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June 4, 2013

City Council  
City of Sammamish  
801 228<sup>th</sup> Ave SE  
Sammamish WA 98075

Re: ECA Update ordinance

Dear Council Members:

As the Council is aware, this office represents Wally Pereyra, whose address is 148 East Lake Sammamish Parkway S.E. Mr. Pereyra's property is located along Ebright Creek at the base of the East Lake Sammamish Plateau.

Mr. Pereyra has provided several comments to the Council concerning the ECA Update process. In these comments, Mr. Pereyra has urged the Council to maintain strong protection for the environmentally critical areas and to take account of the unique topography and natural systems that exist in the community.

In the packet prepared for the June 4, 2013 meeting, staff has prepared a "Decision Table" which lists amendments to the current draft and suggests a sequence by which these amendments can be addressed. In this letter, Mr. Pereyra provides final comments on the text of the ECA and the various amendments described in the "Decision Table."

1. THE COUNCIL SHOULD ELIMINATE THE SO-CALLED "PILOT PROGRAMS" FOR THE EHNSWB AREAS.

The EHNSWB Overlay recognizes the fragile nature of streams leading off the plateau toward Lake Sammamish and the valuable downstream resources. We will not repeat the prior comments provided by Mr. Pereyra, but ask that the Council carefully review them. Given the background of problems and the sensitive resources in the area, the "pilot program" should not be adopted. Mr. Pereyra strongly supports the amendments proposed by Council Member Vance found at pages 4-5 in the "Decision

EXHIBIT NO. CC #91

Table" prepared by staff, amendment number 9.

2. THE COUNCIL SHOULD NOT PIECEMEAL SHORELINE MASTER PROGRAM AMENDMENTS FROM THE ECA.

Throughout the ECA Update, staff has indicated that the Sammamish Shoreline Master Program will need to be updated to take account of the ECA changes. However, the separation of these two regulatory requirements is not appropriate.

First, the Shorelines Management Act, RCW Chap. 90.58 requires that local government address property adjacent to the shoreline area to assure consistent regulation. Thus under RCW 90.58.340:

*All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as to achieve a use policy on said land consistent with the policy of this chapter, the guidelines and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government.*

These provisions require that use regulations for lands adjacent to the shoreline area be developed consistent with SMA policy.

Second, it appears that portions of the so-called "pilot program" actually contemplate developments on the shoreline. One of the pilot program features is the use of tightlines to carry stormwater directly to Lake Sammamish, which will require compliance with the Sammamish Shoreline Master Program and in turn will require a shoreline substantial development permit. In addition, because a tightline will constitute a point discharge into waters of the United States, it will require an NPDES permit.

Third, in general Washington courts prohibit the piecemealing of projects with a shoreline and upland component. Here, the "pilot program" contemplates the construction of tightlines which will eventually require the construction of outfalls into Lake Sammamish, but there has been no consideration to date as to whether this will be consistent with the Sammamish Shoreline Master Program. Further, the present SEPA procedural compliance does not consider the impact of pipelines into Lake Sammamish. It would be inappropriate to make decisions which will inherently impact shorelines when shoreline regulations are not concurrently considered. Our court has held:

To accept the Port's argument would require us to close our eyes to the obvious interrelation of this project upon the wetlands and adjacent uplands areas. There is nothing in the record before us to indicate that the contemplated construction has ever been anything but one project. The question, therefore, is whether the Port may take a single project and divide it into segments for purposes of SEPA and SMA approval. The frustrating effect of such piecemeal administrative approvals upon the vitality of these acts compels us to answer in the negative.

*Merkel v. Port of Brownsville*, 8 Wash.App. 844, 850-851, 509 P.2d 390 (1973). Accordingly, the City Council should not adopt any "pilot program" until such time as it considers amendments to the City's Shoreline Master Program.

3. THE COUNCIL SHOULD ASSURE THAT PROPERTIES THAT DRAIN STORMWATER TO THE NO DISTURBANCE ZONE ARE INCLUDED WITHIN THE EHNSWB.

As noted in our prior correspondence, it is critically important that not only areas within the EHNSWB be subject to continuing regulations, but also that waters that drain to these areas from adjacent property also be subject to the same regulations. It will make little difference to the delicate resources of the area whether harmful water flows come from within the mapped EHNSWB areas or outside of them.

