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May 20, 2013

City Council
City of Sammamish
801 228th Ave SE
Sammamish WA 98075

Re: ENVIRONMENTALLY CRITICAL AREAS UPDATE

Dear Councilmembers:

This office represents Wally Pereyra, the owner of property located at 148 East Lake Sammamish Parkway S.E. Mr. Pereyra has asked me to provide comments to the Council regarding possible amendments to the updates to the Environmentally Critical Areas Ordinance or "ECA." These comments will discuss that part of the ECA which regulates Erosion Hazards Near Sensitive Water Bodies or "EHNSWB." Current EHNSWB regulations are found at SMC 21A.50.220 and.225.

For the reasons stated herein, Mr. Pererya requests that City Council maintain the EHNSWB regulations as they currently exist and reject the several efforts to weaken its provisions. Mr. Pereyra also asks that the Council largely reject the proposals for establishment of a so-called pilot program, or substantially limit its scope to be a true prototype program.

Also submitted today is a letter from Mr. Pereyra, who is uniquely qualified to provide comments on this ordinance. He has lived in his current home since 1973 and owns some 25 acres in this area (his home was built in 1936). Ebright Creek, one of the few remaining Kokanee Salmon spawning streams that flows into Lake Sammamish, bisects his property and passes only 20 feet from his home. He has had more than 40 years experience with this stream, during periods of low and high flows. Mr. Pereyra has also been in a position to observe the impacts of development along the East Lake Sammamish Plateau from his home next to the stream. Mr. Pereyra holds a Ph.D in Fisheries from the University of Washington, and his observations benefit from his extensive training in fisheries science and experience as a research scientist. Recently, Mr. Pereyra completed an extensive rehabilitation project on his property involving the removal of a significant barrier to the migration of fish, especially Kokanee Salmon,

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through his property into the upper reaches of Ebright Creek. This extensive work is outlined in his letter. I attach several of the newspaper articles that address the species recovery and Mr. Pereyra's efforts.

For the reasons stated below, and in Mr. Pereyra's letter, the Council should adopt ECA regulations that strenuously protect both the streams that flow into Lake Sammamish and the water quality in the lake itself.

Retention of the EHNSWB regulations is important for several reasons, outlined below.

1. VALUABLE SALMON SPAWNING STREAMS EXIST IN SAMMAMISH.

Ebright Creek, which runs through the Pereyra property is a high quality, Class II salmonid stream which supports cutthroat trout as well as spawning populations of Kokanee salmon and occasionally coho salmon. The Kokanee salmon in Ebright Creek have been determined to be a part of a dwindling run of Kokanee that are native to Lake Sammamish. Ebright and other creeks that flow into Lake Sammamish from the East Lake Sammamish Plateau are some of the last refugia for this important genetic strain of Kokanee.

The physical circumstances of this area are very unusual. The plateau suddenly descends to the level of Lake Sammamish and in the process the streams that pass through this area are subject to the potential for severe erosion. Before land development overtook the plateau itself, water runoff was limited and metered by the natural characteristics of a forested setting whereby much precipitation was lost to evapo-transpiration. This water cycle is aptly and accurately described in the May 8, 2013 Cumulative Impacts Analysis at page 29-30. However, as also described in that report, land development dramatically changes this water cycle, resulting in more surface and near surface flows known as "interflow." In turn, these flows can result in erosion in the natural streams coming from the plateau and in consequent impacts on fish spawning.

The foregoing problems were recognized in a report prepared by King County called the "East Lake Sammamish Basin and Nonpoint Action Plan" in 1994. This report, prepared nearly 20 years ago, identified the foregoing concerns and recommended methods to alleviate the damage that increased development might have on the fisheries habitat and Lake Sammamish.

As a direct result of the 1994 Nonpoint Action Plan, the King County Council adopted Ordinance 12823 on August 18, 1997. That ordinance created what became known as the "SO-190 Overlay" which was codified in KCC 21.38.200. When Sammamish became a city in 1999, the SO-190 overlay was adopted in full and became the EHNSWB currently codified in SMC 21A.50.220.

