Jenny Ngo

From: Jenny Ngo
Sent: Wednesday, May 20, 2015 1:33 PM
To: 'Prak Naki'; Mike Layes; Dave Kuhl; Agnes Kowacz
Subject: RE: Modi

Prakash,

I believe we have already provided an explanation to Mike's questions. The "why" and "how" this code came into effect is not relevant in this discussion, except that we are responsible for enforcing it. Remember that it is the responsibility of the applicant to prove that their proposal abides by the city's regulations – the fact that a 2014 review was done by *our* reviewer is beyond what Development Services does for permit processing. This was done *at your request as a courtesy to you.* If you disagree with Otak's rating, then Acera should do their own 2014 review instead of second guessing the rating provided by Otak. They are here to be a third party reviewer on behalf of the city, not necessarily to provide a wetland rating for a private project. Additionally, this code has not been adopted, and although this may inform your decision, it is pre-emptive for the City to address for a system that is not being used to determine buffers today.

Under the existing code, the City's categorization has not changed – the fact that the wetland was not categorized as riverine does not disprove the fact that the wetland is proximal and influenced by the stream.
Wetland A occurs within the 100-year floodplain of Little Bear Creek, immediately above and well within the floodprone area of the active channel. Wetland A is subject to inundation from flood flows and will provide flood storage functions during such flooding events. Furthermore, Wetland A is fed by groundwater surfacing along the slope and discharges into Little Bear Creek with both a surface and subsurface hydrologic connection (Appendix A, Photograph 6). During the site visit, shallow subsurface water flowing from Wetland A into Little Bear Creek was observed. In addition, clear evidence of a surface water connection between Wetland A and Little Bear Creek was noted as small channelization and rills leading from Wetland A directly into Little Bear Creek.

There is a fundamental disagreement on several points here that we haven't been able to get resolution on. Both sides have made their points and this will likely not get resolved at the staff level. We don't believe it's correct to hold up the application any longer if we haven't been able to reach an agreement. At this point, staff is planning to issue a critical areas determination on this wetland next week. An official determination will give you an option to formally challenge (appeal) the category rating if you so choose. Appeals includes a public hearing and provides you the opportunity to make your case to a hearing examiner (similar to a judge). If you choose to appeal, information on how to appeal will be provided on the decision.

Jenny

Jenny,

"The requirements in WMC 21.24.320(1) and WMC 21.24.130 are not used in determining the category of the wetland by our code."
Why is it in the code then? If you don't use it?? Just for fun and confusion?

Mike Layes
Professional Wetland Scientist

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Environmental permitting specialists for projects
that contain wetlands, streams, marine shorelines,
or sensitive fish and wildlife species and habitats.

http://www.aceraenvironmentalconsulting.com/

acera.consulting@gmail.com

(360) 292-9639

1409 7th Avenue SE
Olympia, WA 98501

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Tuesday, May 19, 2015 11:54 PM
To: Mike Layes; Jenny Ngo; Dave Kuhl; Agnes Kowacz
Subject: RE: Modi

Dave Jenny,

Thanks for your response. I think you missed response to how wetland is influenced by Little Bear creek which was the sticky point for making the wetland as Class1 by Otak in the first place. You pointed out that Otak's response in the pdf addresses issue that Mike raised below. Otak's response in only for the rating summary on new grading system and not on the old system. Please clarify why City or OTak still think wetland to be Class 1 in old system and why City disagree with Mike's explanation that sloped wetland is not influenced by Little Creek.

In addition, I will like City to response back to Mike's followup question as raised below:

>>The requirements in WMC 21.24.320(1) and WMC 21.24.130 are not used in determining the category of the wetland by our code. **Mike's question:** Why not? Why are they there then? What's the point? So they are not requirements if you decide to say so?

>> Best available science should be used in your critical areas report, and the wetland per the DOE system should be included; however, it is not the categories that our code prescribes nor the categories in which we base our buffers on. The fact that our code does not line up with DOE's rating system does not necessarily invalidate either system. **Mike's question**: So, why are you "invalidating" the DOE rating?

>>Being rated "similarly" to the DOE manual does not negate the fact that our code provides separate rating systems. **Mike's question:** No, but it REQUIRES a similar rating.

With regard to Otak's response to new rating summary, I have few follow-up question.

Page 1: Please provide Professional wetland scientist PWS# and when was the certification awarded? How many wetland categorization and classification has been done by Shelby Petro prior to this wetland classification.

