

**Debbie Beadle**

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**From:** Samuel Rodabough <sam@GSKLegal.pro>  
**Sent:** Thursday, December 06, 2012 4:23 PM  
**To:** Debbie Beadle  
**Cc:** Kamuron Guroi; Evan Maxim; Susan Cezar; Eric LaFrance; James Osgood (jim@Officefinder.onmicrosoft.com); Rick Tomkins  
**Subject:** Osgood Comments - Public Hearing on ECA Updates  
**Attachments:** Commission Ltr.pdf

To whom it may concern,

Please see a letter attached in pdf format for the Public Hearing on the ECA update. The letter is on behalf of my client, Jim Osgood, and concerns the No-Disturbance Area within the Erosion Hazard Near Sensitive Water Bodies Overlay.

Sincerely,

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EXHIBIT NO. 273



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December 6, 2012

*Via Email and Hand Delivery*

Sammamish Planning Commission  
Attn: Kathy Richardson, Chair and Commission Members  
801 228th Avenue SE  
Sammamish, WA 98075

**Re: OSGOOD PROPOSAL  
No-Disturbance Area in Erosion Hazard Near Sensitive Water Bodies  
Overlay**

Dear Chair and Commission Members:

This firm represents Jim Osgood, the owner of a 3.87-acre parcel of real property commonly known as 19661 SE 24th Way, Sammamish or King County Parcel No. 0824069033. The property is located within the No-Disturbance Area within the Erosion Hazard Near Sensitive Water Bodies Overlay. The purpose of this letter is to convey my client's preference for amending the City's regulations with respect allowing subdivision within the No-Disturbance Area.

**Specifically, Mr. Osgood respectfully requests that the Planning Commission adopt the proposed language set forth in the attached Appendix.** In the event that the Commission adopts some form of a pilot program to allow limited subdivision within the No-Disturbance Area (whether the City or Probst proposal, etc.), **this proposed language is intended to be compatible with, and drafted for insertion into, any such adopted pilot program.** Mr. Osgood's proposal is limited to allowing subdivision for those properties that cannot tightline directly to Lake Sammamish. Each of the elements in the proposal, ranging from rainwater harvesting to phosphorus removal, is designed to decrease the volume of any stormwater water discharge and/or to improve water quality of such discharge. We respectfully request that the Planning Commission adopt this proposal as an available alternative within a pilot program.

**A. State Law Authorizes Development In Erosion Hazard Areas Where Risk Is Reduced to Acceptable Levels.**

Under the Growth Management Act (GMA), chapter 36.70A RCW, all counties and cities throughout the state must adopt regulations to designate and protect critical areas. "Critical areas" are defined to include "geologically hazardous areas" (GHA). RCW 36.70A.030(5). In turn, regulations in the Washington Administrative Code (WAC) that implement the GMA, clarify that Erosion Hazard Areas are merely a subset of GHAs. See WAC 365-190-120.

Under the WAC, it is only “[w]hen technology cannot reduce risks to acceptable levels, [that] building in geologically hazardous areas must be avoided.” WAC 365-190-120(2). Stated conversely, when the technology exists to reduce the risks of development to acceptable levels, development should be allowed.

Washington has 39 counties and 281 cities, all of which are under the identical duty under the GMA to designate and protect critical areas, including GHAs. Yet, with the exception of Sammamish, it appears that no other jurisdiction in the entire State has adopted a No-Disturbance Area to protect GHAs. In other words, all other jurisdictions have apparently found a way to effectively manage risk to acceptable levels without imposing an onerous No-Disturbance Area. The Planning Commission should remedy this inequity, by affirmatively seeking those proposals to allow development within the No-Disturbance Area that reduce risk to acceptable levels.

**B. The City’s Own Consultant Concluded that Technology Exists to Reduce Risk to Acceptable Levels.**

The Best Available Science report from the City’s own consultant readily concedes that, with implementation of Best Management Practices, it is technologically feasible to reduce the risks of construction in the No-Disturbance Area to acceptable levels:

“The intent of the overlay is to prevent sediment transport from sites with highly erodible soils to sensitive receiving waters, so development with potentially substantial earth disturbing activity is restricted. **It may be technically possible to develop a site without impacting downstream resources through the implementation of robust TESCOP with site monitoring, contingency plans, and the other measures...**”

Best Available Science Report, AMEC Environment and Infrastructure Inc., posted June 12, 2012 (emphasis added). In developing Mr. Osgood’s proposed alternative set forth below, my client and his team of consultants, including engineers, contractors, and legal counsel has been guided by the recommendations in the AMEC Report.