The EHNSWB ordinance adopts a sensible and easily understood regulatory regime with two distinct parts. First, a non-disturbance zone is created at the edge of the steep slope, with exceptions for single family homes on existing lots, as well as utility easements, access drives and public parks. Second, developments on properties outside the non-disturbance zone, but which would drain stormwater into the non-disturbance area, are required to infiltrate stormwater with certain exceptions.

As a part of the update of the ECA, the regulations for EHNSWB are under strenuous attack by interested property owners seeking to develop their properties with subdivisions and other land development proposals. We urge the City Council to stand fast on vigorous protection for these sensitive streams and to reject many of these proposals. In particular, we urge the Council to take the following steps.

2. THE COUNCIL SHOULD REJECT PROPOSALS TO WEAKEN THE EHNSWB.

In general, the reports of AMEC Environment and Infrastructure on the EHNSWB generally support maintaining the EHNSWB with some minor modifications. However, some have urged more substantial changes to this ordinance; Mr. Pereyra urges that these efforts be rejected.

2.1 THE SO CALLED "PILOT PROGRAM."

One proposal would install a "pilot program" to allow certain developments within the non-disturbance zone. Such a proposal would essentially allow experiments in stormwater control to take place in non-disturbance areas. But there is a large body of information, beginning with the 1994 East Lake Sammamish Basin and Nonpoint Action Plan, that addresses the concerns on these steep slope areas. The scientists that developed the Action Plan recognized that the best manner of protection for these areas is to maintain natural conditions.

A pilot program cannot be a laboratory experiment. In the lab, failed experiments and programs are easily discarded. However, with regard to the proposed "pilot programs", once a "pilot program" is in place there is essentially no manner to undo the harm if it fails. Accordingly, we believe that the whole concept of the "pilot program" should be rejected as only a means by which select property owners could avoid manifestly reasonable regulations, and thereby increase the risk of deleterious impacts to the streams running into Lake Sammamish and the associated fish populations, particularly the endangered Kokanee. Moreover, a failed "pilot program" will result in impacts to downstream residences such as Mr. Pereyra's.

If the Council does decide to approve a "pilot program" it should be extremely limited in extent and implementation, as follows:

1. The program should be limited to a single project on a property no larger than 10 acres in size. The concept of allowing many developers to take

advantage of the pilot program destroys its experimental nature and substantially undermines the environmental protections which have been provided by the ECA.

2. If geologic conditions permit, stormwater should be harvested on site to contribute to the important aquifer recharge function. Any excess stormwater runoff from this pilot project should be tightlined to Lake Sammamish, but only after the runoff receives the highest level of water quality control available under the Stormwater Design Manual, including phosphorus controls to meet the 80% removal goal with a minimum of 60% removal required.

3. No pilot projects should be allowed in those subbasins that pose the greatest threats to Lake Sammamish because of the steep slopes, which include Ebright Creek, Zaccuse Creek, Pine Lake Creek and Laughing Jacobs Creek.

4. The land developer should be required to post performance bonds to assure that downstream and downslope property owners are financially protected from losses due to the program failure. Coverage of the bonds should include financial protection for public investments as well as resource restoration.

5. Careful and complete monitoring of the "pilot project" must be implemented. The effort must assure that the primary purpose of the pilot project is not financial benefit to the land owners, but rather the assembly of information useful to determining whether the prototype program is a valid means of resource protection.

6. No additional "pilot programs" should be allowed until the performance of the experimental pilot program can be evaluated and appropriate regulatory changes made to the City code.

7. Impervious surfaces should be limited to no more than 10% of the site.

8. The City should establish an orderly and objective process to determine which properties are best suited to be considered for a "pilot program." Criteria should include the topographic characteristics of the property, the presence of bodies of water and whether the property is best suited to provide a fair exercise of the pilot program given its purposes. The city should allow submission of requests for consideration within a defined time frame and review of the proposals by a reviewing panel. To allow "open season" for the pilot program would defeat its purpose.