S2.1: **Otaks's response:** If all areas within the parcel that meet the criteria for a wetland were included in the delineation, then parts of 136th Ave and the northern residence and driveway would be included in the 150' upslope area considered in this question. These pollution generating elements in the landscape would constitute 10% of the 150' upslope area.
F**ollow-up question:** Have you measured if 150' upslope will reach 136th Ave street or are you speculating. Also your response makes me believe that roadways that City has created uphill across 136th and northern neighbors who built their driveway is making my land unusable. This doesn't make any sense to me and

unfortunately I disagree with your assessment that wetland has the potential to support water quality function for the site.

S3.3: **Otaks's response:** The wetland has not been identified specifically; however, the directions for this question say to answer YES if there is a TMDL for the basin in which the wetland is found. Little Bear Creek has a TMDL for fecal coliform, therefore this question is answered with a YES.
http://www.ecy.wa.gov/programs/wq/tmdl/LittleBearCrTMDLsummary.html
Follow-up question: Whole questionnaire is in the context of the wetland and NOT Littele Bear Creek. And you agree that wetland has not been identified in watershed or local plan. This seems like you are marking this as 2 for the sake of marking. How can you say that wetland which is sloped is improving water quality which is valuable to the society?

S6.0: **Otaks's response:** The sub-basin immediately down-gradient of the parcel has flooding problems that result in damage to human or natural resources, therefore two points are assigned to that answer.
Follow-up question: This questionnaire is in the context of **Sloped WETALNDS** as the top of the page indicates. A slope wetland doesn't reduce flooding and stream erosion. Moreover there should be signs of flooding once every two years. None of these indicators where observed by ACERA (2014) or OTAK (2015) during winter site assessments in these two consecutive years. Field observations document that Wetland A does not flood frequently enough to meet the Riverine criteria. The lower elevation portions of Wetland A may rarely get inundated with water during major flood events. This is infrequent, and not influencing the continuing existence of this wetland, or providing a dominant, regular source of hydrologic input. So how did you concluded that wetland is providing hydrologic functions that is valuable to society when the fact is there is **NO Scour marks which should have been common in the wetland.**, **NO recent sediment deposits**., **NO plants are bent in one direction or damaged, NO indication of soils with layered deposits of sediment and NO Flood marks on plants along the edge of the bank at different levels.**

H1.2: **Otaks's response:**

- **Seasonally flooded or inundated:** Seasonally flooded or inundated is defined as: an area where surface water is present for extended periods (for more than 2 consecutive months during a year), especially early in the growing season, but is absent by the end of the season in most years (Hruby, 2014). At least 10% of the wetland was observed to be inundated at the time of the site visit and it was estimated that that area would be inundated for at least 2 months of the year, but not permanently.
- **Occasionally flooded or inundated:** Occasionally flooded or inundated is defined as: an area where water is present for periods of less than 2 months during the growing season but the water table usually lies below the soil surface for most of the season (Hruby, 2014). At least 10% of the wetland was observed to be inundated at the time of the site visit and it was estimated that that area would be inundated for less than 2 months of. Note that to accurately delineate the boundaries of hydroperiods within the wetland, monitoring devices should be installed.

Follow-up Question: So according to you , your assessment is not fact based and only way to accurately delineate the boundaries of hydropreiods within wetland is by monitoring installed. Can you also provide the link to specific codes that defines Seasonally and Occasionally definition.

H1.3: Otak's response: At least 5 species with a cover of 10 sq.ft. were observed within all areas that should be included in the delineated wetland boundary. Vegetation observations during a delineation completed during the growing season would provide evidence that at least 5 species cover at least 10 sq.ft. within the wetland.
Follow-up Question: Wow! So you found atleast 5 – please provide details of which 5. Additionally you didn't saw 10 sq.ft evidence for each of the 5 species and you assigned 1 based on speculation that it will cover atleast 10 sqft. This doesn't make sense as your assignment is not fact based but speculation based.

H1.4: Otaks's response: If all areas within the parcel were included in the delineation, then the wetland boundary would include a moderate level of interspersion of habitats. A delineation inclusive of all areas of wetland within the parcel would provide the proof you ask for.
Follow-up question: I have to differ this to Mike from ACERA as I am not sure how to gather proof here without speculation.

H3.0: Otak's response: The wetland does not provide 3 or more priority habitats; however, the area "within 100m" of the wetland does.
Follow-up Question: This questionnaire and scorecard is for Wetland classification and not for Little Bear Creek. According to your own comments wetland doesn't provide 3 or more priority habitat for specifies valued in laws, regulation or policies. Then why assign score of 2. Moreover, it seems illogical to say that just because Little Bear creek is within 100 m, wetland provides habitat for species without any way to proof on the ground. I totally disagree with your assessment here.

