Debbie Beadle

From: Reid Brockway <waterat@comcast.net>
Sent: Wednesday, October 31, 2012 10:59 AM
To: ECA
Subject: Testimony to Planning Commission
Attachments: Critique of agency response - streams.docx

Please log the attached critique of DOE and WDFW comments on proposed stream amendments and distribute to the Commissioners.

Thanks,
Reid Brockway

EXHIBIT NO. 233

Testimony to Sammamish Planning Commission
From: Reid Brockway
Date: October 31, 2012
Subject: State agency review of ECA amendments related to streams

The following is a critique of portions of two letters from state agencies to Evan Maxim containing comments on proposed ECA amendments 2-10, 2-11, and 2-12, which pertain to streams. One letter is from Patrick McGraner, Wetlands Specialist in the DOE, to Evan Maxim, dated October 3, 2012. It is entitled "Ecology Review of Proposed Amendments and Evaluation Forms Amendments to Environmentally Critical Areas Ordinance" and is Exhibit 220 in the Public Comments collection. The other letter is from Theresa Nation, Land Use and Environmental Planner for the Washington Department of Fish and Wildlife (WDFW). It is entitled "WDFW Comments on the Sammamish EDAO Update" and is Exhibit 228.

Synopsis

Both the DOE and WDFW comments oppose the proposed changes. Their primary argument is that the proposals are not consistent with agency policy. Their opposition should be discounted by the Planning Commission for the following principal reasons:

- They fail to recognize the distinction between forest and other undeveloped land and built-out urban neighborhoods
- They do not acknowledge or offer any relief for the problems these amendments seek to correct
- They reflect an agency agenda of forced habitat restoration using local environmental code as a lever
- Their main conclusion – that site-specific assessment is not feasible – is at odds with the very reference they cite

Introduction

First, I think it is significant to note that the Sammamish resident writing this critique is neither an extreme environmentalist nor someone staunchly opposed to government regulation. I seek to achieve balance in our code between human and environmental concerns. While my effort of late has been to try to swing the pendulum back in the direction of property rights, I wish to point out that I was also the citizen most instrumental in bringing about the daylighting of Zaccuse Creek, opening it up for spawning Kokanee. My core objective is fairness.

When it comes to the code associated with streams, our current code is ***not*** fair. It inappropriately applies constraints derived from forest practices to developed neighborhoods[1], resulting in burdening some of our citizens with restrictions that achieve no environmental benefit. I will not elaborate here, as the specifics have been spelled out in my prior testimony.

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[1] "Stream Typing" has its basis in forest practices. The Department of Commerce GMA Update found in the Resource Guide on the city's ECA web page, states: "The modeling system used to assess stream types was designed to address higher elevation forested areas, and not low lying and urbanizing areas".

Further, although I am not an environmental scientist, as an engineer I have significant background in science and the capacity to understand the science associated with streams and riparian environments. I have invested considerable time in assessing what is available, and determining what is absent, by way of validated research on streams and associated habitat, particularly in urban settings. This critique is based on familiarity with the BAS in this area. It is also based on familiarity with Forest Practices Board WAC 222-16-30 which defines "water types" and is the basis for the assumptions the DOE and WDFW reviewers make about the categories of streams and associated buffer sizes.

Proposed Amendment 2-10 and 2-11

2-10: Site Specific Stream Buffer Location (buffer delineation)
2-11: Variable Regulations for Stream Areas (distinguishing established neighborhoods from development of raw land)

Ms. Nation addresses these two amendments together. While her description of what riparian habitat is, and her assertion that it needs to be protected from the negative impacts of development, are both reasonable, she fails to consider a number of factors that underlie the two amendments in question. The major problems with her comments are as follows.

1. The comments focus on development and ignore the distinctions code should make for watercourses in established urban neighborhoods.

   Ms. Nation accepts as a given that the riparian area sizes presumed by the state's water typing system are realities not subject to question and that should apply everywhere. In her first paragraph she states:

   > WDFW has reviewed the best available science (BAS) and developed buffer recommendations for retaining full stream and riparian functions. (See Knutson and Naef, 1997. Reference below.) The recommendations are based on the ecological functions performed by a given stream type.

   There is no recognition that:

   > a) these buffers may no longer be relevant due to man-made features that limit the range of influence on a watercourse, or
   >
   > b) the buffers may be too large in the first place for a given watercourse, considering factors like topography and the actual environmental value of the watercourse[2].

   Her premise is, in essence, one-size-fits-all buffers are universal.

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[2] Salmon-bearing Ebright Creek and a channel that occasionally carries runoff have vastly different ecological values, but both can fall within the crude definition of a Type F stream and thus impose a 330 ft band of restricted land use.