2.2 RELIANCE ON WATER INFILTRATION.

One of the areas of greatest concern is the reliance on infiltration of stormwater as a means to avoid surface runoff. In many locations, with favorable subsurface and topographic conditions, infiltration of water is a useful means to avoid damaging and erosive increases in stream flow in erosive areas such as the EHNSWB. However, in the complex, post glacial landscape on the East Lake Sammamish Plateau, infiltrating large amounts of runoff, essentially "out of sight," does not mean these waters can be considered "out of mind." As the Cumulative Impact Analysis states, the elimination of natural forested areas dramatically increases both surface and near-surface flows. This

near-surface flow, known as “interflow” often flows down hill on clay or till layers, only to surface where these layers “daylight.” Along the EHNSWB area, these points of “daylighting” are frequently into the same steep-sided canyons that are protected from surface water flows. Regrettably, the effect of interflows into steep canyons can be as bad as or worse than surface flows. Ebright Creek has been the scene of at least two “blow outs” and slides that have created stream blockage, erosion and downstream sedimentation with severe impacts to fish populations, including Kokanee, and to Mr. Pereyra's property. These events are described in Mr. Pereyra's letter. These blow out slides occurred on the east side of the Creek, the same area as the recent land development activity. It is believed that the cause of these events was interflow from water infiltrated on adjacent property. It is likely that the law of unintended consequences is at work here.

As applied to the ECA, concerns about interflow must be considered. First, infiltration alone is not a solution to the runoff problem. Emphasis must be on retaining the natural vegetation on the site through maintaining native growth protection areas to achieve, as much as practicable, the same water cycle as before development as identified on page 29-30 of the Cumulative Impacts Analysis. Second, close attention must be paid to the subsurface conditions where substantial infiltration is proposed. Borings, test pits and other mechanisms must be employed to assure that the interflow does not impact adjacent properties and that infiltration does not impact aquifers used for drinking water.

2.3 CONTROLS FOR PROPERTY THAT DRAIN TO THE EHNSWB.

Much attention has been directed to the properties that are within the EHNSWB. However, also of major importance to the protection of sensitive streams and water quality in Lake Sammamish are those lands that drain to the EHNSWB. Land development on these properties can do substantial damage to resources if water volumes are increased such that erosion and blow out occur as described in Mr. Pereyra's letter. Protective provisions for these properties should include strict adherence to the applicable surface water design manual, infiltration of storm water, controls on permissible impervious surface and requirements to keep 50% of these sites in undisturbed open space.

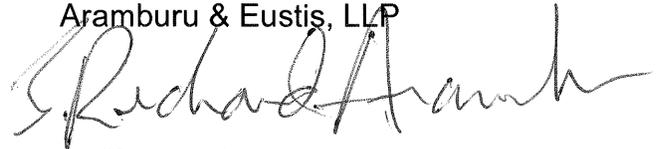
We appreciate the work done by the Council on these important matters. We also appreciate the pressures applied by property owners seeking profits for development of their property. However, the Council must also consider the voices of the fish and natural settings that deserve protection and preservation by the Council for all the residents of Sammamish. The Council has a responsibility to insure that the residents of Sammamish are not impacted by the externalized costs of improper development or development which is inappropriate for the sensitive steep slopes and streams that flow into Lake Sammamish. We strongly urge the Council to maintain the established ECA

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protections, especially for EHNSWB, but if necessary for further understanding of development impacts, to adopt our suggestions for a single "experimental project" of limited scope into the final version of the ECA update.

Sincerely yours,

Aramburu & Eustis, LLP

A handwritten signature in black ink, appearing to read "J. Richard Aramburu". The signature is fluid and cursive, with a long horizontal stroke at the end.

