

Submitted 3/12/13
to CC

Testimony to 3/12/2013 City Council meeting

From: Reid Brockway

Subject: Property rights versus the environment

From the last study session, it is evident that a fundamental assumption is being made by some Council members (as has been the case to a degree with Staff as well) that everything that is in our existing ECA code achieves some benefit to the environment, and that relaxing these restrictions in any way is going to be harmful to the environment. And it has also been asserted that the changes now proposed are favoring property rights at the expense of the environment. Underlying this is an assumption that the two considerations are in conflict.

Our vintage 2005 code was not without significant problems:

- It was modeled after another jurisdiction's code and was not thoroughly reviewed for its affect on our city and citizens
- It was not thoroughly vetted against BAS, and contains numerous requirements that are entirely arbitrary
- It did not take into account the necessary distinctions between undeveloped land and built-out urban neighborhoods
- It was not devised with adequate consideration as to whether the broad brush restrictions it imposes actually accomplish something in all cases

The result is that it contains significant inequities. It imposes restrictions on our residents that in some cases **achieve no environmental benefit**. This is the key point. We are preventing some of our citizens that live in the vicinity of an ECA feature from doing things that are entirely within the rights of any other citizens. Or we are subjecting them to hassle and expense in order to do such things. **But these restrictions may be achieving no environmental benefit.**

Of course that is not true in all cases, but when, for example, you have a low-value feature like an intermittent watercourse that imposes restrictions on homeowners two or three houses away on either side of it, whose actions would not affect it whatsoever, you have overreaching regulations, and that needs to be fixed. That is what we're talking about here.

The characterization of this effort to fix the inequities in our code as favoring property rights over the environment is both incorrect and a disservice to those of us who are trying to do something reasonable. Please get into the details and understand what we are saying, do not operate on the basis of assumptions.

Please open your minds to the possibility that we in Citizens for Sammamish are **not** out to screw the environment. Consider that some of the dogma commonly accepted as BAS – like stipulated buffers and the application of forest practices to urban settings – may be just that, dogma, not BAS that recognizes the difference.

And please don't be intimidated by the DOE, which is steeped in this dogma, but stand up for your citizens and for human concerns, **as well** as for the environment. There is no good reason why the two should be mutually exclusive.

EXHIBIT NO. CC16

Numbers in the ECA code

Within the 2005 Sammamish ECA code are many quantitative requirements – things like required widths of critical area buffers and percent reductions achievable by mitigation. These numbers lack citations as to their bases in science and the law, and in many cases appear to be arbitrary. It was the expectation of Citizens for Sammamish (CFS) and, we believe, the implication of the consultant RFP, that the consultant would supply the basis for each of these numbers where such basis exists, i.e.,

- The Best Available Science, if any, that supports it
- The statutory basis, if any
- How the requirement compares to that of peer jurisdictions

That did not happen. The argument stated for not requiring this of the consultant was that the scope of the consultant's task was merely to look at changes in science and the law since 2005. The implied assumption behind this is that the numbers were all derived from BAS and statute at the time of adoption of the code in 2005. CFS questions the validity of that assumption.

The following table lists all these numbers as found in the 2005 ECA code, organized according to the sections on the various types of critical areas. They add up to 89 individual numerical requirements.

This information is offered to the Council merely as evidence of the magnitude of the issue of potentially arbitrary quantitative requirements existing in the current ECA code.