Page 12:
Riparian: Otaks's response to mark this as priority habitat: The site conditions match the definition of riparian habitat as provided by WDFW, which is reflected on this form.
Follow-up Question: Please provide facts and proof that wetland and Little Bear creek mutually influence each other. Based on the nature of sloped wetland and all the ground facts that I shared under S6.0 response, there is no proof that wetland and Little Bear creek are hydrologically connected and influence each other. This marking is inaccurate.

> **Instream: Otak's response:** The wetland is not providing such habitat; however Little Bear Creek provides this habitat, which is located within 100m of the wetland and therefore included in this analysis.

Follow-up question: You are assuming that wetland interact and provide functional life history requirements for instream fish and wildlife without any ground facts that sloped wetland is hydrologically connected.

> **Snag and Logs:** Otaks' includes this as one of the pint their selection for 3 priority habitat.

Follow-up question: How many priority snags were found in the 1.5 acre parcel and how many priority logs were found that enables cavity excavation/use of wildlife. I am surprised here as a forested land which is undeveloped will have few snags ad trees.

> Thanks in advance for helping out resolving these issue. Unfortunately, the margin to have 40 ft buffer (Total: 15 rating points) Vs 165 ft buffer (17 rating pints) based on just 2 point rating difference and that too points assigned to higher numbers by Otak just based on speculation is not acceptable. I will sincerely ask City to help resolve this issue and not rob individuals of their right to build property on their parcel based on speculations.

Thanks,
-Prakash

From: acera.consulting@gmail.com
To: JennyN@ci.woodinville.wa.us; pmodi2002@hotmail.com; davek@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us
Subject: RE: Modi
Date: Tue, 19 May 2015 15:58:57 -0700

The requirements in WMC 21.24.320(1) and WMC 21.24.130 are not used in determining the category of the wetland by our code.

Why not? Why are they there then? What's the point? So they are not requirements if you decide to say so?

Best available science should be used in your critical areas report, and the wetland per the DOE system should be included; however, it is not the categories that our code prescribes nor the categories in which we base our buffers on. The fact that our code does not line up with DOE's rating system does not necessarily invalidate either system. – So, why are you "invalidating" the DOE rating?

Being rated "similarly" to the DOE manual does not negate the fact that our code provides separate rating systems.

No, but it REQUIRES a similar rating.

WMC 21.24.320 must take precedent for determining buffers as the 2004 DOE system doesn't align at all with the designation of buffers. The municipal code uses Classes 1 through 3, whereas the 2004 DOE system uses Category I through IV. Section (2) clearly states "wetlands shall be designated as Class 1, Class 2, and Class 3 according to the criteria in this section." We are following the categories pursuant to WMC 21.24.320 and the subsequent buffers required under WMC 21.24.330(1). We cannot reduce buffers different than what our code can allow.

Mike Layes
Professional Wetland Scientist

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(360) 292-9639

1409 7th Avenue SE
Olympia, WA 98501

From: Jenny Ngo [mailto:JennyN@ci.woodinville.wa.us]
Sent: Tuesday, May 19, 2015 3:35 PM
To: Mike Layes; 'Prak Naki'; Dave Kuhl; Agnes Kowacz
Subject: RE: Modi

Mike and Prakash,

I'm not sure where the 2 week timeframe comes from. We've provided a response to your issues on the best available science discussion in past emails. It appears that the explanation wasn't clear enough. Answer to your questions are below.

I want to make it clear the fact that we aren't pushing either direction for the existing critical areas code or the new one. I do however feel that it is our responsibility to tell you both of these upcoming changes – Prakash will need to make the decision on whether he wants to stay with the existing code or move to the new one. We need to discuss further on the route that will be chosen. If there is a desire to stay with the old code, I would recommend fully submitting a short plat application so that it can be vested to the existing code (be aware that vesting occurs at subdivision under state code, even if we go through a critical areas process).

The discussion about the rating under the new code is going to be important – particularly for the significant difference in buffer widths. I cannot speak for Kevin O'Brien or Shelby Petro on their rating, however they did provide response to the questions you had on the wetland rating, attached. This should help explain the rating the scoring behind the wetland and habitat points.