J. Richard Aramburu

JRA:cc

cc: Wally Pereyra
FOPL
Kokanee Working Group

Many happy returns: East side creek again brims with salmon

By Theron Zahn | Published: Nov 17, 2012 at 7:11 PM PDT

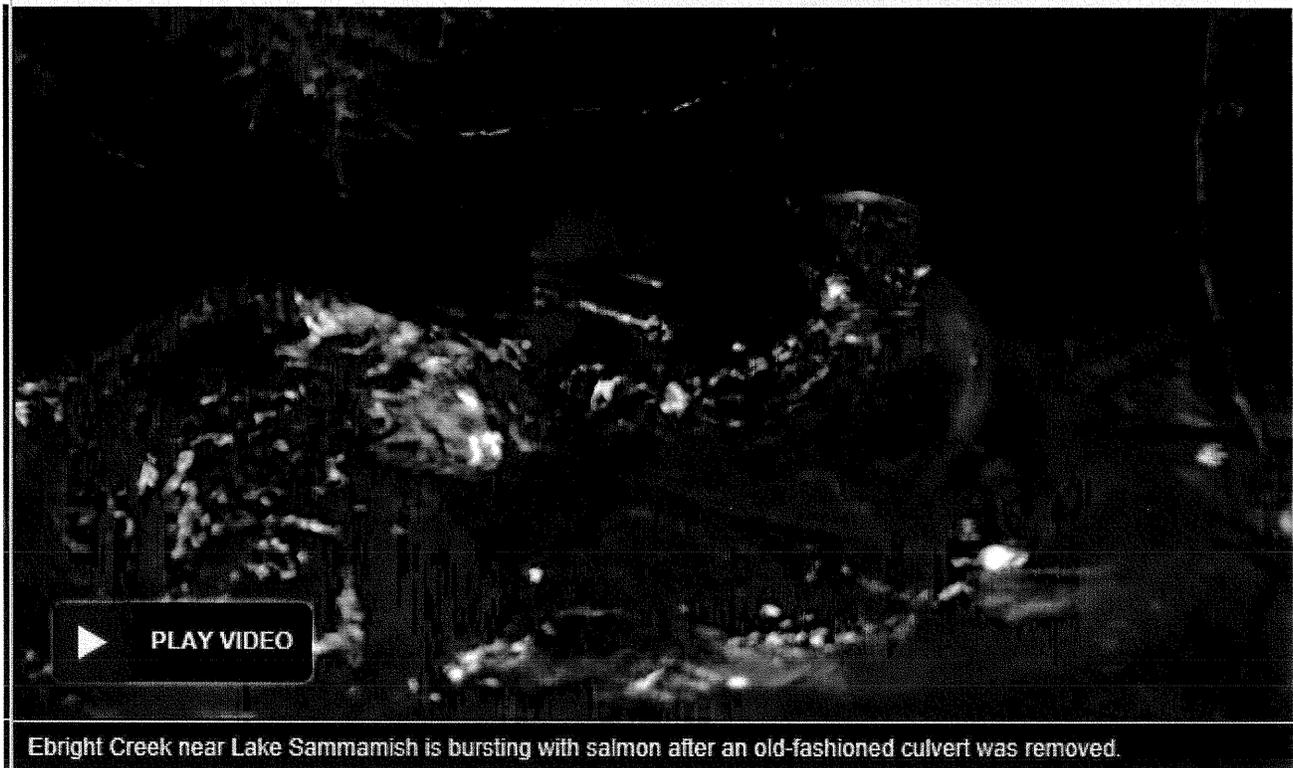
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Ebright Creek near Lake Sammamish is bursting with salmon after an old-fashioned culvert was removed.

SAMMAMISH, Wash. - A creek that feeds Lake Sammamish on the east side is bursting with salmon this fall - for the first time in years.

The robust return has a welcome sign to ecologists, who have been working to bring the threatened kokanee salmon run back from the brink.

"For the first time in over a decade there are several hundred kokanee salmon spawning upstream," says ecologist Hans Berge.

Berge and others have been working to increase their numbers and improve their native spawning areas in the creeks that run into Lake Sammamish.

For decades an old-fashioned culvert on Ebright Creek blocked the salmon's natural path.

"So they would swim upstream a half a mile, and they would be stopped," says Berge.

But now the culvert is gone.

"Now that that 18-inch culvert has been replaced with this larger box culvert," says Berge. "Fish are able to go all the way upstream, well into a pristine canyon environment where they used to spawn naturally."

Ecologists say parts of the creek the kokanee can now reach is about as good as it gets for fish.

"It's just fantastic habitat, it really is - great tree canopy, so there is a lot of shade for the water to keep it cool," says Berge.

Also helping this year's record run are efforts made over the past several years to make sure more young fish survive to return again.

"It's a wonderful opportunity for fish to come back and see this habitat that they haven't been in in many many years," says Berge.

State and King County ecologists have been working to boost salmon runs in the Sammamish watershed for more than a decade.



