

From: info
Sent: Wednesday, July 02, 2014 8:52 AM
To: Rachel Pitzel; Dave Gordon
Subject: FW: SEPA Comments related to Plat 2C per city notice of June 16.

From: Kristen Bryant [<mailto:kristenbry@gmail.com>]
Sent: Tuesday, July 01, 2014 5:09 PM
To: Brenda Martinez; info
Subject: SEPA Comments related to Plat 2C per city notice of June 16.

Hello City of BD,

Attached please find my comments regarding Plat 2C for the city's review.

Kristen Bryant

1006 139th PI NE #C4

Bellevue, WA 98005

- 425-247-9619

Since the proposed project is a Type 3 decision, it is required to have a mandatory open record Plat Hearing before the Hearing Examiner. We believe that the comment period on the Plat is open until the Plat Hearing is closed.

The SEPA comment deadline is another matter, in that it is a deadline for the filing of an appeal. We have not filed an appeal, but we expect that our SEPA related comments will be considered by staff. In fact, there is good reason for the city to withdraw the MDNS determination and re-issue a new one that considers the issues raised by comments received in response to the Plat.

At the hearing, we expect that both our Plat and our SEPA comments will be considered by the Hearing Examiner.

We want to note for the record that all of the public documents that I had requested to use in the preparation of comments were not made available by the City although the PDR request was filed weeks ago. These documents may be very important, so we request that the comment period should be extended to a reasonable period after all public documents are made available.

We expect the Hearing Examiner to take note of our objections regarding the availability of public documents and make appropriate provisions to ensure a fair and impartial hearing and a fully complete hearing record.

Thank you,

Kristen Bryant

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Kristen - 425-247-9619

WETLANDS AND STREAMS

A. INSUFFICIENT EVIDENCE TO JUSTIFY RATING CATEGORY FOR SEGMENT OF WETLAND E1

The documents provided by the city do not show that the necessary scientific work was done to justify the separation of Wetland E1 into two separate rating categories. By allowing this separation, the portion of Wetland E1 in Plat 2C had its buffer width set at 110 feet instead of the required 225 feet if this single wetland were not separated into 2 units.

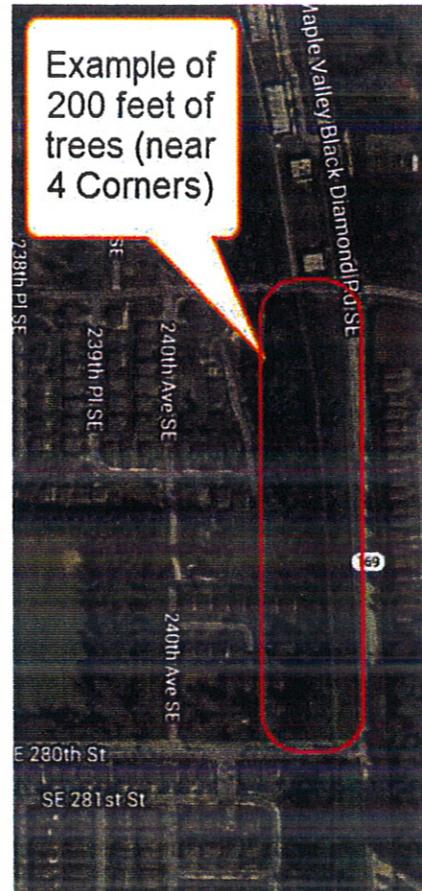
This is important because Wetland E1 is contiguous with the city's core wetlands complex. It is the type of sensitive area the city's laws intend to protect. The animals and plants are secluded in this part of the woods, and are able to thrive. The law says that they should be protected in wetlands and buffers. A buffer width of 225' vs. 110' feet is a tremendous difference. This is even more important when considering trails because people, and pets will be inside the 110' buffer disturbing animal and plant habitat.

To provide real-world visualization, a corridor of trees approximately 200 feet wide can be found just outside of Black Diamond on the way to Four Corners. If driving or walking north on Highway 169, pass 280th Street (this is south of 4 Corners). Look to the west (the left side) and there is a row of trees through which a housing development can be seen. (Map view shown on right.) That corridor of trees is about 200 feet wide. Wetland E1 is slated to have only half that width of tree buffer surrounding it. This does not afford enough wildlife protection.

