



Planning Commission

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Date: February 6, 2013

To: City Council

From: Planning Commissioner Joe Lipinsky

RE: Minority Report #3

Proposed Environmental Critical Area (ECA) Code Update

I respectfully dissent from the Planning Commission's recommendations relating to environmentally critical areas (ECA). While I commend my fellow Planning Commissioners for the time and effort they spent working on this difficult topic and respect their decision, I dissent for the following reasons. While I believe that the recommendations are an improvement over the city's current ECA regulations, I cannot agree with the recommendations because they do not adequately balance citizens' rights to use their properties against environmental harm. Instead the recommendations continue the past policy of adopting unreasonable levels of environmental protection at the expense of Sammamish residents whose rights to use their properties are quantifiably harmed.

Specifically, in reviewing each ECA regulation, I ask the following three questions: (1) does science show that the regulation is necessary to prevent harm to the environment; (2) does state law require the regulation, and (3) is the regulation narrowly tailored to minimize the burden imposed on the landowners affected. Without asking these three questions when reviewing ECA regulations, you default to the starting point of unreasonable levels of environmental protection. In essence, the Planning Commission's recommendations have put the proverbial cart before the horse by starting with the assumption that the existing ECA regulations were needed instead of asking the questions outlined above.

By asking whether the regulation is necessary and then whether the regulation is narrowly tailored, I come to different conclusions than the Planning Commission. Two important examples follow.

First, in regard to small, isolated, low-value wetlands, uncontroverted public comment reveals there is no science showing the environment is harmed if these low-value wetlands of up to 4,000 square feet are exempt from ECA regulations. In fact, this is exactly what the city of Renton just did. Additionally, since the Washington State Department of Ecology approved Renton's plan it must be allowed under state law. Thus, this is the standard Sammamish should adopt because it correctly balances harm to the environment and citizens' rights to use their properties.

Second, in regard to the no disturbance area, science does show that regulation is needed to protect the environment. The Planning Commission's recommendation, however, fails the third question that should be asked – is the regulation narrowly tailored to minimize the burden imposed on the landowners affected by the regulation. Once again uncontroverted public comment shows that every jurisdiction, other than Sammamish, that surrounds Lake Sammamish utilize the most recent King County Storm Water Manual to protect the environment. This is the standard Sammamish should adopt because it correctly balances harm to the environment and the citizens' rights to use their properties.

While there is no way to accurately predict how the ECA regulations recommended by the Planning Commission will harm Sammamish residents, based on past experience with ECA regulations, we can rest assured that significant harm will result. For example, Sammamish residents – David and Megan Gee – suffered real harm because of past unreasonable ECA regulations that did not ask my three questions when these ECA regulations were adopted. Because the Gee’s property contains a small, low-value, isolated wetland they were prevented from building a house on their property. This caused the assessed value of their property to fall by more than \$600,000. While science does not show that building a house on the Gee’s property would lead to any environmental harm and state law did not require this unfair and unreasonable result, past ECA regulations prevented the Gee’s from building a house. Consequently, the unintended effect of this past ECA regulation resulted in real harm to Sammamish residents, while providing no offsetting benefit to the environment.

In conclusion, while the Planning Commission’s recommendations relating to the ECA do a better job of balancing citizens’ rights to use their properties against environmental harm, the recommendations will cause unfair harm to Sammamish residents because they are not guided by the following key questions: (1) does science show that the regulation is necessary to prevent harm to the environment; (2) does state law require the regulation; and (3) and is the regulation narrowly tailored to minimize the burden imposed on the landowners affected.

Thank you for your consideration of our recommendations.