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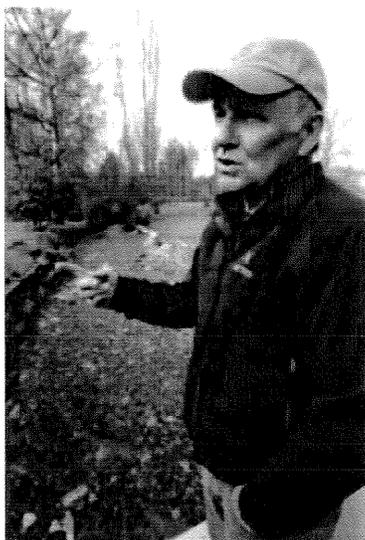
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Kokanee restoration earns local philanthropist a Green Globe award

April 30, 2013

By Peter Clark



Wally Pereyra

After donating more than \$175,000 of his own money to restore kokanee salmon habitat on his land, the modest Wally Pereyra has begun to receive wide attention.

The week of April 22, King County announced the winners of its Green Globe awards, an annual recognition of dedicated citizens for efforts ranging from environmental conservation to education and sustainable building. Pereyra was on the list and the county honored him with an award.

"Pereyra has been a tireless advocate for habitat conservation and restoration in the watershed, investing his own time and resources to improve access to high quality spawning and rearing habitat for Sammamish kokanee," a press release from the county read. "Most recently, Wally led an effort to replace an undersized culvert on his land along Ebright Creek that for decades had been a barrier to fish passage."

At a Kokanee Work Group event that had Sammamish fourth-graders releasing kokanee fry into Ebright Creek on his land, Pereyra was roundly praised for his dedication to the recovery of kokanee salmon.

"Wally, using his own nickel, has probably quadrupled the amount of space for the fish," Sammamish Mayor Tom Odell said. "It's the single biggest event that's happened to the kokanee since I've been here."

Pereyra, a fish biologist and native from the Northeast, was honored by the recognition, but said it was not the reason he helped the fish.

"It means a lot, actually," he said. "I didn't do these things for the honors. I did it because it's the right thing to do."

He said that with restoring the habitat, they expected to see 30 percent increase and instead it was 300 percent.

"All of us have come to have a relationship with those little red fish coming up the stream, and we are bringing back a resource that is so important to them," he said. "Everything is really connected to these little red fish, and I think we need to keep that in mind."



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Kokanee Work Group progress is heartening

May 7, 2013

By Administrator

A few years ago, the news about the kokanee salmon was pretty uniformly discouraging. Now, thanks largely to the efforts of the Kokanee Work Group, the fish species seems like it might be taking a step back from the brink.

Old-timers will tell you about the days when the streams running into Lake Sammamish were so thick with fish returning to spawn, you could practically walk across the water on their backs.

As years went by, the salmon suffered. Exploding development, particularly in the late 20th century, likely degraded streams and exacerbated a series of infamous algae blooms in the lake.

A few years ago, as few as 100 salmon fry were counted making their way into Lake Sammamish, where kokanee spend their adult lives. In spite of the low numbers, the federal government refused to designate the kokanee as an endangered species.

Things did not look good for our local salmon.

A group of local governments and individuals stepped in to try and save the fish.

The Issaquah Salmon Hatchery began a breeding program.

Local governments learned from the mistakes of the past and continue to require new developments to protect water quality, among other efforts. Individual residents also pitched in, particularly Sammamish's Wally Pereya, who spent \$175,000 of his own money to improve the stretch of Ebright Creek that flows across his property.

These efforts have paid off. In December, officials counted more than 1,000 fry swimming into the lake — an order of magnitude above the counts only a few years prior.

It's easy to dismiss the countless task forces, work groups and fact-finding commissions that government spawns. Many are feel-good enterprises that produce little more than reports destined to gather dust. The Kokanee Work Group, however, seems to be one example of a group that works. While it was denied help from the federal government, it has managed to leverage the efforts of other levels of government, private groups and private citizens to produce tangible results.

This success story is helping the fish and the environment.