No explanation has been given to me or Mr. Modi as to why the following provisions (WMC 21.24.320(1) and WMC 21.24.130 are required in the WMC, but are apparently completely ignored and not used to rate wetlands:

"WMC 21.24.320(1) Wetland Rating. Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System found in the Washington State Wetland Rating System document, Western Washington, Ecology Publication No. 93-74."

Why is this skipped over, and why does WMC 21.24.320(2) take precedence? Please explain.

The requirements in WMC 21.24.320(1) and WMC 21.24.130 are not used in determining the category of the wetland by our code. Best available science should be used in your critical areas report, and the wetland per the DOE system should be included; however, it is not the categories that our code prescribes nor the categories in which we base our buffers on. The fact that our code does not line up with DOE's rating system does not necessarily invalidate either system. Being rated "similarly" to the DOE manual does not negate the fact that our code provides separate rating systems. WMC 21.24.320 must take precedent for determining buffers as the 2004 DOE system doesn't align at all with the designation of buffers. The municipal code uses Classes 1 though 3, whereas the 2004 DOE system uses Category I through IV. Section (2) clearly states "wetlands shall be designated as Class 1, Class 2, and Class 3 according to the criteria in this section." We are following the categories pursuant to WMC 21.24.320 and the subsequent buffers required under WMC 21.24.330(1). We cannot reduce buffers different than what our code can allow.

"WMC 21.24.130 Contents of critical area special study.
(1) The critical area special study shall be in the form of a written report and shall contain the following, as applicable:
(a) Using the best available science, identification and characterization of all sensitive areas on or encompassing the development proposal site;"

"WMC 21.02.060(4) The word "shall" is mandatory and the word "may" is discretionary."

These provisions are then clearly mandatory, and therefore must be considered when rating wetlands.

City Staff response to Mr. Modi:
"the code provides a very clear set of criteria of how wetlands are classified under this jurisdiction. We cannot deviate from this criteria..",

I would very much appreciate a straight answer to this question:

Why are the requirements of WMC 21.24.320(1) and WMC 21.24.130, which are clearly mandatory, not considered "*criteria of how wetlands are classified*"?

See the answer above. The wetland can be and should be rated under both systems, but our code provides an additional rating system that we are required to use. This section provides no scoring or ranking using the DOE wetland rating system. From a previous email: Although I don't disagree with what I believe are the code's intention of updating how ratings are done in light of DOE's best practices, the code provides a very clear set of criteria of how wetlands are classified under this jurisdiction. We cannot deviate from this criteria unless it's proven that our buffers are inadequate.

As I detailed in my response to the OTAK review and above, the Code does not just intend, but *requires* Best Available Science. The Best Available Science for classifying wetlands is: Ecology's Washington State Wetlands Rating System for Western Washington. I will restate a portion of this response here:

The Washington State Growth Management Act (GMA) directs Cities and Counties to use the "Best Available Science" in regards to managing and protecting Critical Areas. The City of Woodinville Municipal Code also requires the use of BAS as follows:
"WMC 21.06.052 Best available science. Best available science: current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 375-195-900 through 375-195-925."

Cities update their critical areas ordinances to match best available science. The fact that the code no longer matches best available science does not immediately invalidate the code. Cities may choose to adopt more restrictive buffers than what best available science recommends. The fact that the buffers in this instance are larger than what you believe they should be does not change the buffers required under code.

"WMC 21.24.130 Contents of critical area special study.
(1) The critical area special study shall be in the form of a written report and shall contain the following, as applicable:
(a) Using the best available science, identification and characterization of all sensitive areas on or encompassing the development proposal site;"

In addition, The City of Woodinville Municipal Code requires that the City's wetland classification ratings are to be similar to Ecology's wetland rating system "Washington State Wetlands Rating System for Western Washington" as follows:

WMC 21.24.320(1) Wetland Rating.
Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System found in the Washington State Wetland Rating System document, Western Washington, Ecology Publication No. 93-74.

Within the City of Woodinville Municipal Code, the provision WMC 21.24.320(1) Wetland Rating is placed first, before the City's own wetland classification system WMC 21.24.320(2) Wetland Rating Categories. Therefore, it should logically take precedence over the City's classification system which follows. Furthermore, WMC 21.24.320(1) states that "Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System…". The Merriam Webster definition of similar is "having characteristics in common: strictly comparable". WMC 21.24.320(1) therefore takes precedence over, and requires consistency between the City's wetland classification system and Ecology's wetland categories. In addition, WMC 21.24.130(1)(a) requires that BAS shall be used for the "identification and characterization of all sensitive areas".

