and wildlife distribution have mostly focused on amphibians and birds. Few studies have examined how use of wetlands by mammals relates to wetland size, and no studies of this relationship were found for macroinvertebrates or reptiles. No studies were found that documented the role that small wetlands play in providing water quality or hydrologic functions. However, **thedegree to which small wetlands perform water quality or hydrologic functions is likely tobe determined by site-specific characteristics (see Chapter 2) and can be estimated on aper-acre basis using some of the available function assessment methods.**

* * * *

The literature emphasizes that small wetlands are critically important to amphibians, particularly when connectivity between wetlands and with adjacent uplands is maintained. **However, none of the studies evaluated the role of wetlands less than 0.5acre, so the implications of exempting wetlands less than 0.25 acre, as is commonly donein local wetland regulations, are unknown.**

# Other Western Washington Jurisdictions

- Maple Valley: **5000 sf**(Isolated)
- Kent: **5000 sf**(Isolated III + IV)
- Anacortes: **4000 sf** (Class III + IV)*
- Bellingham : **4000 sf** (Class III + IV)*
- Black Diamond: **4000 sf** (Class III + IV)
- Des Moines: **4000 sf**(Class III + IV)
- Everett: **4000 sf** (Class III + IV)*
- Olympia: **4000 sf** (Class III + IV)*
- City of Sultan: **4000 sf** (Class III + IV)
- Mason County: **4000 sf** (Class III + IV)*
- Skagit County: **4000 sf** (Class III + IV)*

***Relevant excerpts for these jurisdictions added to Record in Appendix A**

## Staff Revised Evaluation Form: Isolated Wetland Exemption to 4,000 sqftItem 3-19b

## vs

## GEEProposed Evaluation Form:Isolated Wetland Exemption to 4,000 sqftItem 3-19

### STAFF: Environmental N

- Decreased on-site protection of wetlands
- Decreased protection of public assets and resources (e.g. streets, water quality)
- Increased cumulative impacts to wetlands
- **Neutral**effect on potential to restore damaged wetland buffer areas
- Increased chance of damage to wetlands
- Neutral potential to damage high quality, unique wetlands
- **Increased**net loss of wetland functions and values

The proposed amendment would allow for more wetlands to fall under the exemption, thereby allowing more cumulative impacts and net loss of overall wetland functions and values. Also, the potential for damage to wetlands, including smaller high quality wetlands would be greater as ~~the city~~ more wetlands would be exempt from protections~~review~~. Although this amendment is ~~supported~~ not opposed by Department of Ecology, it ~~does not appear to~~ is not ~~be~~ based on BAS, it is suggested as a potential policy alternative for small municipalities ~~with less review capacity~~.

### GEE: Environmental Neutral

- Decreased on-site protection of **small isolated** wetlands **of low function and value**
- Decreased protection of public assets and resources (e.g. streets, water quality
- **Negligible** cumulative impacts **to wetlands < 1 Acre (.188% of all wetlands within Sammamish)**
- **Increased** effect on potential to restore damaged wetland buffer areas**[City's 3-19c]**
- Increased chance of damage to **low function** wetlands
- Neutral potential to damage high quality, unique wetlands
- **Neutral** effect on net loss of wetland functions and values **[City's 3-19c]**

The proposed amendment **may decrease the extent of protection of +/- 1 acre of small isolated wetlands of low function and value within Sammamish, and** the potential for damage to **such** wetlands. Although this amendment is not opposed by Department of Ecology, **DOE does not believe** it is based on BAS, it is suggested as a potential policy alternative.

# B. D.O.E. Version 4.0

# D.O.E. VERSION 4.0

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.

## CLARIFICATION: DOE'S THREE (not 2) PRIOR COMMENTS "EXIST IN THE RECORD."

**We have included Ecology's language below if you wish to consider using it.**

1. Exempt wetlands less than 1,000 sf where it has been shown by applicant that they are not associate
not part of a wetland mosaic and do not contain habitat identified as essential for local populations of p
Washington Department of Fish and Wildlife.

2. **Evaluate the circumstances of wetlands between 1,000 sf and 4,000 sf in size**. Ecology recommends th
Rating System to establish category and evaluate functions. Use the following criteria and local knowledge of pa
infor
**a. Th**
**follo**

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- ❑
- ❑
- ❑

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

**"DOE VERSION 1.0"**
***Donna J. Bunten***
***CAO Review Coordinator***
***Dept. of Ecology***

**a. The requirement to avoid impacts may be dropped for Category III and IV wetlands between 1,000 and 4,000 sfthat 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**

# D.O.E. VERSION 4.0

**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.

**CLARIFICATION:**
**DOE'S "PREFERENCE" IS NOT THE LEGAL STANDARD FOR ECA/SMC/GMA/SMP**

SAMMAMISH REVIEW.COM
Weekly news for the citizens of Sammamish, WA

# Sammamish to appeal state stormwater guidelines

September 24, 2012

By Caleb Heeringa

Sammamish will join more than a dozen other Western Washington cities in appealing a new set of storm water guidelines issued by the Washington State Department of Ecology.

