

May 7, 2013

**VIA HAND DELIVERY**

Honorable Councilmembers  
City of Sammamish  
801 - 228th Avenue SE  
Sammamish, WA 98075

Re: Support for EHNSWB Pilot Program

Dear Councilmembers:

I urge you to approve the pilot program for the Erosion Hazards Near Sensitive Water Bodies (EHNSWB) Overlay as set forth in the May 7, 2013 City Council Review Draft, Section 21A.50.225(5). This pilot program will authorize limited development under strict controls with detailed monitoring that, we believe, will demonstrate that such development can occur without any adverse impacts to Lake Sammamish water quality. The pilot program has been crafted to provide relief to property owners who have been denied reasonable use of their property and who would otherwise have no choice but to seek judicial relief.

Over the past 18 months, your staff and Planning Commission have approached potential changes to the EHNSWB Overlay regulations thoughtfully and with great caution. A significant record has been developed that supports adoption of the pilot program. The key facts supporting the pilot program can be summarized as follows:

- The No Disturbance Area regulations were adopted in the mid 1990's in response to high phosphorous levels in Lake Sammamish, the identification of erodible soils on the east side of the lake. Given the limited erosion control technology available at the time, this was a prudent-risk adverse approach taken by King County.
- The No Disturbance Area regulations were only enacted for the areas of unincorporated King County along the eastern shore of the lake. Other jurisdictions, such as Bellevue, Redmond and Issaquah, with land in the lake's drainage basin containing similar slopes and similar erodible soils, did not adopt King County's no-disturbance approach, but rather adopted regulations to address erosion control through site specific controls, such as requirements to tight-line flows past erodible soils.
- Significant development has occurred in the Lake Sammamish drainage basin since the mid 1990's but, importantly, the water quality of Lake Sammamish has actually improved. Total phosphorous concentrations in the lake have exhibited a statistically significant decline since the period of record began in 1994, clearly indicating that

stormwater phosphorus loading to the lake has significantly decreased. The increase in urban development within the drainage basin during this period strongly suggests that new construction best management practices have been effective at reducing stormwater phosphorus loading. Issaquah Highlands (490 acres) and Talus (168 acres) are two examples of projects in the lake basin that were constructed on similar slopes and soils as those in the No-Disturbance Area but without any adverse effects on lake water quality.

- Although the No Disturbance Area may be in closer proximity to the lake than other areas within the drainage basin in which development has occurred, there is no evidence that the proximity of development to the lake has any relevance to the potential for a development site to contribute to phosphorous loading.
- The No Disturbance Area represents less than 0.5% of the total basin tributary to Lake Sammamish. Allowing limited and highly controlled development within this small portion of the basin will cause no undue risk to water quality in the lake.
- The No Disturbance Area regulations were enacted before full implementation of the NPDES Construction General Permit requirements and the release of Ecology's Stormwater Management Manual (and its updates). Ecology's manual has been adopted by most jurisdictions to mandate the use of best management practices for erosion control. Implementations of these best management practices, including monitoring and enforcement, have been very effective at controlling sediment transport.
- An evaluation of data from projects covered by the NPDES Construction General Permits in King County shows that construction sites comply with turbidity standards on more than 99.5% of all permit days. The vast majority of water quality exceedances under the NPDES Construction General Permit occur between October and May. A mandatory schedule for planning and implementing site stabilization prior to the start of the wet season can substantially reduce the risk of erosion and assure compliance with these standards.
- In recent years, new technology has been introduced providing advance treatment that can effectively and reliably remove 60% of phosphorous from the design storm.
- Installation of permanent stormwater management systems prior to mass grading can ensure that the necessary controls are in place to effectively manage sediment during construction.
- Placing stormwater in a closed conveyance (tight-line) and directing it to the lake is an effective technique to prevent erosion of natural channels. Examples of development using this effective technique include the Timberline Ridge development and the Hyla Crossing and Rowley Center in Issaquah, which avoided stream channel erosion by discharging stormwater directly to outfalls in the lake.

- Energy dissipation technology is widely available to ensure that stormwater released from a tight-line into Lake Sammamish does not resuspend phosphorous in lake sediment.

The proposed pilot program was formulated on these facts. Our focus has been on that part of the pilot program that would allow three (3) subdivisions as long as those subdivisions installed an enclosed conveyance (tight-line) to directly discharge to the lake and prevent stormwater releases to erodible streams.<sup>1</sup> Working with City staff, several additional requirements were included in the proposed pilot program to further reduce the risk of any adverse water quality impacts to the lake. These include:

- Phase construction to limit exposed soils prior to installation of full erosion control measures.
- Install permanent water quality systems before any mass grading occurs.
- Comply with strict seasonal construction limitations, with a required "close out plan" to be developed, reviewed and implemented prior to the wet season to ensure completion of active construction with all wet-season site protections in place prior to October 1.
- Install "active" chemical and mechanical water quality treatment during clearing and grading.
- Control post-development phosphorus to 60% removal in stormwater runoff.

The draft code contains detailed monitoring requirements to confirm the effectiveness of the pilot program in controlling erosion and protecting the lake from adverse water quality impacts. That data would be used to evaluate whether to allow further development in the area at the conclusion of the pilot program.

The staff supports the proposed pilot program. The Planning Commission voted in favor of its adoption. The Department of Ecology, in its most recent comment letter, also supports adoption of the pilot program.

While AMEC's Best Available Science report to the City expressed the opinion, without citation, that a "no risk" standard should be applied in the No Disturbance Area, this opinion was not based on available science. Moreover, AMEC's opinion is inconsistent with decisions by the Growth Management Hearings Board, which find that development within critical areas can be allowed when regulation and technology mitigate risk to acceptable levels. *Friends of Pierce County et al. v. Pierce County*, Washington Central Puget Sound Growth Management Hearings Board, Case 12-3-00002C, July 9, 2012. The pilot program has been designed to include numerous elements that minimize risk to water quality. One of the key elements of reducing risk, by using a tight-line to convey stormwater and avoid erosion areas, was identified in AMEC's report as meeting Best Available Science.

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<sup>1</sup> Two other limited pilot programs were proposed by others and recommended by the Planning Commission. While our team is supportive of those other pilot programs, we have focused our attention on our proposal, requiring tight-line releases.

The pilot program has been designed based on available technology and regulatory controls that will reduce risks to acceptable levels. This cautious approach to allow carefully monitored limited development is consistent with the Washington State Attorney General's guidance on avoiding unconstitutional taking of private property by considering options for less restrictive approaches that can achieve the government objective.

As noted by AMEC's recent report, no other jurisdiction with property that drains into Lake Sammamish has adopted the draconian "no disturbance" approach to regulation. Instead, all other jurisdictions have imposed erosion control requirements (such as tight-line requirements) and best available technology to effectively reduce risks and protect water quality.

It is time for the restrictions in the No Disturbance Area imposed by King County more than two decades ago to be updated. The pilot program is a reasonable first step for the City of Sammamish to provide some relieve to property owners while protecting the water quality of Lake Sammamish.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brent Carson". The signature is fluid and cursive, with the first name "Brent" written in a larger, more prominent script than the last name "Carson".

Brent Carson

BC:lk1