We support the language in the definitions section of the May 7, 2013 draft that clarifies that the EHNSWB actually includes two areas. However, the precise language is somewhat confusing. We suggest that the language on page 82, at lines 6-7 be amended to read as follows:

(b) Properties draining to the no-disturbance area. Properties draining to the no-disturbance area are within the Erosion Hazard near Sensitive Water Body Overlay. ~~that drain to the no-disturbance area.~~

4. IF THE "PILOT PROGRAM" IS ADOPTED, STRICT PROTECTIONS SHOULD BE MADE TO PROTECT DOWNSTREAM RESOURCES AND LAKE SAMMAMISH.

As we have made clear, the "pilot program" represents a bad precedent and is poor environmental policy. As we have stated above, we support the Vance Amendment to not adopt the "pilot program."

If the "pilot program" is adopted (over our strong objection), then it must contain stringent provisions to protect downstream resources. Thus the "Scale and Scope Elements" found on page 6 of the Decision Table should be adopted.

Most of the "Stormwater Elements" found on page 6 should also be adopted if a pilot program is implemented. In particular phosphorous control (Item k), maintenance of preexisting volumes (Item l), retention design for the 200 year storm (Item m) and level three flow control (Item n) should be included in any regulations. We oppose using "man-made" conveyances (Item j) for stormwater without specification of what is intended.

Instead of prohibiting infiltration (page 7), careful provisions for maintaining stream base flow through preservation of open space (Item bb) and aquifer recharge functions (Item hh) are important. It cannot be stressed enough that any infiltration must be carefully done to prevent excessive interflow that may "daylight" in steep side

canyon walls and create slides and erosion.<sup>1</sup>

5. VAGUE LANGUAGE ALLOWING ALTERATIONS IN STREAMS AND STREAM BUFFERS SHOULD BE DELETED.

Section 21A.50.340 of the May 7 Council Review Draft deals with permitted alterations in streams and stream buffers. That section describes several allowed exceptions. However, there is problematic language found in the preface to this section, which reads as follows:

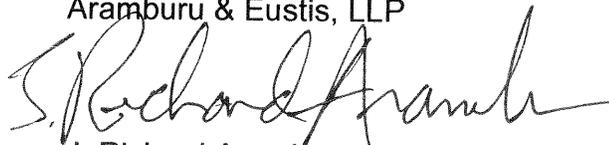
Alterations to streams and stream buffers are not allowed except as provided for by complete exceptions, allowances for existing development and other uses, ~~partial exceptions~~ and exceptions in this chapter or as allowed for by this section.

The phrase "allowances for existing development and other uses" appears to be very broad. The term "allowances" is not defined in the ECA and does not have a common meaning. Nor is it obvious what the "other uses" are in this phrase. The use of this vague language would appear to open the door to potential inappropriate activity in stream buffers. We urge that this phrase be deleted.

We appreciate the opportunity to comment on these important issues. The City of Sammamish is located in an area with unique geology, topography and biology. These features make the City a highly desirable location for its present and future residents. The Council should protect and enhance these valuable resources by adopting an ECA update that protects these features, not contribute to their deterioration.

Sincerely yours,

Aramburu & Eustis, LLP



J. Richard Aramburu

JRA:cc

cc: Client

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<sup>1</sup> We note that City staff has taken issue with testimony provided by Mr. Pereyra at the May 20 hearing, suggesting that it was "factually inaccurate." In this statement, the City Staff contends that the March 28, 2011 slide into Ebright Creek was not connected with adjacent land development activity. We are aware that the City is in litigation with the adjacent property owner and thus a denial of the relationship between the slide and city activity or permits is understandable. However, Mr. Pereyra stands by his statements for two reasons. First, he understands that there was predevelopment activity on the Greenbriar plat that may have involved water infiltration testing. Second, following the March 28, 2011 slide, Mr. Pereyra observed a steady flow of water from the area of the slide as shown by the attached photograph. There had never been flows observed by Mr. Pereyra in this area since he purchased his property in 1973.



Water and Debris Flow from March 28, 2011 slide into Ebricht Creek