**C. Mr. Osgood Supports a Pilot Program to Allow Subdivision Within the No-Disturbance Overlay.**

Although there are many reasons why the No-Disturbance Overlay should be eliminated in its entirety, my client recognizes that such a sweeping change is unlikely during this ECA update process. Indeed, he has been informed by City Staff that they will not support any proposal to allow subdivision in the No-Disturbance Overlay that affords greater relief than a mere temporary pilot program. Accordingly, Mr. Osgood supports the adoption of a pilot program.

By its very nature, however, a pilot program is intended to result in useful and practical data to assist in evaluating whether it would be desirable to adopt the program's temporary regulations on a permanent basis. My client is concerned that City Staff's idea of a pilot program is so overly risk adverse, that the pilot program will not result in any useful and practical data. For example, if the pilot program is limited to those projects that can directly tightline to Lake Sammamish, the pilot program would be of extremely limited utility. What about the remaining 99% of properties in the No-Disturbance Overlay without direct tightline access to Lake Sammamish? Without offering an alternative in the pilot program that allows for limited development of those sites, the pilot program would offer no insight into whether appropriate development of these properties is feasible.

My client has dutifully attempted to work with City Staff to develop such an alternative. For the past several months, my client has participated in many meetings with City Staff. Although each individual meeting was composed of various participants, these meetings have typically included the following: Kamuron Gurol, Planning Director; Evan Maxim, Senior Planner; and Eric LaFrance, Senior Stormwater Program Engineer. Unfortunately, none of these meetings resulted in a proposal from City Staff that Mr. Osgood's team believed was both technically feasible and financially viable for Mr. Osgood's property.

**D. Mr. Osgood Supports a Pilot Program that Includes a Viable Alternative For Those Properties that Must Utilize an Off-Site, Manmade Conveyance to Lake Sammamish.**

Mr. Osgood supports the inclusion of an alternative to allow subdivision for those properties that must utilize an off-site, manmade conveyance to Lake Sammamish. In addition, he also supports allowing subdivision for those properties that can tightline directly to Lake Sammamish.

The concerns expressed by City Staff to such a proposal have focused on managing risk of the pilot program in three specific areas: (1) construction-related stormwater discharge, (2) post-construction stormwater discharge, and (3) the stormwater conveyance between the project site and Lake Sammamish. City Staff has indicated that the protections already included in the draft pilot program proposals prepared by the City and Probst (*i.e.*, seasonal clearing limitations, implementation of Temporary Erosion and Sedimentation Control measures, etc.), are sufficient to remedy risk numbers (1) and (2) above. If adopted, inasmuch as these requirements would apply to all proposals within the pilot program, Mr. Osgood has focused his resources to addressing risk number (3), namely protecting the stormwater conveyance (*i.e.*, ditch) between the project site and Lake Sammamish. This is done by ensuring the requisite engineering and analysis of the ditch, limiting the volume of stormwater discharged into the ditch, and regulating the release rate of the discharge into the ditch.

My client proposes the following amendment for insertion as an available alternative under any pilot program adopted by the Commission. The proposed code language is colored red and italicized, with comments inserted in between to explain the reasoning for its inclusion. To see

the entirety of the proposed code language without the comments please see the attached Appendix.

*Where access to Lake Sammamish is only available via connection to an existing offsite, manmade conveyance, the applicant shall design a project consistent with the following:*

**COMMENT:** This provision reduces risk by excluding from this proposed pilot program alternative those projects that cannot utilize an offsite, manmade stormwater conveyance. In other words, utilizing natural streams and gullies for conveying stormwater may lead to downstream erosion and scouring, which is difficult to control in a natural conveyance.

*(A) The project site must be less than 5 acres in size;*

**COMMENT:** This provision further reduces risk by **limiting stormwater volume**. Specifically, it excludes from this pilot program alternative those projects with the potential for the greatest stormwater discharge volume. Typically, the larger the project site, the larger the area of disturbance and impervious surface. Limiting the project size inherently limits stormwater volume, thereby reducing risk to the ditch.

*(B) Permanent stormwater treatment and flow control facilities shall be installed consistent with current City standards. In addition, these facilities shall remove 60 percent of total phosphorus;*

**COMMENT:** This provision further reduces risk by **improving water quality by exceeding existing City standards**. All projects within the City draining to Lake Sammamish are already subject to a Sensitive Lake Protection water quality standard which requires, at a minimum, 50 percent total phosphorus reduction. *See* SMC 13.20.030. This provision exceeds the standard by 10 percent, which represents the maximum reduction technically feasible at this time.

