

Debbie Beadle

From: Debbie Beadle
Sent: Friday, February 22, 2013 9:09 AM
To: Debbie Beadle
Subject: FW: CAO Review - Rationale for Support for Development in the EHNSWB Overlay
Attachments: Pilot Program Manual Conveyance Support.doc

From: Evan Maxim
Sent: Wednesday, February 20, 2013 2:30 PM
To: Melonie Anderson
Subject: FW: CAO Review - Rationale for Support for Development in the EHNSWB Overlay

Public Comment

*Evan Maxim
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From: James Osgood [<mailto:jim@Officefinder.onmicrosoft.com>]
Sent: Wednesday, February 20, 2013 1:23 PM
To: City Council
Cc: Kamuron Gurol; Evan Maxim; Susan Richardson (susan@susan-richardson.com); Samuel Rodabough; Rick Tomkins
Subject: CAO Review - Rationale for Support for Development in the EHNSWB Overlay

I have prepared a brief (2 pages) overview of both the Rationale for Support for Development in the EHNSWB Overlay and for the Open Channel (ditch) alternative in the Pilot Program. The Rationale cites the comments and testimony that was provided during the Planning Commission process, with links to the comments included. In many cases there is more than one supporting comment, but only one is shown. Please let me know if you have any questions or would like more information or citations.

I would love the opportunity to discuss this in detail with you. If there is a good time I could meet with you, please let me know.

Thank you for your consideration,

Jim Osgood

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EXHIBIT NO. CC 3

Rationale for Support for Development in the EHNSWB Overlay

Prepared by: James Osgood 2/19/2013

Pilot Program (21A.50.225 5) 4-15G Evaluation Form

- **No other jurisdiction in the State has similar prohibitions.**¹
 - Nearby jurisdictions use the most recent King County Storm Water Manual to protect the environment.⁵
- **Very limited program – 9 developments total.** (21A.50.220 5 (c))
 - Earth moving will only occur during the dry months.(221A.50.220 1)
- **Growth Management Act - GOAL HG-4: Avoid creating regulations that have an unnecessary impact on the cost or supply of housing.**
- **Sammamish is an Urban Growth Area and needs to find ways to permit growth.**
 - Failure to do so will not “permit urban densities” as required in a very large portion of the city. (RCW 36.70A.110)
- **No Development will be allowed on steep slopes.** (21A.50.225 5)
 - Much confusion between EHNSWB and Steep Slopes. They are not the same. (Minority Report 4, page 5, p 1 is an example)
 - Primary erosion concern comments are based on steep slopes. (e.g. Welch comment 128)
 - Many areas with the EHNSWB are not steep with gradual downstream slopes. (e.g. Osgood Property and it’s downstream conveyance slope at an average of 15% or less)
 - A portion of the BAS definition of Erosion Hazard Area is slopes of 15% or greater. (AMEC Matrix Response #132)
- **Erosion Control technologies are reliable per Department of Ecology** (AMEC report EHNSWB Page 3).
 - Very Low Risk of erosion after development.
- **2009 King County Surface Water Design Manual more stringent and protective than when overlay put in place** (Comment 207, page 2, p 3) and since 2005 CAO implemented.
- **Main concern should be water quality, NOT Volume.** (Rick Tomkins PE, Triad Associates)
 - Lake Sammamish is designated as a receiving body without receiving volume limits.
 - Program includes a 60% Phosphorus removal requirement.
 - Lake Sammamish is on the Department of Ecology’s 303(d) list, as a Category 5 water body for ammonia N, dissolved oxygen, and fecal coliform10, not Phosphorus (in 2012 varied between Category 1 and 2).
 - Limnologist report: Small construction sites runoff of Pilot Program would not affect the Phosphorus Level in Lake Sammamish. (Herrera Environmental Consultants, Comment 193)
- **AMEC BAS Available Science report on EHNSWB referenced No BAS³, only opinions, other jurisdiction’s actions and generalities.** (AMEC report EHNSWB Page 12).
 - Assuming BAS used in 2005 as complete and accurate is contrary to the reason the City Council established the Sunset Clause; to fix inequities.
 - BAS available science used in 2005 related to landslide, stream bed erosion shoreline or maps.⁶
 - Consultants did not evaluate any technologies that may be used to mitigate risk.

- **Property Rights are constitutionally protected and should not have unreasonable or unfounded regulations attached to them.** ²
 - Need to balance the government's intended purpose in a regulation with the means used to accomplish it and the financial impact on the landowner
 - BAS (peer reviewed) needs to show that harm **would** be done
 - The absence of BAS is NOT a good reason for regulation.
 - City Attorney prepared a response not released to public (Verbal Public Comment/Question and Answer – follow up: #4). We assumed there were issues of over regulation.

Open Channel Manual Conveyance (21A.50.220 5 (c) iii) 4-15F Evaluation Form

- **Comprehensive conveyance analysis required.** (221A.50.220 5 (c) (iii) D)
 - Repair or upgrade, as necessary, is required to support that water flow and volume will ensure that conveyance will handle the additional storm water that will be produced as a result of subdivision development during and after a large storm or similar event (Minority Report 1 Concern) and protect downstream properties (Minority Report 2 #5 concern).
 - Third party peer review is required.
 - Result is significantly more protection than provided in the 2009 King County Surface Water Design Manual.
- **Peak Water Flows will be less than the current flows.** (Rick Tomkins PE, Triad Associates Comment 276)
 - Flow 3 control will balance release to lower volume levels than currently exist
 - More overall volume, but less burden on the manmade conveyance (ditch)
 - Less risk of catastrophic event
- **Only site areas of less than 5 acres can qualify for the Pilot Program.** (221A.50.220 5 (c) (iii) A)
- **Hard Pan Soil at short depth does not allow Infiltration for Low Impact Development.** ⁴
- **Many Low Impact Development techniques are included:** (221A.50.220 5 (c) (iii) F-J)
 - Require level 3 flow control on all projects (current requirement is level 2)
 - Minimum of 15% open space (in addition to required recreation space)
 - Limit individual site impervious surface to 50%
 - Revegetation of all open space
 - 15% of each lot shall contain drought resistant/tolerant plantings
 - Rainwater Harvesting
 - These techniques reduce overall water volume by 30% or more. (Rick Tomkins PE, Triad Associates)

Footnotes

¹ EHNSWB Comparison table 11-30-12 Prepared by Evan Maxim and Sam Rodabaugh Verbal Public Comment/Question and Answer – #30)

² Washington State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property 2006

³ Best Available Science defined by WAC 365-195-905

⁴ Public Comment 132 6/13/2012 Icicle Creek Engineers, Inc. (Brian Beaman)

⁵ City Council Tab 1 - (E) Lipinsky Minority Report #3 - 2-1-13

⁶ Comment 160 2005 Best Available Science Resource List