Wetland E1 was previously scored a Category 1 wetland with a 225-foot buffer. The change to downgrade a segment of it to Category 2 did not receive enough review.

Due to this single discretionary interpretation of the code, the following has happened:

1. Wetland E1 buffer was reduced from 225 to 110 feet.
2. A walking trail planned for inside the 110-foot buffer is located in the outer 50% of that smaller buffer, but if the buffer were a 225' buffer, the trail would clearly be within the inner half. If the wetland is Category 1, the trail would be allowed only in the outer 25% of the 225' buffer, so it would be over 170' away from the wetland. Now, with the trail in the 110' buffer, the trail is only 60' feet away from the wetland in some places.



3. A trail means that dogs and people will be in the area. This has the effect of harming off-trail vegetation and spreading non-native weed seeds that will reduce the native vegetation. This lack of native vegetation will further harm wildlife that depend on native plants for food.

Detailed concerns and evidence regarding Wetland E1:

I. INTERPRETATION OF ECOLOGY GUIDANCE

To determine that wetland E1 would be segregated, and thus determine the buffer width for Wetland E1, the city relied on a faulty interpretation of the guidance provided by the Department of Ecology. This question should have been addressed more carefully during this Plat review, as the determination of the segregation of Wetland Category E1 is only relevant for Plat 2C.

According to the applicant, Wetland E1 in Plat 2C is given a 110' buffer due to a divide or break in the direction of the surface water flow. There is no legal requirement that the city allow this segregation; it was a discretionary decision, since the wetland is clearly unbroken in terms of land area. The city code does not provide a circumstance where such a break is required.

The applicant requested the segregation, and the city's reviewer, **not** seeing a clear reason for the division, checked with the state Department of Ecology senior ecologist, Tom Hruby. Dr. Hruby replied that there is a practical issue involved of where to draw the boundary, even though it theoretically can be done. To achieve a legal split into two units, Dr. Hruby goes on to say:

"We recommend the wetland be rated as one unit because it is very difficult to identify a legally defensible boundary. ... **The boundaries drawn by different scientists were off by more than 100ft.** ... Drawing a boundary between two units is possible but may take **detailed monitoring of water levels for at least a year.**" [Emphasis added].

There is no evidence in the documents obtained from the city that the recommended year-long monitoring was conducted or reviewed by the city. Without this, the city's SEPA determination should not allow the segregation of wetland E1.

The complete email from Dr. Hruby to Jason Walker, dated July 05, 2012 at 1:23 PM, subject "Wetland Rating Questions":

Subject: FW: Wetland Rating Questions

From: Hruby, Tom (ECY) [mailto:thru461@ecy.wa.gov]
Sent: Thursday, July 05, 2012 1:23 PM
To: Jason Walker
Subject: RE: Wetland Rating Questions

Jason,

"Abrupt" in the context of the description is relative and depends on local conditions. Generally it means the rate of change of an environmental characteristic is at least 2-3 times higher than the gradient in the surrounding landscape. For example a stream may have an average slope of 2%. An abrupt change in the stream slope would therefore be 4-6%. However, if the average slope is 4-6%, the slope would have to be 8-12% to be considered an abrupt change.

Tom

Tom Hruby, PhD, PWS
Senior Ecologist
Washington State Department of Ecology
PO Box 47600
Olympia WA 98504
(360) 407-7274
tom.hruby@ecy.wa.gov

If I read your description correctly, what you describe is a headwater system with water flowing from the wetland in two directions. Based on our guidance one could separate the wetland into two units for rating because there is a major change in the water regime (water flows in two directions). The practical issue however is where to draw the boundary; one that is legally and scientifically defensible. If you can identify the boundary where the water direction changes flow to an accuracy of 5-10 ft then you can separate the wetland into two units. This may require a detailed topographic survey, lidar, or some other measurements such as piezometer readings across the boundary.