<http://sammamishreview.com/2013/05/07/kokanee-work-group-progress-is-heartening>



<http://www.king5.com/news/environment/Kokanee-The-next-generation-206517051.html>

Environment Northwest

Next generation of kokanee salmon released into Lake Sammamish



by GARY CHITTIM / KING 5 News

Bio | Email | Follow: @gchittimK5

Posted on May 6, 2013 at 7:55 PM

Updated Wednesday, May 6 at 8:00 PM

ISSAQUAH, Wash. -- As the sun set over Laughing Jacobs Creek near Issaquah, a convoy of trucks rolled in. This is a vital kokanee salmon stream and tonight is release night.

Ten thousand tiny kokanee fry are being introduced to the stream of their ancestors. They are the offspring of salmon that returned to spawn in this creek last year and hopes are high they will add to a growing, more stable population of kokanee in Lake Sammamish.

This is the first time in the creek, but they know the water very well. They were raised in it. Workers from King County and the Washington State Fish and Wildlife hatchery in Issaquah have been collecting water from kokanee streams in the area and bringing it back to the hatchery to put in the pens with the young kokanee.

Biologists believe young salmon do better in the native streams. If they are raised in it in the hatchery, they will feel comfortable when released in it. They also release them at night in hopes predator fish won't be able to see them.

In this case it was Laughing Jacobs Creek in Issaquah.

This stream produced a healthy return last year. Hundreds are coming back to a system now that in some past years hosted as few as 30 or 40.

The goal is for many more and a coalition of King County, State Fish and Wildlife, fishing groups and land owners are all on board. If the trend continues there are hopes that someday there will be enough kokanee in Lake Sammamish that people can start catching them.



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Kokanee release celebrates species recovery

April 30, 2013

By Peter Clark

Marking the fourth year of a successful effort, The Kokanee Work Group, along with the cities of Issaquah and Sammamish, held its annual kokanee fry release last week with the help of area fourth-graders.

On a sunny and mild April 26, a group of students from Elizabeth Blackwell Elementary School placed several hundred young kokanee salmon into their home waters of Ebright Creek. The concentrated effort to save the species, which lives most of its life in Lake Sammamish, celebrated the results of a recovery after the fish had hovered on the edge of extinction.



By Peter Clark
King County Executive Dow Constantine (left) and mayor Ava Frisinger release kokanee salmon fry from their plastic cups into Ebright Creek April 26, during the annual celebration of the continuing restoration effort for the endangered species.

Sammamish Mayor Tom Odell praised the citizens who have come together to help the native fish.

"We are here to celebrate success," he said. "We've already put several thousand into the stream and we're going to put several thousand more."

The kokanee, which return to local streams in order to spawn, came close to extinction because of rapid development in the area, according to Grace Reamer, a volunteer with Friends of the Issaquah Salmon Hatchery. Hastily built culverts and choked streams invaded the habitat and found the fish dying out quickly, she said.

The celebration also took place in recognition of Wally Pereyra, on his property along the creek. After

putting in about \$175,000 of his own money to rebuild the strangling culverts, he was able to help restore the natural habitat.

As students and volunteers lowered small fry into the creek, members of the Snoqualmie Tribe performed "The Rabbit Song" to send the fish along their way.

King County Council Executive Dow Constantine attended the event and expressed the county's exuberance over the recovery effort's success.

"Today, we are able to celebrate the fact that we are moving them away from that brink," he said. "Today, we have reason to be optimistic. We can achieve those goals."

The Kokanee Work Group was founded four years ago. Through cooperation with the state-owned Issaquah Salmon Hatchery, more than 10,000 adult kokanee spawned in several streams in the Sammamish watershed last winter, according to a release from the city. Four years ago, that number was less than 100, Reamer said.

Issaquah Mayor Ava Frisinger, who is also president of the Friends of the Issaquah Salmon Hatchery, shared her joy that the city could be a part of such a dramatic population upswing.

"Issaquah is delighted to be a part of this effort and the Kokanee Work Group," she said. "We supported the listing of these fish as an endangered species, and I am proud of the role that Issaquah has been a part of in that recovery."

Among all of the salmon-shaped fish and activities for the children, there was also encouragement to maintain the efforts to protect the kokanee.

"We need to build community support on this to keep up the momentum," Odell said.