The Sammamish City Council approved spending $20,000 on the appeal as part of their consent agenda at a Sept. 17 meeting. City stormwater manager Eric LaFrance said the new regulations, which are meant to guide the storm water policies of individual cities through 2018, shift additional regulatory responsibility on cities and **extend onerous and sometimes expensive storm water requirements to even small developments**. * * *

Whereas the previous rules treated developments over an acre differently than, say, a private landowner adding a single-family home to his property, the new regulations tighten requirements even on smaller projects. Depending on the hydrology of the site and the size of a proposed building, more and more projects of all sizes will be required to use low-impact development techniques like green roofs, gray water recycling and pervious pavement.

**The new rules seem excessive, even for city staff like LaFrance who pride themselves in making sure that development doesn't impact sensitive streams and lakes around the area, City Manager Ben Yazici said at a Sept. 4 council meeting.** * * *

Sandy Howard, communications manager for Ecology's Water Quality Program ... said the new rules aim to protect the health of the Puget Sound and its waterways.

"We stand by (the rules) and feel they are a fair balance between protecting the environment and providing flexibility for local governments," she said. * * *

[LaFrance] questioned whether more inspections were the best use of city staff's time.

**"Any time a government requirement is heavy on price and not heavy on results, I see that as a missed opportunity," he said.** * * * * *

# D.O.E. VERSION 4.0

**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.

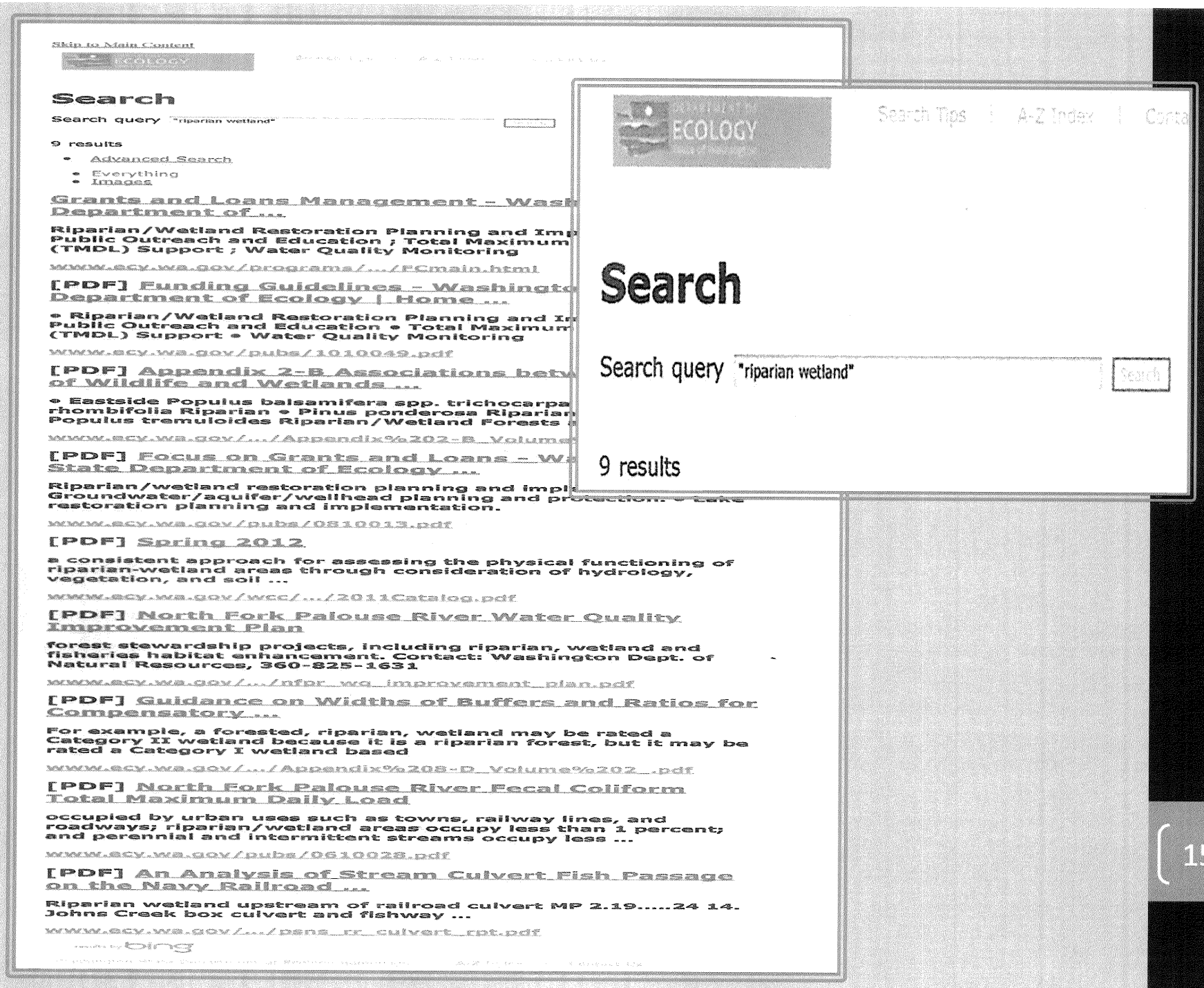
**"ISOLATED WETLAND" IS CLEARLY DEFINED IN SMC-- NOT AMENDED BY 2011 SMP**

**EXISTING SMC 21A.15.1410 Wetland, isolated.** "'Wetland, isolated' means a wetland that is hydrologically isolated from other wetlands or streams, does not have permanent open water, and is determined to be of low function."