This is similar to the problem we face in wetlands with different HGM classes within one delineated boundary. We recommend the wetland be rated as one unit because it is very difficult to identify a legally defensible boundary. When we took wetland experts into the field we were unable to agree on the boundary during just one site visit. The boundaries drawn by different scientists were off by more than 100ft. We ask you to rate the entire wetland as one unit because we could not identify any simple indicators that would allow you to draw an accurate boundary. Drawing a boundary between two units is possible but may take detailed monitoring of water levels for at least a year.

Tom

Tom Hruby, PhD, PWS
Senior Ecologist
Washington State Department of Ecology
PO Box 47600
Olympia WA 98504

II. WETLAND E1 PART OF CORE WETLANDS COMPLEX

There are additional considerations that should be made when considering why the protection of this particular wetland, E1, is important:

1. The wetland connects to the city's core wetland complex. The documentation reviewed did not appear to address this special circumstance. However, from the required wetland rating forms, it appears should be addressed. The form asks:

“ **Does the wetland unit being rated meet any of the criteria below?**
If you answer YES to any of the questions below you will need to protect the wetland according to the regulations regarding the special characteristics found in the wetland.”

... And then the form continues with a 4th condition of:

“SP4. Does the wetland unit have a local significance in addition to its functions?
For example, the wetland has been identified in the Shoreline Master Program, the Critical Areas Ordinance, or in a local management plan as having special significance.”

There is good evidence to support additional local significance. The City of Black Diamond Sensitive Areas Ordinance Best Available Science Review and Recommendations (Best Available Science) document from September 2008 states, regarding two of the wetlands that are connected with the wetlands in this plat:

“Rock Creek Wetlands Wetlands associated with Rock Creek are mapped by the NWI as scrub/shrub and forested wetlands. This wetland complex was given a preliminary Category I rating under the Ecology wetland rating system. *(page 43, emphasis added)*

...

Black Diamond Lake/Creek Wetlands Wetlands associated with Black Diamond Lake and Black Diamond Creek are characterized as a forested wetland, and more particularly as a bog. The King County Wetland Inventory identifies the wetlands associated with Black Diamond Lake and the upstream and downstream reaches of Black Diamond Creek as unique/outstanding. The Black Diamond Lake and its associated world-class bog have been extensively researched by the Nature Conservancy and represent a valuable natural asset for the City. The low elevation riparian wetland associated with Black Diamond Lake is also considered a high quality wetland ecosystem.” *(page 44, emphasis added)*

In light of these connections, the city should ensure protection of its valuable natural assets and reject the segregation of Wetland E1.

If the applicant submits additional evidence for the Category II rating, the city should require a new field visit by an independent 3rd party reviewer to visit only the part of wetland E1 that was segregated. It is not clear from previous verifications by the MDRT reviewer that this separate unit alone was reviewed in enough detail. The 2009 EIS reviewer only spot-checked a few places for the

entire Villages MPD, and the city MDRT reviewer for Plat 2C does not appear to have done enough field visits to the area specifically in Plat 2C.

III. UNCLEAR SEPA DESIGNATED OFFICIAL

Separately, the decision to separate Wetland E1 is questionable on technical grounds. The city's SEPA designated official at the time of the city's agreement to segregate the wetland was not clearly appointed by the city.

The Aug 22, 2013 memorandum "Approval of the Wetland E1 re-evaluation of Class II designation and proper segregation for the Villages MPD Phase 1A Preliminary Plat" is signed by two individuals, both with "Designated Official" under their name. But it is not clear if either was actually the designated official at the time.

IV. WETLAND BUFFER SHOULD BE INCREASED.

Rather than decrease the buffer on Wetland E1, The city code, in fact, states that the opposite should have occurred. In section 19.10.230 Wetland Buffers, the city code states:

"G. *Increased wetland buffer widths.* The mayor or his/her designee shall require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

1. A larger buffer is needed to protect other sensitive areas;"

The city's reviewer and appropriate city officials did not appear to take this section of the code into account. Wetland E1 is connected to a wetland with a 225' foot buffer, may itself be rated Category I by some scientists, and as noted above, is part of a very unique and valuable sensitive area.

If the above information does not provide sufficient reason to re-instate the Category I rating and remove the "segregation" of the wetland, then before closing the SEPA review and comment period, **the city should require that a new, independent reviewer working for the city as a 3rd party should be sent to the field to verify the wetland rating for the Plat 2C portion of Wetland E1.** Additionally, this visit should occur in the spring or late fall, not during the dry season.

