

Testimony to 3/5/2013 City Council meeting
From: Reid Brockway
Subject: Stream-related problems remaining in ECA code

EXHIBIT NO. CC7

My area of focus has been on our ECA regulations related to streams, and about 20 of the public comment Exhibits came from me. I've been working with Staff, and they know my viewpoint pretty well. Unlike some of the public who have testified, I have no personal stake in this; my motivation has been to correct some of the gross inequities that exist in the code. I have seen how they have impacted some of our citizens, and the financial and emotional toll they can take.

There is a lot of ground I could cover, but this evening I hope to just give you a feel for the nature of the problems that still exist in the code as revised by the Planning Commission.

The handout you have is comprised of two things. One, which I supplied to the PC last September, is an overview of the restrictions in the current code on residents living near a Type F stream. That is the most protected category in our city. But the definition of a Type F stream is so broad that it can be anything from a major salmon stream like Ebright Creek to an intermittent drainage that happens to run into Lake Sammamish. That overview reflects the unreasonable restrictions our code placed on residents of established neighborhoods that happen to have watercourses running thru them.

The second handout is an accounting of the extent to which those problems have been addressed in this code update process. It shows that some of them have been solved. But in the PC Recommended draft, whether intended or not, the following problems from that overview still exist:

- Our code still treats stream buffers unconditionally as habitat, even in fully developed neighborhoods, and says "any alteration" within a stream buffer requires a Critical Areas Study. There is a new section 21A.50.060 in which it is intended to provide relief for normal maintenance of landscaping, but it is at odds with 21A.50.340 which has the overreaching "any alteration" constraint. A literal interpretation of .340 says a CAS is still required merely to plant a shrub.
- No structure – even a small tool shed – can be installed within 165 feet of a Type F stream. That's true even if the watercourse has no fish and is two houses away on somebody else's property.
- There is still a one-time, 1000sf limitation on the expansion of a building within a stream buffer even if there are multiple houses, driveways, etc. between that location and the watercourse the buffer is associated with. A resident cannot add a detached garage, or greenhouse, or other separate structure regardless of the fact that it may have no impact whatsoever on the watercourse and associated habitat.

*Received at Regular Mtg.
March 5, 2013
Public Comment*

These problems, and others like them, need to be fixed, and the C4S code mark-up suggests how to do it. One very workable solution to these and other buffer-related problems is to provide the option of buffer delineation. But I don't have time to get into that now.

The main message I'd like to leave the Council with is that there are still significant problems that need to be solved, and I and other concerned members of the public stand ready to help work out solutions.

Note: these problems are those documented in "Overview of restrictions associated with streams" submitted 9/18/12 (Exhibit 211)

Problem	Solved?	Code references	Comments
Any alteration within a stream buffer requires a Critical Areas Study. (Literal interpretation says even yard maintenance requires such study.)	Partially	21A.15.056 21A.50.060 21A.50.340 (1)	New code of 21A.50.060 (1) allows maintenance actions without a CAS or review. 21A.50.340 still requires a CAS for any "alterations to streams and stream buffers", and the definition of "alteration" (21A.15.056) is all-inclusive given that buffers are being treated as habitat.
No structure can be installed within buffer width plus 15 feet of watercourse regardless of site characteristics. (Homeowner cannot, for example, build a small shed within 165 ft of a Type F stream)	No	21A.50.210	New code in 21A.50.060 only allows one-time expansion (up to 1000sf) of existing buildings. It does not allow for addition of any new structures regardless of size or isolation from the watercourse.
"a state or federal permit or approval" is required to plant any non-native species within a stream buffer.	Yes But...	21A.50.340 (3)	21A.50.060 is now referenced, and no state or federal permit is mentioned there. However a Critical Areas Study may still be required to plant a shrub, i.e., irrespective of scale (see above).
A "restoration or enhancement plan" is required to remove invasive vegetation within a stream buffer.	Yes	Old 21A.50.060 (1)(d)	New 21A.50.060 (5) now allows removal of non-native or invasive noxious weeds without a permit (up to 2500 sq ft).
Footprint of a house cannot be expanded within a buffer if built after Nov. 27, 1990. Cannot be expanded by more than 1000 sq ft if built before that date.	Partially	Old 21A.50.060 (1) (a) & (b)	New 21A.50.060 (2) b) allows expansion of existing "building(s) and associated impervious surfaces" regardless of original date of construction, but still subject to one-time 1000 sq ft limitation. A property owner still cannot, for example, add a detached garage within 165 ft of a Type F watercourse even if there are multiple houses, driveways, etc. in between.

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For a Type F stream the required buffer is 150 ft on either side from the OHWM (21A.50.330 (1)), or more if the city deems it necessary (21A.50.330 (5))

Residents living near a Type F stream cannot:

- Make any alterations within a stream buffer without submitting a Critical Areas Study (21A.50.340 (1))
- Install any structure within 165 feet of the stream's OHWM (21A.50.210).¹
- Plant any non-native plant species within 150 ft without obtaining "a state or federal permit or approval" (21A.50.340 (3))
- Remove invasive vegetation within 150 ft without submitting a "restoration or enhancement plan" (21A.50.060 (1)(d))
- Expand the footprint of a house within the buffer if built after Nov. 27, 1990, or by more than 1000 sf if built before that date (21A.50.060 (1) (a) & (b))

This is true even if the stream is on someone else's property, as will be the case where lots are not large. It can also be true even if that stream is an intermittent trickle.²

Same restrictions apply to Type Ns and Np streams, except...

- Type Np stream buffer is 75 ft (+15 ft setback)
- Type Ns stream buffer is 50 ft (+15 ft setback)

¹ Note that the code defines "structure" as anything except low fences and uncovered low decks and paved areas. Therefore a garden shed, for example, is not permitted.

² Type F streams have no flow criteria; what makes them Type F is their "potential" for use by salmonids.