*(C) Stormwater detention shall be provided to achieve Level 3 flow control or equivalent based upon the adopted surface water design manual;*

**COMMENT:** This provision further reduces risk by **reducing stormwater release and exceeding existing City standards**. All projects within the City's Monahan drainage basin currently require Level 2 flow control, which is typical for basins with erosion problems. *See* SMC 13.20.030(1)(c). For the sake of simplicity, Level 2 flow control essentially limits peak stormwater discharges on a site up to and including a 50-year storm event under forested, pre-developed conditions. *Id.* This proposed provision would require Level 3 flow control, which limits peak discharges up to an including the 100-year storm event under forested, pre-developed conditions. In short, this requires installing a much larger stormwater detention facility that can attenuate a larger volume of stormwater and release it slowly to mimic natural

conditions even under the most severe storm. Moreover, when the No-Disturbance Overlay was first adopted, Level 2 flow control consisted of limiting peak flow durations to existing conditions, as opposed to the current, more conservative standard of forested conditions (*i.e.*, the Level 2 standard already exceeds what existed at the time of adoption of the No-Disturbance Area, and it is proposed to exceed it further by utilizing Level 3 flow control).

***(D) All treatment and flow control facilities, tightlines, and connections to existing offsite, manmade conveyances shall be designed by a professional engineer, using the adopted surface water design manual. The off-site manmade conveyance shall be evaluated per section 1.2.4.2 of the KCSWDM. A downstream analysis of all elements of the off-site, manmade conveyance shall be required. The analysis shall address the entirety of the conveyance from the project site to Lake Sammamish and shall include a field inspection, geotechnical review, and quantitative hydraulic analysis. The analysis shall be subject to a third-party peer review at the applicant's expense. Any necessary repairs or improvements to the existing offsite, manmade conveyance, as identified in the downstream analysis, shall be required to ensure that the conveyance can function properly without creating or exacerbating erosive or flooding conditions within the conveyance or on other affected areas;***

**Comment:** This provision further reduces risk by **ensuring the integrity of the ditch and exceeding the City's existing standards**. This provision is designed to ensure that the manmade conveyance is designed and/or improved to convey all tributary project flows. Under existing regulations, a downstream analysis is typically limited to only a 1/4 mile. *See* SMC 13.20.030(1)(b); King County Surface Water Design Manual (1999), at §1.2.2.1. This proposed provision mandates a downstream analysis from the project site all the way to Lake Sammamish, even if greater than 1/4 mile. Unlike existing regulations, this proposed provision also imposes a requirement for a mandatory, third-party review to ensure the integrity of the ditch. In other words, an extremely cautious belt and suspenders approach has been used to ensure the integrity of the ditch.

***(E) Temporary erosion and sediment control improvements, in particular temporary flow attenuation and active water quality treatment, shall be installed in accordance with current City standards;***

***(F) Effective impervious surface coverage on each residential lot shall be limited to a maximum of 50 percent of the lot area;***

**COMMENT:** This provision further reduces risk by **limiting stormwater volume and exceeding the City's existing standards**. Under existing regulations, the maximum allowable impervious surface coverage for lots in the R-4 zone (for those lots less than 9,076 square feet) is 70 percent. *See* SMC 21A.25.030(4). This

proposed provision significantly and proportionately reduces stormwater volume from the site.

- (G) A minimum of 15 percent of the gross project site area shall be retained as open space. This open space shall be in addition to the open space otherwise required for recreational use, and shall be established in dedicated tracts that may include stormwater management facilities;*

**COMMENT:** This provision further reduces risk by **limiting stormwater volume and exceeding the City's existing standards**. Under existing regulations, a project must provide 390 square feet of recreation area for each residential lot in a subdivision. See SMC 21A.30.140(1)(a). For Mr. Osgood's property, this proposed provision requirement would set aside an additional 25,350 square feet of open space, which operates to reduce stormwater volumes.

- (H) In addition to meeting current tree retention standards per SMC 21A.35.210(1)(a), all dedicated open space areas shall be revegetated. Revegetation shall consist of: native trees (70% evergreen), provided at a rate of 1 per 200 square feet and spaced no more than 40 feet on center; native shrubs, provided at a rate of 1 per 20 square feet; and groundcover pursuant to SMC 21A.35.080. Revegetation shall apply to disturbed areas not otherwise occupied by storm water management facilities or recreation area;*

**COMMENT:** This provision further reduces risk by **limiting stormwater volume and exceeding the City's existing standards**. Specifically, by specifying the quality and extent of revegetation of the disturbed portion of the open space, stormwater runoff volume is further reduced by ensuring substantial capacity for evapotranspiration.

- (I) A minimum of 15 percent of each residential lot shall contain drought-tolerant native plantings;*

**COMMENT:** This provision further reduces risk by **limiting stormwater volume and exceeding the City's existing standards**. Specifically, requiring increased native plantings substantially decreases the amount of area on a lot that can be dedicated to lawns and other landscaping, which tend to increase surface water runoff.