# D.O.E. VERSION 4.0

**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.

- **DOE insists Sammamish include a definition of "Riparian Wetland"- yet DOE has not adopted a clear definition of the term.**
- **Search of DOE website for term "Riparian Wetland" yields 9 results—none is a definition of the term.**
- **DOE v 4.0 refers instead to WDFW definition of "Riparian Area."**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• Eastside Populus balsamifera spp. trichocarpa
rhombifolia Riparian • Pinus ponderosa Riparian
Populus tremuloides Riparian/Wetland Forests
www.ecy.wa.gov/.../Appendix%202-B_Volume
[PDF] Focus on Grants and Loans – W
State Department of Ecology ...
Riparian/wetland restoration planning and impl
Groundwater/aquifer/wellhead planning and protection. • Lake
restoration planning and implementation.
www.ecy.wa.gov/pubs/0810013.pdf
[PDF] Spring 2012
a consistent approach for assessing the physical functioning of
riparian-wetland areas through consideration of hydrology,
vegetation, and soil ...
www.ecy.wa.gov/wcc/.../2011Catalog.pdf
[PDF] North Fork Palouse River Water Quality
Improvement Plan
forest stewardship projects, including riparian, wetland and
fisheries habitat enhancement. Contact: Washington Dept. of
Natural Resources, 360-825-1631
www.ecy.wa.gov/.../nfpr_wq_improvement_plan.pdf
[PDF] Guidance on Widths of Buffers and Ratios for
Compensatory ...
For example, a forested, riparian, wetland may be rated a
Category II wetland because it is a riparian forest, but it may be
rated a Category I wetland based
www.ecy.wa.gov/.../Appendix%208-D_Volume%202_.pdf
[PDF] North Fork Palouse River Fecal Coliform
Total Maximum Daily Load
occupied by urban uses such as towns, railway lines, and
roadways; riparian/wetland areas occupy less than 1 percent;
and perennial and intermittent streams occupy less ...
www.ecy.wa.gov/pubs/0610028.pdf
[PDF] An Analysis of Stream Culvert Fish Passage
on the Navy Railroad ...
Riparian wetland upstream of railroad culvert MP 2.19.....24 14.
Johns Creek box culvert and fishway ...
www.ecy.wa.gov/.../psns_rr_culvert_rpt.pdf
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# II. OUR CONCERNS WITH THE PROCESS

# Transparent and Fair?

## "The process should be transparent and fair."

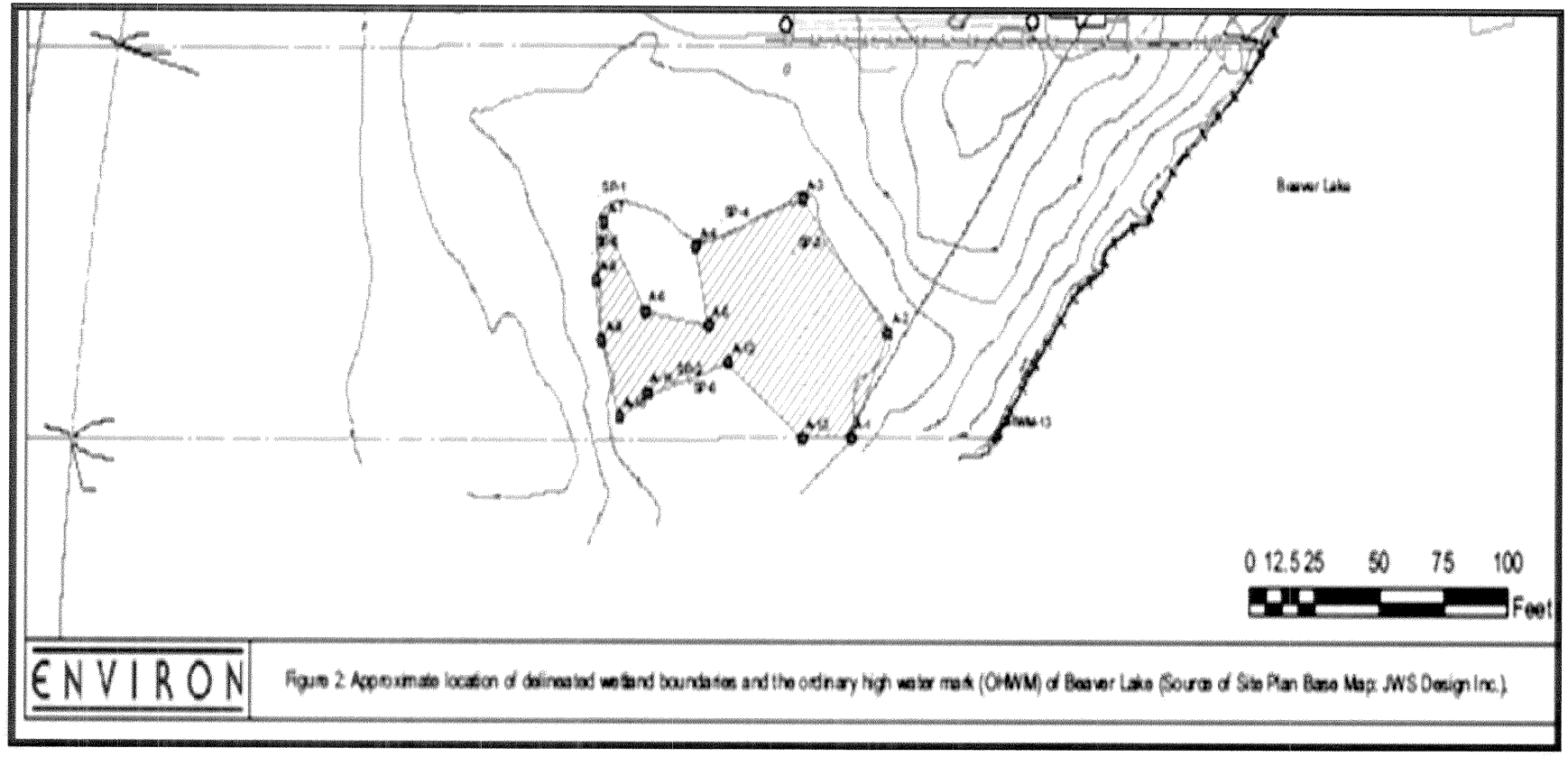
[Planning Commission Success Statement, adopted March 1, 2012]

