

Debbie Beadle

From: David Gee <dgee@gsblaw.com>
Sent: Monday, December 03, 2012 8:19 PM
To: ECA
Cc: Debbie Beadle; David Gee; meggee@comcast.net; brc@vnf.com
Subject: Proposed Revisions to DCD DRAFT Section 21A.50.320 Wetlands - Limited exemption Development Flexibilities.
Attachments: SEA_DOCS-#1082999-v1-12_3_12 Responsive Revision -.doc
Follow Up Flag: Follow up
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EXHIBIT NO. 263

CLEAN DRAFT - RESPONSIVE TO DCD DRAFT REGULATIONS POSTED 11-30-12

[Submitted on 12-3-12 by David and Megan Gee, 22201 NE 28th Place, Sammamish]

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21A.50.320 Wetlands – Limited exemption Development Flexibilities.

(1) Isolated wetlands, as designated by a qualified professional in a written and approved critical areas study meeting the requirements of SMC 21A.50.130 and incorporating the adopted Washington State Wetland Rating System for Western Washington, that do not exceed a total area of 1,000 square feet may be exempted from the avoidance sequencing provisions of SMC 21A.50.135(1)(a) and the provisions of SMC 21A.50.290 and may be altered by filling or dredging if the cumulative impacts do not unduly counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan.

(2) Isolated category III and IV wetlands, as designated by a qualified professional in a written and approved critical areas study meeting the requirements of SMC 21A.50.130 and incorporating the adopted Washington State Wetland Rating System for Western Washington, that occupy a total area of more than 1,000 square feet and up to 4,000 square feet, may be exempted from the avoidance sequencing provisions of SMC 21A.50.135(1)(a) and the provisions of SMC 21A.50.290 and may be altered, provided:

- (a) The total area of wetland alterations shall be limited to 2,500 square feet; and
- (b) The critical areas study concludes that the wetland meets all of the following criteria as identified within the Wetland Rating Form--Western Washington published by the State of Washington Department of Ecology:
 - (i) The wetland is not adjacent to a riparian area; and
 - (ii) The wetland is not part of a wetland mosaic; and
 - (iii) The wetland does not score 15 points or greater for habitat; and
 - (iv) The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife; and
- (c) Mitigation to replace lost wetland functions and values, consistent with SMC 21A.50.310 shall be prepared for review and approval by the City.

(3) Category III and IV wetlands with a total area of 4,000 square feet or less may have the buffer reduced to 15 feet, provided:

- (a) The wetland does not score 15 points or greater for habitat in the adopted Western Washington Rating System; and,
- (b) The wetland is not part of a wetland mosaic; and,
- (c) The buffer functions associated with the area of the reduced buffer width are mitigated through the enhancement of the wetland, the remaining on-site wetland buffer area, and/or other adjoining high value habitat areas as needed to replace lost buffer functions and values; and
- (d) No subsequent buffer reduction or averaging is authorized.

Dear Planning Commission—

As you are aware, Megan and I have attempted throughout this year's ECA Update process to present and promote a reasonable update to the SMC to help address arbitrary and disproportionate effects of the CAO implemented by Sammamish in 2006. We have not tried to overreach, and have sought to move the process toward a simple and narrow "fix" that would afford both applicants and DCD staff greater flexibility and clarity for developing property that hosts a small wetland with documented "low function and value." We are mindful too of the overlapping restrictions of the SMP, and recognize the efforts of Kamuron Guroi and Evan Maxim to obtain input from the Department of Ecology in that regard.

This CLEAN draft of Section 21A.50.320 (which incorporates some further clarifying edits—highlighted in redline on Page 2) reflects a concerted and appreciated effort by Kamuron Guroi and Evan Maxim to respond to many of the concerns we have raised regarding the inflexibility of the current Code in connection with small wetlands with low scores for function and value. We appreciate their courtesy in allowing us to attend their latest meeting with DOE staff. Unfortunately, as evidenced by the inconsistency of many of its comments on small wetlands from the outset of this Update process, DOE is less troubled than we are by the inconsistency between (a) its "pushback" against our more direct proposals to simply increase both the size of the 1000 sf exemption in the existing SMC (to 4000 sf) and the extent of mitigation, and (b) its approval of substantially similar approaches in numerous other nearby jurisdictions. (As shown in the chart on page 3, DOE has given approval to similar ordinances in the context of at least 3 of the handful of SMPs it has approved to date).

However, to the extent that this proposed draft will add some flexibility to the regulatory impasse we have struggled with for the past several years, and there is not another way to gain DOE's support for a simpler and more balanced approach, we are supportive (small "p") of the proposed code change as shown here.

Thank you for your consideration and hard work.

Respectfully,
Megan and David Gee

DOE HAS APPROVED 4,000 SF EXEMPTIONS IN AT LEAST 3 SMPS TO DATE (SHOWN IN RED)

[Submitted on 12-3-12 by David and Megan Gee, 22201 NE 28th Place, Sammamish]

Western Washington Jurisdiction	Date Enacted	Size	Applies to Isolated WL Only?	SMP Approved by DOE?
1. Maple Valley	2006	5000 sf (Isolated)	yes	Underway
2. Kent	2006	5000 sf (Class III + IV)	yes	2/10 Must apply Kent CAOs
3. Anacortes	12/08	4000 sf (Class III + IV)	no	9/10 Avoidance required
4. Bellingham	2005	4000 sf (Class III + IV)	no	Awaiting approval
5. Black Diamond	2/09	4000 sf (Class III + IV)	no	Underway
6. Des Moines	2007	4000 sf (Class III + IV)	no	11/10 Apply Des Moines CAOs
7. Everett	2006	4000 sf (Class III + IV))	no	No SMP
8. Olympia	2006	4000 sf (Class III + IV)	no	Underway
9. Renton SMP-- Creates exemption rather than adopt from CAO	11/11	4000 sf (Class III + IV)	Term "isolated" appears in heading, but not text	11/11 SMP Allows alteration of 4000 sf wetlands
10. City of Sultan	2006	4000 sf (Class III + IV)	no	7/08 --Alteration only if unavoidable and necessary
11. Mason County		4000 sf (Class III + IV)	no	Underway

12. Skagit County		4000 sf (Class III + IV)	no	Underway
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