- (J) Each single-family residence developed shall provide roof rainwater harvesting (collection, storage, and distribution) facilities sufficient to flush toilets for a family of four.*

**COMMENT:** This provision further reduces risk by **limiting stormwater volume and exceeding the City's existing standards**. Specifically, this proposed provision would require rainwater harvesting. By capturing rainwater from impervious surface

and utilizing it for toilets, this significantly reduces the amount surface water runoff volume, because it is collected and discharged through the sewer lines, rather than into the ditch. The City's existing regulations do not currently require rainwater harvesting. NOTE: This provision was not included in the draft proposal that was the subject of the City's Evaluation Matrix, Item 4-15f.

**E. Mr. Osgood's Proposal Merits a Positive Recommendation on the Evaluation Matrix.**

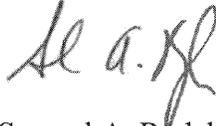
City Staff has provided the Commission with Evaluation Matrix, Item 4-15f, which evaluated Mr. Osgood's proposal from City Staff's perspective. We believe that the net "negative" rating is unduly harsh and unfairly critical of Mr. Osgood's proposal. In particular, as indicated above, the version of Mr. Osgood's proposal rated by staff did not include the rainwater harvesting element, which further improves it from an environmental perspective. Moreover, we believe that City Staff failed to account for all of the various ways in which Mr. Osgood's proposal exceeds existing regulations, resulting in improved water quality and decreased stormwater discharge. If this proposal does not merit inclusion in a pilot program, it is difficult to understand what would be acceptable to City Staff that is both technically and financially feasible for Mr. Osgood's property. Overall, the proposal merits a neutral, or at worst, a small negative (n) for the environmental rating, resulting in an overall net positive due to the implementation score of neutral and a property score of a large positive (P).

**CONCLUSION**

Mr. Osgood respectfully requests that the Commission adopt the proposed language set forth in the attached Appendix. As previously indicated, this proposed language is intended to be compatible with, and drafted for insertion into, any adopted pilot program.

Sincerely,

GROEN STEPHENS & KLINGE LLP



Samuel A. Rodabough  
[sam@GSKlegal.pro](mailto:sam@GSKlegal.pro)

cc: Client  
Ben Yazici, City Manager  
Kamuron Gurol, Director of Community Development

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**APPENDIX**

Where access to Lake Sammamish is only available via connection to an existing offsite, manmade conveyance, the applicant shall design a project consistent with the following:

- (A) The project site must be less than 5 acres in size;
- (B) Permanent stormwater treatment and flow control facilities shall be installed consistent with current City standards. In addition, these facilities shall remove 60 percent of total phosphorus;
- (C) Stormwater detention shall be enhanced to achieve Level 3 flow control or equivalent based upon the adopted surface water design manual;
- (D) All treatment and flow control facilities, tightlines, and connections to existing offsite, manmade conveyances shall be designed by a professional engineer, using the adopted surface water design manual. The off-site manmade conveyance shall be evaluated per section 1.2.4.2 of the KCSWDM. A downstream analysis of all open channel elements of the off-site, manmade conveyance shall be required. The analysis shall address the entirety of the conveyance from the project site to Lake Sammamish and shall include a field inspection, geotechnical review, and quantitative hydraulic analysis. The analysis shall be subject to a third-party peer review at the applicant's expense. Any necessary repairs or improvements to the existing offsite, manmade conveyance, as identified in the downstream analysis, shall be required to ensure that the conveyance can function properly without creating or exacerbating erosive or flooding conditions within the conveyance or on other affected areas;
- (E) Temporary erosion and sediment control improvements, in particular temporary flow attenuation and active water quality treatment, shall be installed in accordance with current City standards;
- (F) Effective impervious surface coverage on each residential lot shall be limited to a maximum of 50 percent of the lot area;
- (G) A minimum of 15 percent of the gross project site area shall be retained as open space. This open space shall be in addition to the open space otherwise required for recreational use, and shall be established in dedicated tracts that may include stormwater management facilities;
- (H) In addition to meeting current tree retention standards per SMC 21A.35.210(1)(a), all dedicated open space areas shall be revegetated. Revegetation shall consist of: native trees (70% evergreen), provided at a rate of 1 per 200 square feet and spaced no more than 40 feet on center; native shrubs, provided at a rate of 1 per 20 square feet; and groundcover pursuant to SMC 21A.35.080. Revegetation shall apply to disturbed areas not otherwise occupied by storm water management facilities or recreation area;
- (I) A minimum of 15 percent of each residential lot shall contain drought-tolerant native plantings;
- (J) Each single-family residence developed shall provide roof rainwater harvesting (collection, storage, and distribution) facilities sufficient to flush toilets for a family of four.