- Is it fair that after nearly a year of work, City Staff would propose a **2,500 sf exemption?**
- Were the several consultations by City Staff with DOE regarding our proposal sufficiently transparent?
  - We have no way to know whether the interests of Sammamish, including our own, have been fairly presented or advanced.
  - Staff declined requests by members of both Planning Commission and City Council to participate in Staff's meetings with DOE.

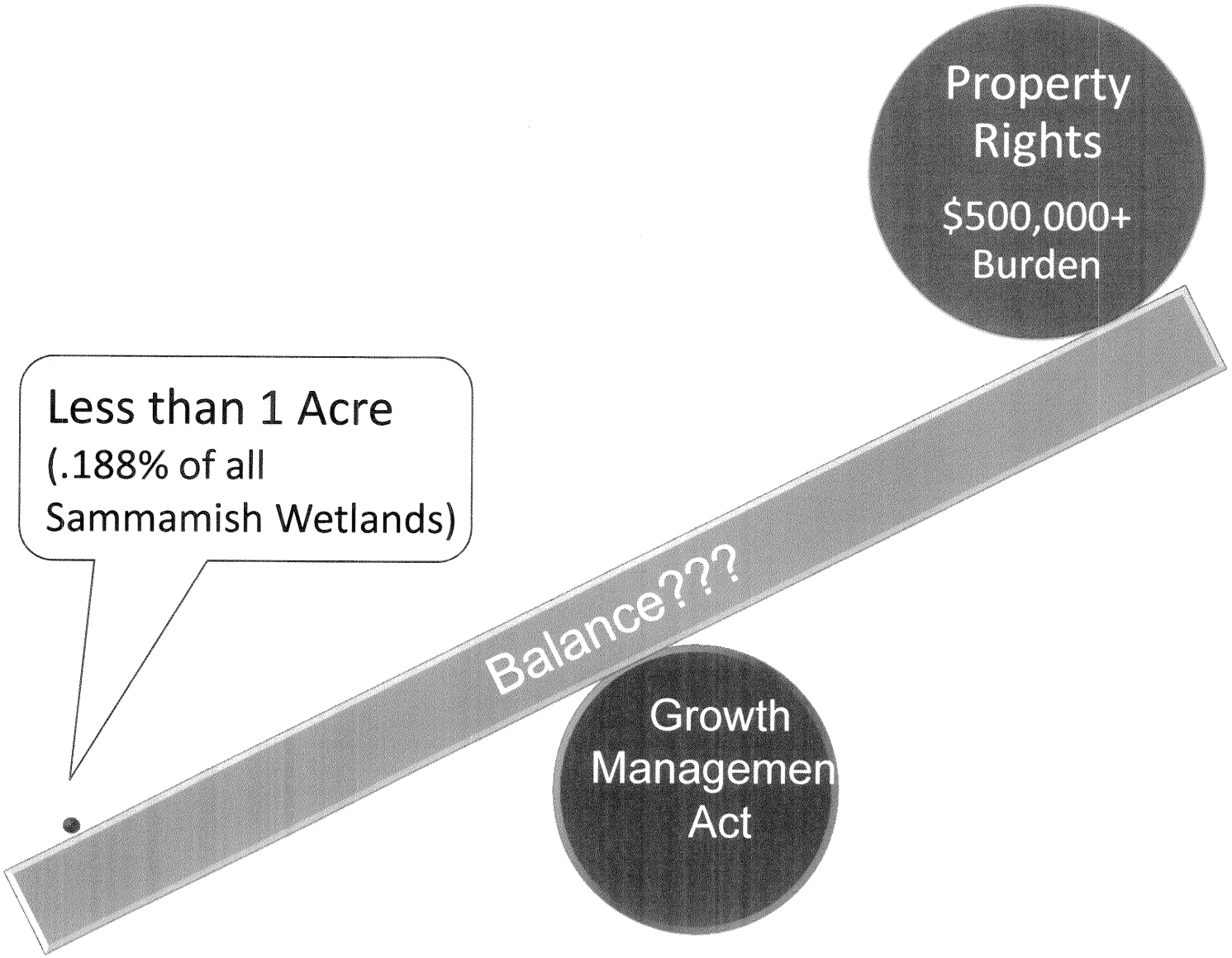
**As Citizen Stakeholders, we have participated actively and in good faith throughout the update of Sammamish ECA Code to push for additionalflexibility and balance. We have thoughtfully identified and pursued what we believed to be the least controversial revision, with the most narrow focus and impact. We have tried to be transparent and fair with our request for help. We respectfully request that City Staff support rather than oppose our request for added flexibility through this process.**