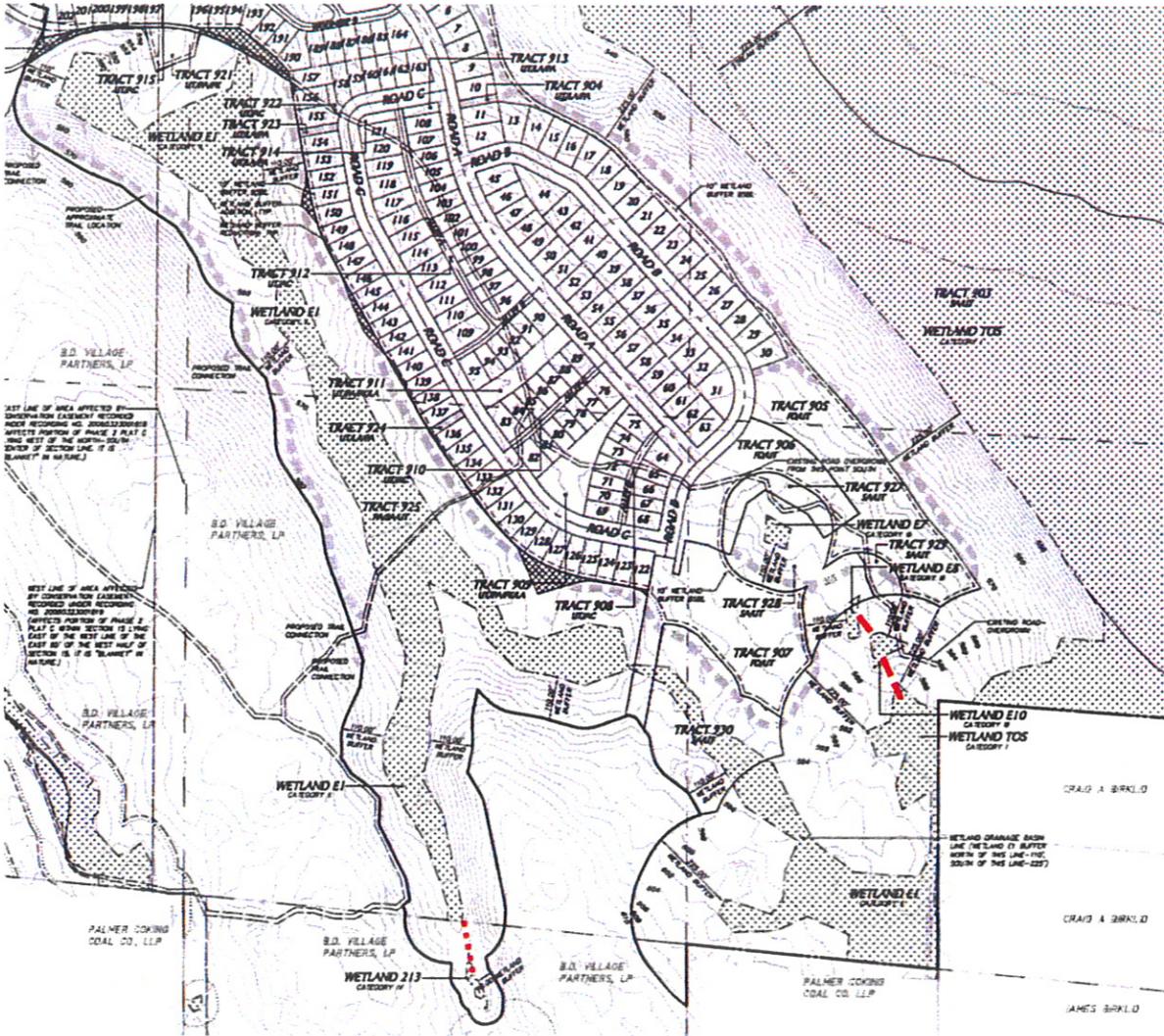
B. DENSITY OF DEVELOPMENT ALONG WETLAND BUFFER MAY BE HIGHER THAN ALLOWED.