Code ref.	Description
21A.50...	
Erosion hazard areas	
.225 (3) (c)	75% of max net density
.225 (3) (c)	2000 sf impervious surface
(iii)	
.225 (3) (d)	2000 sf impervious surface
.225 (3) (d)	200 sf impervious surface
(iv)	
.225 (3) (e)	25% open space
.225 (3) (f)	35% max impervious surface
Landslide hazard areas	
.260 (1)	50 ft buffer
.260 (2)	15 ft min buffer
.260 (5) (a)	40% slope
.260 (5) (b)	40% slope
.260 (6)	2000 sf impervious surface
.260 (6) (d)	200 sf impervious surface
.260 (7) (a)	40% slope
.260 (7) (a)	20 ft elevation change
Critical aquifer recharge areas	
.280 (1) (a)	75% infiltration
.280 (1) (a)	700 sf impervious surface
(iv)	
.280 (1) (a)	year 2005 reference
(iv)	
.280 (3) (b)	Hazardous material reporting thresholds
& (b) (i)	
.280 (3) (c)	1300 ft distance
(iii)	
.280 (3) (c)	1300 ft distance
(iv)	
.280 (5) (b)	10,000 sf landscape area
(ii)	
.280 (5) (d)	20 gal hazardous mt'l
.280 (5) (e)	100 cy fill
.280 (5) (f)	One acre lot size
.280 (5) (f)	80% nitrogen removal
(i)	
Wetlands	
.290 (1)	Buffer widths in table
.290 (1) (a)	50% min buffer distance

.290 (1) (b)	50% min buffer distance
.290 (5)	25 ft beyond top
.290 (6) (c)	50% minimum width
.290 (6) (d)	50% minimum width
.290 (7)	50 ft minimum increase
.290 (7)	300 ft proximity
.290 (8)	50% max reduction
.290 (8)	5-yr monitoring period
.290 (8) (a)	20% reduction
.290 (8) (b)	10% max reduction
(i)	
.290 (8) (b)	20% max reduction
(ii)	
.290 (8) (c)	10% max reduction
.290 (8) (c)	5-yr monitoring period
.290 (8) (d)	10% max reduction
.290 (8) (e)	10% max reduction
.290 (8) (f)	10% max reduction
(i)	
.290 (8) (f)	20% max reduction
(ii)	
.290 (8) (g)	10% max reduction
.290 (8) (h)	50% max reduction
.300 (5) (d)	12 in max tree diameter
.300 (5) (h)	15 ft max road width
.300 (9) (a)	3 dwelling units per acre
.300 (9) (b)	75% build-out
.310 (6) (a)	Acreage ratios in table
.310 (7) (b)	Double the acreage
.320	1000 sf exemption
.322 (3) (a)	8% max impervious surface
.322 (3) (b)	50% min native veg
.322 (3) (d)	50% of area for trees
(i)	
.322 (3) (d)	50% ref. to 21A.25.030
(ii)	
.322 (3) (d)	0.0096 signif trees per sf
(iii)	
.322 (3) (d)	0.012 trees per sf
(iv)	
.322 (3) (d)	Coniferous trees at least 3 ft tall
(iv) (A)	
.322 (3) (d)	Deciduous trees at least 3 ft

(iv) (B)	tall
Wildlife habitat corridors	
.327 (2) (b)	300 ft target width
.327 (2) (b)	150 ft minimum width
Streams	
.330 (1)	Buffer widths in table
.330 (1) (a)	50% min buffer distance
.330 (1) (b)	50% min buffer distance
.330 (2)	25 ft from toe of slope
.330 (2)	30% to 40% slope range
.330 (2) (a)	25ft beyond top of slope
.330 (2) (b)	25 ft additional buffer
.330 (4) (c)	50% max buffer reduct'n
.330 (4) (d)	50% max buffer reduct'n
.330 (6)	50% max buffer reduct'n
.330 (6)	5-yr monitoring period
.330 (6) (a)	20% max reduction
.330 (6) (b)	10% max reduction
(i)	
.330 (6) (b)	50% impervious surface
(i)	
.330 (6) (b)	20% max reduction
(ii)	
.330 (6) (b)	50% impervious surface
(ii)	
.330 (6) (c)	10% max reduction
.330 (6) (c)	5-yr monitoring period
.330 (6) (d)	20% max reduction
(i)	
.330 (6) (d)	30% max reduction
(ii)	
.330 (6) (e)	10% max reduction
.330 (6) (f)	10% max reduction
.330 (6) (g)	10% max reduction
(i)	
.330 (6) (g)	20% max reduction
(ii)	
.330 (6) (h)	10% max reduction
.340 (7) (f)	4 ft utility depth

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