# May 2009 Environ Report-Gee Property:

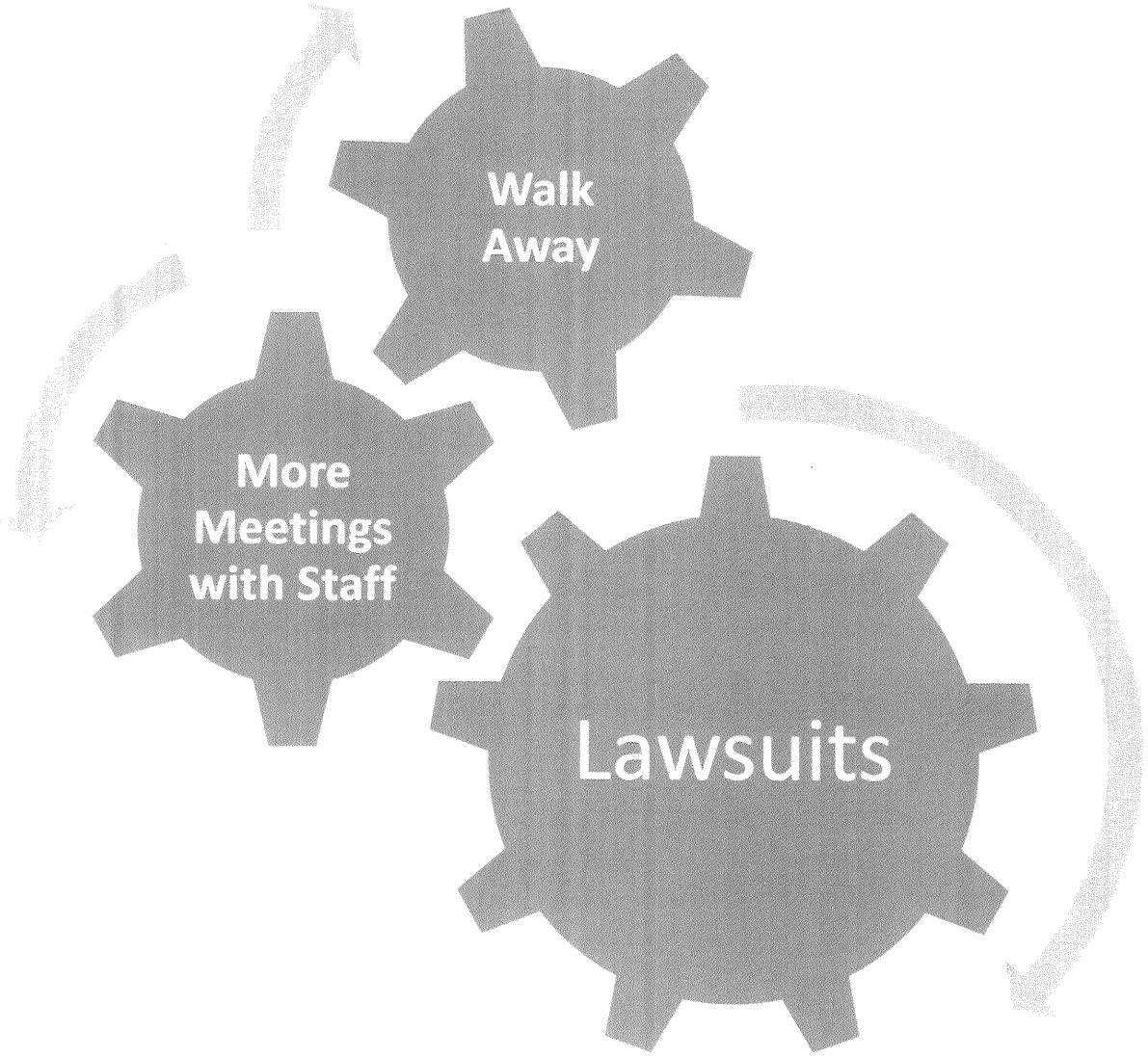
- "isolated, closed depressional wetland"
- **3800 square feet (< 0.1 acre)**



# Problem: Disproportionate Impact of Inflexible Regulatory Process



# Possible Solutions:



# Meetings with City Staff—
# No Solution to the Disproportionate Impact

From: David Gee [mailto:dgee@gsblaw.com] Sent: Tuesday, June 16, 2009 3:43 PM To: KamuronGurol; meggee@comcast.net; jwsdesign@comcast.net Cc: David Gee; bcarson@GordonDerr.com Subject: RE: Gee, Beaver Lake site issues resolution meeting [June 16th at 9 am]

Kamuron....

