

Debbie Beadle

From: Evan Maxim
Sent: Thursday, December 06, 2012 3:20 PM
To: Debbie Beadle
Subject: FW: Comments to the City of Sammamish on Item 3-19e - Isolated Wetland Exemptions-Wetland Buffer Exemptions

EXHIBIT NO. 271

Importance: High

Follow Up Flag: Follow up
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Public Comment

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From: Burcar, Joe (ECY) [mailto:jobu461@ECY.WA.GOV]
Sent: Thursday, December 06, 2012 3:03 PM
To: Kamuron Gurol; Evan Maxim
Cc: McGraner, Patrick (ECY); Tallent, Geoff (ECY); Stockdale, Erik (ECY); Nation, Theresa K (DFW)
Subject: Comments to the City of Sammamish on Item 3-19e - Isolated Wetland Exemptions-Wetland Buffer Exemptions
Importance: High

Hi Kamuron and Evan,

Thank you for the opportunity to provide comments to the Planning Commission during their deliberation on proposed updates to the City's Critical Areas Ordinance (CAO). In addition to the identified amendment to the City's CAO, it is our understanding that the City intends to also submit a limited amendment to the Shoreline Master Program to allow the changes described in Item 3-19 to be implemented within shoreline jurisdiction.

Final Comments on Item 3-19e

Ecology cannot provide the City with any assurance that the proposal will be approved as a Shoreline Master Program Amendment, as the City has not yet prepared any analysis to identify and evaluate potential Cumulative Impacts associated with the proposal, for which consistency with the No Net Loss requirements under the SMP-Guidelines at WAC 173-26 are unknown at this time. However, if the City decides to proceed with the amendment, in addition to previous comments provided to the City (see below), Ecology would also state the following:

- The exemption should only be considered for "isolated wetlands", without this qualifier the amendment does not appear to be feasible;
- Appropriate mitigation consistent with Best Available Science and applicable standards from the SMP-Guidelines will need to be identified and clearly required for any alteration to isolated wetlands and/or wetland buffers;
- The proposal and supporting analysis will need to clearly demonstrate consistency with applicable goals and substantive requirements of the SMP-Guidelines at WAC 173-26 and the SMA at RCW 90.58.

Previous Comments

Item 3-19 has been modified multiple times through the City's Planning Commission review of this amendment, for which the final version appears to be described as "Item 3-19e". Ecology provided comments throughout the City's development of this amendment, for which the following list of recommendations provided by Ecology Wetland Specialist Patrick McGraner should be considered by the City in addition to these final comments. Previous Ecology comments consist of:

- Email from Patrick McGraner (Ecology) dated May 1, 2012 and including a 4-page attached letter titled "Recommended Regulatory Approach for Small Wetlands", which provides specific recommendations and cautions associated with the City's proposal.
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- Email from Donna Bunten (Ecology) dated July 25, 2012, responding to specific questions raised by the City's Planning Commission.
- Email from Patrick McGraner (Ecology) dated September 6, 2012, with discussion related to "isolated wetlands".
- Email from Patrick McGraner (Ecology) dated November 5th, 2012, providing an attached copy of "Kitsap" Central Puget Sound Growth Management Hearings Board (CPSGMHB) finding that the County's exemption of isolated wetlands is erroneous, as the exemption does not appear to be based on analysis (no cumulative impact analysis), nor did the County integrate adaptive management or a monitoring program to evaluate potential net loss of ecological functions.
- Email from Patrick McGraner (Ecology) dated November 28th, 2012 in response to the City's question related to the definition of "riparian".
- Email from Teresa Nation (WDFW) dated November 29th, 2012 in response to the City's question related to the definition of "riparian".

Discussion:

Shoreline Master Program provisions applicable to limited SMP amendments require local jurisdictions to satisfy both procedural requirements (WAC 173-26-010 through 173-26-160) and substantive requirements from Part III of the SMP-Guidelines (WAC 173-26-171 through 173-26-251). The following criteria from WAC 173-26-201 (1) (c), refer to four scenarios (subsection "i" A – E and require consistency with "ii" through "vi") as justification for Ecology to consider a limited amendment prepared by a local government. Before the City decides to move forward with the proposed amendment, Ecology suggests that the City evaluate consistency with these requirements and factor into their work plan adequate resources to address all of the applicable substantive standards in the SMP-Guidelines, including preparation of analysis to ensure no net loss of shoreline ecological functions.

(c) Limited master program amendments may be approved by the department provided the department concludes:

(i) The amendment is necessary to:

(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;

(B) Include a newly annexed shoreline of the state within the local government jurisdiction;

(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;

(D) Improve consistency with the act's goals and policies and its implementing rules; or

(E) Correct errors or omissions.

(ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;

(iii) The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;

(iv) The amendment is consistent with all applicable policies and standards of the act;

(v) All procedural rule requirements for public notice and consultation have been satisfied; and

(vi) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the limited amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

Related to Patrick McGraner's November 5th email (notifying the City of the Kitsap CPSGMHB decision) and substantive requirements of the SMP-Guidelines, Ecology is concerned that the City may be moving forward with an amendment without supporting analysis or a clear understanding of the significance of potential cumulative impacts which could result from this amendment and may compromise Ecology's ability to consider or approve the amendment. In fact, as provided within the City's "Evaluation Form" for "Item 3-19e", the City acknowledges a; *"increased cumulative impact to wetlands"* and *"Some net loss of wetland functions and values"*, which raise concerns in terms of the need for this amendment and the feasibility for the City to be able to demonstrate consistency with the SMP-Guideline requirements. Therefore, it is suggested that the City proceed with caution and fully consider the feasibility of this amendment to satisfy the substantive and analytical requirements of the SMP-Guidelines.

Further, it appears that the Planning Commission requested from City staff a summary of similar exemptions that may be included in approved SMP's for neighboring jurisdictions. Ecology would again caution the City in placing too much weight on the perception that a precedent has been established by the presence of an individual standard used by one or more jurisdictions in their local SMP's. This caution is based on the fact that Shoreline Master Programs are reviewed and approved based on jurisdiction specific characteristics and analysis considering existing conditions and factoring in future development potential within the individual jurisdiction, for which similar SMP standards may result in very different impacts when applied in the context of different jurisdictions. Therefore, Ecology recommends that the City focus on the feasibility for the amendment as demonstrated through objective analysis. Evaluating the feasibility of proposal will ensure consistency with the substantive requirements of the SMP-Guidelines, as opposed to reliance on general comparison of development standards between two different jurisdictions, for which many relevant factors cannot be fully understood. In other words, Ecology will defer to the supporting analysis as a basis for our decision, not equity claims or perceptions of precedent in comparing different standards from different jurisdictions.

Best regards,

Joe Burcar

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