Further, she contends that Sammamish's buffers, wide as they are, are insufficient. Referring to Sammamish regulations she states, "...one must consider that the established stream buffers already represent a considerably reduced buffer than what would be needed for full protection of functions". But she provides no explicit justification for this assertion.

Nor does the document she cites, Knutson and Naef, 1997, distinguish watercourses in urban settings from streams in undeveloped settings, nor provide science specific to urban areas. This is a WDFW policy document that provides recommendations; it is not a scientific study. (Its title is "Management Recommendations for Washington's Priority Habitats: RIPARIAN".) Starting on page 16, it addresses three regions in Washington: forested areas in western Washington, forested areas in eastern Washington, and the non-forested shrub-steppe region of eastern Washington. Urban environments are absent from this set.

Knutson and Naef ***does*** have a section on urbanization (starting on page 67). However that section talks about all the ill-effects of urbanization as a process – changes in basin hydrology, loss of riparian habitat, habitat fragmentation, etc. It does ***not*** address how to manage already urbanized areas. (Interestingly, it does mention that free-ranging domestic cats takes a toll on riparian wildlife. WDFW's recommendation in this regard is for "keeping cats indoors and dogs in penned yards as much as possible." (P.113) Should Sammamish add this to its code?!)

Finally, Knutson and Naef acknowledges that the science behind fixed-width buffers is weak. On page 81 it states, "Because there are few studies that examine the specific effects of incremental variation in management recommendations (e.g., reduction or expansion of recommended riparian habitat area widths), the consequences are general and qualitative in nature." This is further evidenced by the table on page 84 showing the buffer widths recommended by various entities – DOE, Washington State Forest Practices Board, etc. That table reflects wide variability among these agencies, which presumably all base their recommendations on BAS.

2. The comments do not speak to, or even acknowledge, the problems these amendments seek to solve.

As discussed in prior testimony, our code, based as it is on arbitrary buffer widths based on stream Type that do not take into account actual range of influence, can burden citizens living within these buffers with restrictions that provide no or negligible environmental benefit. These residents (if they do not ignore the code) are required to submit studies, apply for permits, and incur costs to do things that are the unconstrained rights of citizens not living within these buffers. And they face some outright prohibitions as well, such as the inability to expand the footprint of a structure. The comments by Ms. Nature do not evidence any awareness of this aspect of ECA code, nor sympathy for the objective of achieving a balance between environmental and human concerns.

If there were an appreciation for the inequities these proposed amendments seek to address, perhaps Ms. Nation would be less dogmatic about her reliance on stream type definitions and

(incomplete) BAS, and would consider favorably the increased flexibility provided by buffer delineation.

3. The comments exhibit an agenda of habitat restoration, using local environmental code as a lever for imposing such policy.

   This is evidenced by statements found in the second paragraph. There Ms. Nation states, "Buffers determined by taking a shapshot of current conditions and excluding everything but "viable habitat" have a ***host of problems***." [Emphasis added] Then she proceeds to identify only three problems:

   > "making mandatory mitigation impossible"
   > "discouraging voluntary restoration"
   > "failure to take into consideration future conditions"

   Each of these implies an underlying objective of restoring habitat to a pre-development state, i.e., of not accepting "current conditions" but of converting areas within the large, arbitrary, forest-based declarative buffers back to natural vegetation. The mission is not protecting the viable habitat that remains in developed neighborhoods, it is to use the restrictions associated with the large buffers as bargaining chips to force mandatory mitigation and habitat restoration.

   But it appears that reversing development is not just Ms. Nation's agenda but also that of her agency. This is evidenced by the cited WDFW document. For example, in the section, Management Recommendations, Knutson and Naef states, "First and most important is passive restoration, or the cessation of human activities that are causing degradation or preventing recovery," and, "If passive restoration is unsuccessful or impractical, then more active approaches should be attempted." (P.113) It is not surprising, perhaps, that an agency whose charter is environmental protection favors the environment over the human impacts of its policies, but the city of Sammamish is not such an agency.

   It is notable that this same agenda is evidenced in Mr. McGraner's comments on ***wetland*** buffers. In his section addressing proposed amendments 3-17 and 3-18 he states:

   > 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.*** [Emphasis added.] The scientific literature does not support establishing buffer widths based on "the actual width of viable habitat" etc.

   (Note that neither does the scientific literature ***oppose*** basing buffers on actual width of viable habitat; it largely ignores ECAs in developed urban settings.)