**Yes, we are frustrated--we continue to experience little if any flexibility on the part of your group. We have tried to work within the system but really end up at odds with a system that simply shrugs at our concern about devaluing our property by hundreds of thousands of dollars. Megan and Jon explained to staff that, as constituted, over 2/3 of the property becomes unusable with the greatest burden on the most valuable lakefront portion. We were told repeatedly that Sammamish has no ability to allow us to mitigate the wetland area by locating it elsewhere on the property, even if that would yield greater protection (less potential for disruption) for the wetland area. I believe that contradicts what Brent Carson has told us. Can you please send us the Code citation that disallows your exercising discretion in this regard in favor of the landowner? I am very sorry you couldn't help us.**

# Meetings with City Staff—
# Current Code allows No Solution for the Disproportionate Impact

**From:**KamuronGurol [mailto:kgurol@ci.sammamish.wa.us] **Sent:** Thursday, June 18, 2009 2:09 PM **To:** David Gee; meggee@comcast.net; jwsdesign@comcast.net Cc: bcarson@GordonDerr.com **Subject:** RE: Gee, Beaver Lake site issues resolution meeting [June 16th at 9 am]

Hi David, thanks for your email and here's my response to your question. Again, I regret that I was unable to attend the meeting in person.

The "Avoiding impacts to critical areas" (aka mitigation sequencing) section in our code (SMC 21A.50.135, printed below) is the key section. It is a commonly used approach to guide applicants in planning a development proposal on a parcel with environmental constraints. I'm sure that Brent is familiar with this approach. In sum, it says that if you can avoid an impact, you need to do so. If you can't fully avoid, you would minimize that impact, then mitigate for it, and so on, in descending order of preference. Given the size and configuration of your parcels, there are unconstrained areas large enough for a house and drainfield/reserve on each without impacting the wetlands, so such impacts can be avoided.

**I can assure you that our staff gets no joy over the fact that the lot is and has been constrained by wetlands and buffers. We've tried hard to identify and relay the range of available flexibilities in city code.**

For example, our staff have confirmed that the wetland located along the shoreline would not require an additional wetland buffer beyond the 50-foot lake setback that is required from the lake's ordinary high water mark (OHWM). I understand that this modification has resulted in a significant increase in the allowable shoreline uses on both of the parcels. I also understand that staff has relayed information regarding the possible applicability of the "partial exemption" code section (SMC 21A.50.060) that could provide some needed flexibility for construction of the home and driveway on the northern parcel, within the footprint of the existing home and associated impervious surfaces. On the southern parcel, there appears to be sufficient room outside the wetland, buffer and septic drain fields for a large building footprint. Again, I wish less of your site was unencumbered or that the constraints were located elsewhere, but this is also not the case.

I hope this helps. I'd be happy to speak with you, Megan, Brent or Jon if you need more information.

Kamuron Gurol

# One More Possible Solution: Fix the Code

# Known Topics
# Environmentally Critical Areas update
# November 2011

The following is a list of known topics identified for the update of the Sammamish Environmentally Critical Areas (ECA) code. The list is based on direction from the City Council and Planning Commission, permit applicant feedback, **resident and stakeholder comments**, and staff experience working with the code since 2006. These are shown as topic areas without a specific direction as to the nature of the change. Other topic areas may arise as the update process proceeds. The topic areas include:

- Restrictions on development in:
  - Erosion Hazard Near Sensitive Water Bodies (EHNSWB) overlay area
  - Wetland Management Area overlay area
  - Landslide Hazard area
- **Mitigation requirements and options for development on sites with wetlands and streams with low functions and values**
- **Review of existing and potential areas of flexibility and options for applicants**
- Standards for human-altered or created features (e.g. ditches, altered and urbanized streams, constructed ponds, ponds historically created in wetlands)
- Standards for new trails and other public development in stream or wetland buffers
- Terms and definitions in state statute (RCW) and regulations (WAC) and local code, and clarification of state law requirements (bookends)
- 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
- Clarification and housekeeping changes – non-substantive procedural and technical language

## ECA Review Process Possibilities to Help Resolve Our Problem

- ❑ OPTION 1: Buffer Reductions
- ❑ OPTION 2: ECA Ombudsman
- ❑ OPTION 3: Stormwater Assessment
- ❑ OPTION 4: 5,000 sf Exemption (size)
- ✓ **OPTION 5: 4,000 sf Exemption for Small Isolated Wetlands of Low Function and Value**

**We have thoughtfully identified and pursued during the ECA update the proposed revision that we believe to be the least controversial, with the most narrow focus and impact—to add flexibility to enable Sammamish to address disproportionate impacts that burden our property. We ask you to advance the 4,000 sf exemption for small isolated wetlands of low function and value.**

# Thank You

David and Megan Gee
22201 NE 28th Place
Sammamish, WA 98074

# Appendices

# Appendix A—Additional Peer Jurisdictions (pages 28-32)

# Anacortes Municipal Code (2008)

**17.70.520 - Isolated wetland and small wetland exemptions.**

The following isolated wetlands shall be exempted from this chapter where it has been shown by applicants 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 the Washington State Department of Fish and Wildlife. *****

B.The requirement to avoid impacts may be dropped for Category III and IV wetlands between one thousand and four thousand square feet that meet all of the following criteria:

1.Wetland is not associated with a riparian corridor;

2.Wetland is not part of a wetland mosaic;

3.Wetland does not score twenty 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 the Washington State Department of Fish and Wildlife.