It is not clear from review of the city's documentation that the applicant took into account the need to not simply provide wetland buffers, but to also keep density of development below a certain threshold along wetlands. The city code as well as best professional guidance should be checked to make sure adjacent development is not covering too much surface area.

The density of residential lots is approximately 8 units per acre. This seems to be high to surround a wetland such as Wetland E1 and especially core wetland TOS.

C. WETLANDS SHOWN AS ISOLATED MAY BE CONNECTED

This map taken from the Plat document has red lines between certain small wetlands that may in fact be connected to the larger wetlands near them.



The dashed red lines show that Wetlands marked separately as Wetland E8, Wetland E10, and Wetland E213 may in fact be connected during the wet season.

If they are connected, they increase the size of their larger adjacent wetlands and take on their buffer widths. In addition, the wrong delineations could lead to a violation of federal laws.

This is a potential increase to 225' feet for wetlands E8 and E10. This would likely prevent future development of Tract 907 and part of Tract 905. The city should send a reviewer out to verify these wetlands.

D. FEDERAL REGULATIONS - AVOID VIOLATIONS

Additionally, the city needs to ask the Army Corps to verify the wetlands. This part of the development has a number of potential wetlands issues. The city has not verified the wetland boundaries apart from a very partial site visit by city reviewer Parametrix in 2008. While the Development Agreement may set those boundaries, this agreement does not:

1. Prevent the city from fulfilling its obligation to does the proper scientific validation.
2. Protect the city in the event of wetland disturbance or fill according to federal requirements.

The city should place as a condition on the Plat the requirement of Army Corps wetlands delineation verification of before clearing and begins on the plat.

E. BUFFER AVERAGING PLAN DOES NOT IMPROVE PROTECTION

The city's code states that any buffer averaging plan must improve wetland function. In section 19.10.230 Wetland Buffers, the code states:

"H.

Wetland buffer width averaging. The mayor or his/her designee may allow modification of the standard wetland buffer width in accordance with an approved sensitive area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

1.

Averaging **to improve wetland protection** may be permitted when all of the following conditions are met:"

In the applicant's buffer averaging plan, although the applicant tries to make a case that the four conditions of the code that follow the quote above are met, there is not a scientific case that can reasonably be made to say that the averaging improves wetland protection. In fact, the applicant's actual reason for the averaging is to reduce cost of fencing so that the fence can be a straight line rather than follow the more curved and angled edge of the wetland. This is ~~not~~ a justifiable reason for buffer averaging, and the city cannot permit the buffer averaging plan with this plat.

F. POSSIBLE TRIBUTARY STREAM TO ROCK CREEK NOT ADDRESSED.

Other maps show a stream near the north edge of wetland buffer E1 extending to Rock Creek. This stream is not addressed in the plat drawings.

Figure 1. Segment of city's Best Available Science Critical Areas Map, with orange outline showing possible stream:

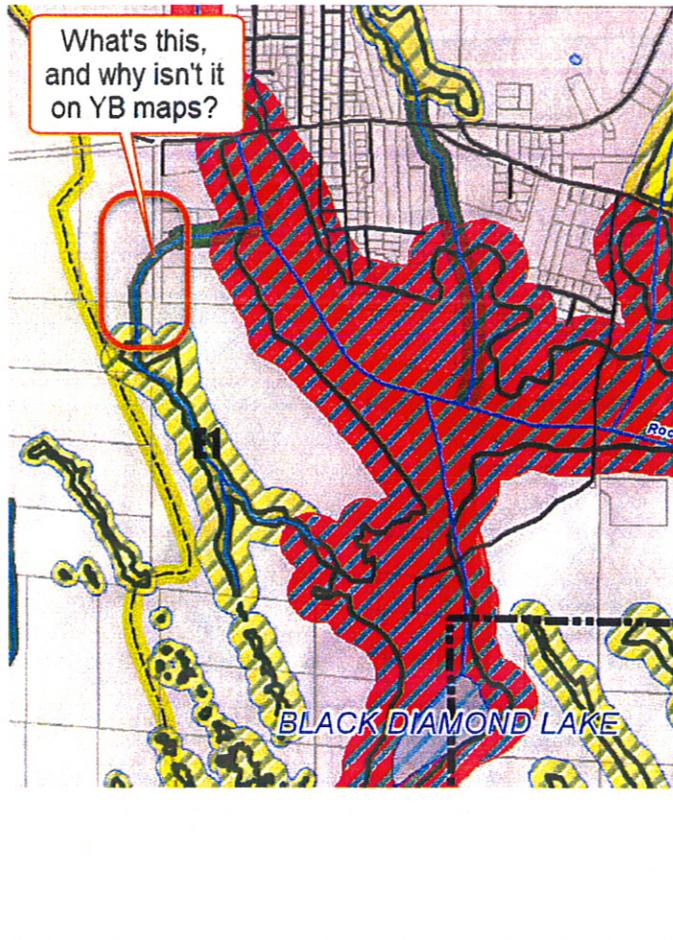
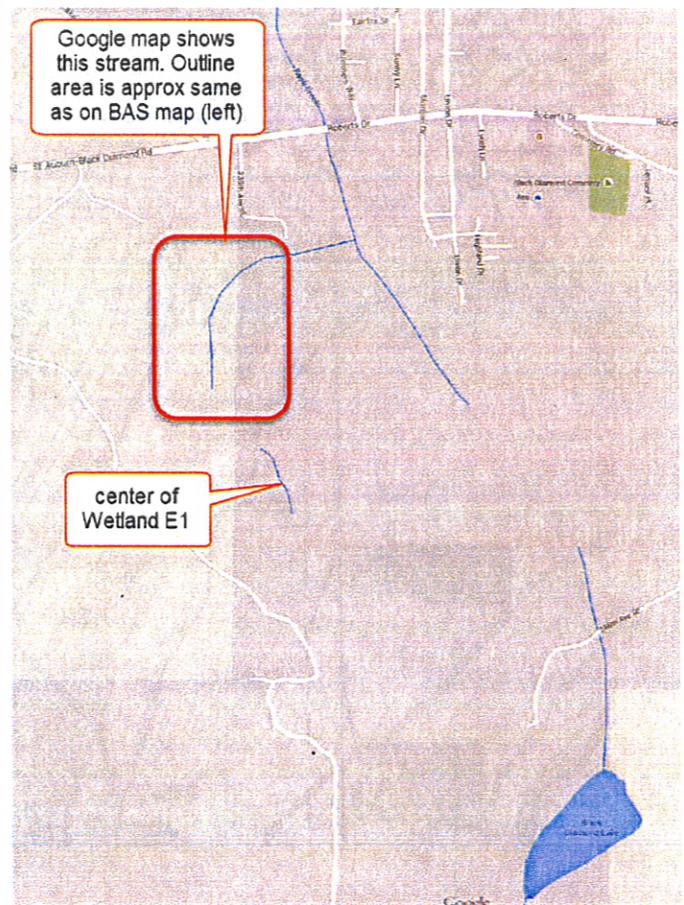


Figure 2. Online map of same area. Google map copied June 30, 2014. Shows a stream not shown on applicant's map.



Continued on next page...

G. WILDLIFE HABITAT

This plat includes a portion of Rock Creek.

The city's 2008 Best Available Science document section 5.2 page 45 states:

“Steelhead (*O. mykiss*): Winter run steelhead within the Covington Creek basin are in the Puget Sound ESU, which is listed as threatened under the ESA. Covington Creek, Ravensdale Creek, Rock Creek, Lake Sawyer, Crisp Creek, and the portion of the Green River located in the study area are reported as providing spawning and/or rearing habitat for winter steelhead.” *(emphasis added)*

The applicant's wildlife habitat review does not address a plan for ensuring protection of this threatened species.

The MDRT review also does not make sufficient comment on the wildlife habitat given the significant natural value to the city of the entire plat. Based on the documents obtained, it does not appear that the city conducted a meaningful review of the wildlife habitat plan.

Comments Submitted by:

Kristen Bryant, born and raised in Black Diamond. King County resident interested in protecting our the beautiful Puget Sound region, and enforcing our laws and rights that many others before us worked so hard to get on the books.