   It is apparent that the DOE and WDFW wish to return land to a pre-development state. But people are here to stay. Sammamish is largely a residential community and is within the urban growth boundary. The notion that environmental policy is going to reverse that – that

people are going to convert lawns and gardens and landscaping back into native habitat – is simply unrealistic. Policies designed to achieve that through local code are misguided and place an unnecessary burden individual residents.

4. The main conclusion of the comments is in conflict with the very reference they cite.

   Ms. Nation and Knutson and Naef are at odds when it comes to site-specific assessment (buffer delineation). In her last paragraph Ms. Nation states, "...we find it unlikely that any site-specific evaluation would result in a determination that smaller buffers would provide acceptable protection of functions." In contrast, Knutson and Naef repeatedly makes a case ***for*** site specific assessment. The attachment to this critique provides several excerpts from Knutson and Naef reflecting this.

Proposed Amendment 2-12

2-12: Flow Part of Stream Definition (provide finer scaling of restrictions/protections based on actual environmental value of watercourses vs. the relatively coarse "Stream Types")

Mr. McGraner's comments are very brief, amounting to one short paragraph. He mainly defers to WDFW for this amendment (and WDFW does not address it). He does, however, advocate standardization of stream typing state-wide per WAC 222-16-030. But it is precisely this crude typing scheme, based as it is on forest practices, and ignoring human concerns, that is the problem. In combination with our current code, it dictates that even a small, intermittent drainage, if an errant salmonid could conceivably reach it, shall impose on a neighborhood a 330 foot swath of restricted land use. And even the lowest category of stream, with no fish and dry most of the year, imposes a 130 foot band of restriction.

The objective of this amendment is achieving environmental protection proportionate to the true value of a watercourse and thereby balancing environmental and human concerns. There is no indication that Mr. McGraner even understands this let alone has any valid reasons for opposing it.

Final observation

It is significant to note that these agency reviews were based Evaluation Forms prepared by the city. As I have indicated in prior testimony, and as reflected in mark-ups of these Evaluation Forms that I have submitted, I believe the city's versions mischaracterize these amendments to varying degrees, particularly in understating the human impacts. I believe this may have contributed to the failure of the agency personnel to understand and give serious consideration to the human side of the equation and the problems these amendments seek to solve.

Attachment 1: Excerpts from Knutson, Naef on promoting site-specific assessment

The following are quotes extracted from the subject WDFW recommendations document.

P.1 –

> Because PHS[3] management recommendations address fish and wildlife resources statewide, they are generalized. Management recommendations are not intended as site-specific prescriptions but as guidelines for planning. Because natural systems are inherently complex and because human activities have added to that complexity, management recommendations may have to be modified for on-the-ground implementation. Modifications to management recommendations should strive to retain or restore characteristics needed by fish and wildlife. Consultation with fish and wildlife professionals is recommended when modifications are being considered.

P.5 –

> Riparian habitat encompasses the area beginning at the ordinary high water line and extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.

and

> The riparian habitat area encompasses the entire extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the stream system.

(The above two citations are provided as evidence that WDFW recognizes that riparian habitat is defined by factors that directly influence a stream, not by arbitrary dimensions.)

P.78 –

Section on Management Recommendations, subsection Goals, contains the disclaimer:

> Management recommendations from WDFW are not intended to address the wide diversity of habitats, existing land uses, and landowner/manager objectives. They have been written to meet the general needs of fish and wildlife. These management recommendations are provided to guide rather than dictate site-specific activities. For these reasons and because they are generalized to cover the entire state, fine-tuning may be necessary to adapt these recommendations to local conditions and landowner/manager objectives. Specific recommendations are provided, not necessarily as site prescriptions, but to offer clear, implementable guidelines that would result in the protection of fish and wildlife in most cases.

and also:

> Landowners and managers may have to make modifications or compromises to these recommendations in order to consider site-specific factors. Site-specific study and examination of alternative solutions that would meet the needs of fish and wildlife may be necessary if landowners and managers desire to implement practices other than those recommended here. These management recommendations have not provided guidance to address all alternative solutions because the variables are too numerous and complex and

[3] Priority Habitats and Species – a WDFW list.

should be evaluated on a site-by-site basis. Landowners and managers should consult with professional fish and wildlife biologists when making substantial modifications to these recommendations. Biologists can help to develop more specific and innovative means of meeting the needs of fish and wildlife.

P.83 –

Standard versus Variable Width Riparian Habitat Areas. While variable riparian habitat widths may allow landowners greater flexibility, sufficient information does not currently exist to provide variable width recommendations that adequately accommodate the extreme variability of riparian widths, land uses, and fish and wildlife communities across the Washington landscape. Therefore, any application of variable riparian widths must first include additional site-specific and watershed-level studies.