Impacts allowed under this provision to these wetlands will be fully mitigated as required in the mitigation section (Section 17.70.350).

(Ord. 2794, § 1(Att. A), 12-15-2008)

# Bellingham Municipal Code (2010)

**16.55.270 - WETLANDS, APPLICABILITY**

*****

**B.** This chapter shall not apply to:

*****

**2.** Category III and IV wetland between 1,000 square feet and 4,000 square feet may be exempt if they meet all of the following criteria:

**a.** Wetland is not hydrologically connected to a Type I through Type 5 stream; and

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

**c.** Wetland is not part of a mosaic of wetlands.

**d.** Wetland does not score 20 points or more for habitat or 24 points or more for water quality in the wetland rate per Section 16.55.270.

[Ord. 2010-08-050; Ord. 2005-11-092]

# Olympia Municipal Code (2006)

**18.32.515 Wetlands and Small Lakes - Small Wetlands**

B. Wetlands and "small lakes" between one thousand (1,000) and four thousand (4,000) square feet shall be exempt from the requirements of OMC 18.32.135.A, provided that the wetland or small lake:

1. Is rated as a Category III or IV wetland,
2. Is not associated with a riparian corridor,
3. Is not part of a wetland mosaic,
4. Does not score 20 points or greater for habitat in the Washington State Wetland Rating System for Western Washington (2004),
5. Does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife, and
6. A wetland mitigation report is provided as required by OMC 18.32.590.

(Ord. 6426 §27, 2006; Ord. 6356 §5, 2005).

# Skagit County

**14.24.230 Wetland protection standards.**

(6) Category III and IV wetlands less than 4,000 square feet that have been identified through a site assessment may be exempted or partially exempted from the provisions of this Chapter and may be altered by filling or dredging as outlined below.

(a) Category III and IV wetlands less than 1,000 square feet are exempt from County regulation where:

(i) The wetland is isolated; and

(ii) The wetland is not associated with a riparian corridor; and

(iii) The wetland is not part of a wetland mosaic, as described by the Department of Ecology in publication No. 04-06-025; and

(iv) The wetland does not contain Department of Fish and Wildlife-designated priority species or habitat identified as essential for local populations of priority species.

(b) Category III and IV wetlands between 1,000 and 4,000 square feet may be exempted from the mitigation sequencing requirement to first avoid impacts where:

(i) The wetland meets the criteria listed in Subsection (6)(a) of this Section; and

(ii) The project impacts are fully mitigated. (Ord. O20080014 (part))

# Appendix B (pages 33-42)

**Excerpts of pertinent ECA Process Public Record showing that 2,500 sf exemption is not responsive to any known stakeholder issues, and was not among the Major Items advanced by Planning Commission.**

# Small isolated wetlands < 5,000 sfin Sammamish?

From: "Susan Cezar" <scezar@ci.sammamish.wa.us>
**Date: Thu, Jan 26, 2012 10:43 am**
Subject: isolated wetlands
To: "meggee@comcast.net" meggee@comcast.net

Hi Megan, thank you for your inquiry regarding hydrologically isolated wetlands under **5,000 square feet.** The City does not have an inventory of all wetlands, or of isolated wetlands under **5,000 square feet.** As you know, we did do some mapping work in a few areas of the city as time/resources allowed. There are a number of other resources that the city and the public can use to gain some information, such as the King County wetland inventory, aerial photos, and the mapped areas completed by the city. However, there isn't really a substitute for a professional evaluation on a site-specific basis.

A few projects that the staff recall contained an isolated wetland less than **5,000 square feet**are noted below:

1. Ivy 12 Plat, PLN2009-00004
2. Wrobel & Beaver Crest Plats, PLN2005-00082 and PLN2005-00083
3. Gramercy Park, PLN2005-00075 (not positive on this one)

I hope this information is helpful to you.
Susan

# Small isolated wetlands < 5,000 sfin Sammamish?

-----Original Message-----
From: David Gee [mailto:dgee@gsblaw.com]
Sent: Thursday, January 26, 2012 2:24 PM
To: KamuronGurol; Susan Cezar; meggee@comcast.net
Cc: David Gee
Subject: RE: isolated wetlands

Kamuron—-Yes. In connection with the pending ECA Review we are interested to help inform the Planning Commission and the City Council about the actual and likely (future) impacts of the current ECA ordinances and of potential changes to the ECA ordinances, including such things as the definition and regulation of hydrologically isolated wetlands

**I mentioned to you at one meeting that other jurisdictions in our region have used different definitions of isolated wetlands (including size thresholds), and that may be a simple way to solve our concerns at the Beaver Lake property.**
**It's too bad that the City has no specific information to help measure the likelihood and extent of any impact on future development/planning that might result from a change in the ECA ordinances to increase the current 1000 foot threshold for small isolated wetlands.**

Following up on Susan's list of other resources, how can we access the City's map--I know I have seen it previously--but is there a way to get a copy? I assume that the King County inventory is captured in the City's map (is that correct?). It would also be helpful to know the size of the 3 isolated wetlands that the staff recalls--can you provide us that information? We would also like to get details about how these other 3 isolated wetlands sites were addressed if that is available.

Thanks for any help you can provide on this.

Regards,

David

*****

-----Original Message-----
From: KamuronGurol [mailto:kgurol@ci.sammamish.wa.us]mailto:[mailto:kgurol@ci.sammamish.wa.us]
Sent: Thursday, January 26, 2012 10:48 AM
To: Susan Cezar; meggee@comcast.net<mailto:meggee@comcast.net>
Cc: David Gee
Subject: Re: isolated wetlands

Thanks Susan.

**Megan, can you enlighten me a bit as to the issue or concern behind the data request?** Thx much, -Kamuron

# Request to Planning Commission from David + Megan Gee [March 28, 2012] [5000 sf]

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 f

**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?**

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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

# D.O.E. Guidance in April 2012: [4000 sf]

*Donna J. Bunten*
*CAO Review Coordinator*
*Dept. of Ecology*

**We have included Ecology's language below if you wish to consider using it.**

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.

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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.

**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**

# 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 Public Comment by David Gee.

Dear Kamuron—

* * * * *

Second, with regard to the Code amendment that we proposed to the Planning Commission on April 19, I was interested to review the April 18, 2012 email from Kathy Curry to Evan Maxim regarding "Suggested 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.**

# Staff Recommendation Memo #3 (Revised June 14, 2012): [4000 sf]

- 3-19. **Increase the wetland exemption threshold from 1,000 to 4,000 square feet**(public comment #33, 67-70, 84, 85, 88, 101, & 105). The city has received a number of comments related to an increase in the wetland - limited exemption threshold. The code currently allows for the filling / alteration of hydrologically isolated wetlands of less than 1,000 square feet. The BAS report prepared by the city's consultant has indicated that the peer jurisdictions evaluated as part of their review, provide similar exemptions that range from 250 to 2,500 square feet for isolated wetlands. **The Department of Ecology has noted that the city may wish to consider provisions for isolated wetlands between 1,000 and 4,000 square feet.**
- **Staff comment:** The staff recommends *advancing* **this recommendation** to July.
- **PC Direction**: ***Advance this proposed amendment.*** *Evaluate effect of this amendment when combined with item 3-7. Provide additional rationale as to "why" this amendment should be advanced. Evaluate this option in combination with authorization for wetland banking and wetland fee-in-lieu approaches.*

# July 6 Staff Memo:
# ECA Process Major and Minor Items [4000 sf]

## Wetlands

- 3-3. Provide for a fee-in-lieu mitigation program for wetland impacts.
- 3-4. Revise buffer width requirements to include evaluations of proposed land use intensity and existing buffer function and condition.
- 3-7. Provide additional guidance (both allowances and limitations) concerning small isolated wetlands.
- 3-17. Property owners should have the option to locate wetland buffers on a site (public comment #5 & 73).
- 3-18. Distinguish between developed and un-developed land when establishing wetland buffers (public comment #5 & 73).
- **3-19. Increase the wetland exemption threshold from 1,000 to 4,000 square feet** (public comment #33, 67-70, 84, 85, 88, 101, & 105).
- 3-21. Increase the allowance for wetlands to be used for stormwater management purposes.

# AMEC review of DOE v. 1.0 + 2.0

## (Supplemental Report, posted June 15, 2012) [4000 sf]

"[R]ecognizing the need for some administrative flexibility, the Washington State Department of Ecology (2012) has provided guidance that could support exempting isolated wetlands **up to 4,000 square feet** from requirements to avoid impacts, with mitigation still required. By "isolated," the wetlands would not be associated with riparian areas or buffers for either streams or lakes and would not be part of a wetland mosaic, where they would function as a part of a larger collection of nearby wetlands. Ecology also recommends that exempt wetlands not provide habitat identified by the Washington Department of Fish and Wildlife as essential for local populations of priority species. **For wetlands between 1,000 and 4,000 square feet,** Ecology recommends that the exemption apply only to Category III and IV wetlands that do not score 20 points or greater for habitat under the Western Washington Rating System. Ecology also notes that, where water quality is a high priority (as is the case for all areas draining to Lake Sammamish), wetlands that provide a high level of water quality protection should generally also not be exempted from normal regulatory protections."

# DOE version 3.0 – July 23, 2012 [EXH 181] [4000 sf]

"Ecology's preference would be to use the language in the Small Cities Guidance document."

* * * * *

"However, we recognize that many jurisdictions desire to place size thresholds on wetlands that are to be regulated, in order to focus staff time and attention on the most important natural resources. In order to assist jurisdictions in addressing this administrative need, while minimizing the impact on wetland functions, **Ecology developed the 0-4,000 sf exemption language."**