I don't understand your argument. Just because a section of code is placed before another section of code does not necessarily mean that it takes precedent over a section below. A common mistake is to pull out one section or sentence of a code without considering the context in which it comes from. Code chapters should be looked at as a whole, not as fragments.

I did not address the OTAK review regarding the City's Classification System in my earlier response because I did not feel it was necessary. This information was previously detailed in the wetland report and BAS and the WMC require that wetlands be rated *similar* to Ecology's system.

The results of rating Wetland A using the City's classification system is not in any way *similar* to Ecology's Wetland Rating System. If Wetland A was rated as a high functioning wetland (Category I or a high point Category II) using Ecology's Rating System, it would be logical to give it the Class 1 designation. However, it is not even close. Determining the protection requirements of a wetland without considering the functions it actually provides, is certainly *not* using Best Available Science.

As mentioned above, the rating system that the City uses cannot be equated to DOE's rating system, and therefore we can't rely solely on this system for our buffers. I understand your argument that the categories in WMC 21.24.320(2) do not necessarily reflect today's best available science, however a larger prescribed buffer may be a city's policy decision to provide additional protection.

OTAK incorrectly rates Wetland A as Class 1:
WMC 21.24.320(2) Class 1 wetlands are those wetlands that meet any of the following criteria:
(iv) Wetlands proximal to and influenced by the main stem of the Sammamish River or Little Bear Creek

The issue of what "proximal" definition one uses in this case i.e. "plain meaning" vs. the geology definition is debatable. It's not defined in the WMC and therefore ambiguous if Wetland A actually meets this criteria.

The "Influenced by" criteria can be determined by the Hydrogeomorphic (HGM) Classification of Wetlands (Ecology).

Evidence of why Wetland A is not "influenced by the main stem of the Sammamish River or Little Bear Creek". Is as follows:

For this to be true, Wetland A would need to meet the criteria for the Ecology HGM classification of "Riverine".

- **The unit is in a valley or stream channel where it gets inundated by overbank flooding from that stream or river.**
- **The overbank flooding occurs at least once every two years.**

The operative characteristic of Riverine wetlands in Washington is that of being "frequently

flooded" by overbank flows.
In western Washington the technical committees developing wetland methods decided that the frequency of overbank flooding needed to call a wetland Riverine is at least once in 2 years (2 yr return frequency). This characteristic, however, cannot be easily measured in the field and needs to be established from field indicators. The following are some field indicators that can be used to classify a wetland as Riverine:

- **Scour marks are common in the wetland.**
- **Recent sediment deposits.**
- **Plants are bent in one direction or damaged.**
- **Soils with layered deposits of sediment.**
- **Flood marks on plants along the edge of the bank at different levels.**

None of these indicators where observed by ACERA (2014) or OTAK (2015) during winter site assessments in these two consecutive years. Field observations document that Wetland A does not flood frequently enough to meet the Riverine criteria. The lower elevation portions of Wetland A may rarely get inundated with water during major flood events. This is infrequent, and not influencing the continuing existence of this wetland, or providing a dominant, regular source of hydrologic input.

OTAK goes into detail about water flowing into Little Bear Creek from Wetland A, but provide no evidence or observations of the influence Little Bear Creek has on Wetland A.

Wetland A has a HGM class of "Slope" according to these criteria from Ecology's rating system:

- **The wetland is on a slope *(slope can be very gradual)*.**
- **The water flows through the wetland in one direction (unidirectional) and usually comes from seeps. It may flow subsurface, as sheetflow, or in a swale without distinct banks.**
- **The water leaves the wetland without being impounded, NOTE: *Surface water does not pond in these types of wetlands except occasionally in very small and shallow depressions or behind hummocks (depressions are usually <3 ft diameter and less than 1 foot deep).***

OTAK and ACERA both agree on the Slope HGM classification. The dominant hydrology of Wetland A is ground water seepage *not* overbank flooding.

Slope wetlands are a source of water flow, they do not store or provide any significantly flood water storage functions. The wetland is on a hillside. Hillsides do not store floodwater.

Wetland A does not meet the requirements of the HGM Classification as a Riverine Wetland because it is not "influenced by" overbank flooding from Little Bear Creek on a regular basis (at least once every two years).

Wetland A should be designated as Class III not Class I.

- **BAS/Ecology Rating = Category IV (ACERA) Category III (OTAK) = Low functions. Class III is the "*Similar*" rating.**
- **BAS/Ecology HGM Classification Slope NOT Riverine (ACERA & OTAK) – Not frequently flooded i.e. not influenced by Little Bear Creek, and does not meet Class I requirements.**

See the comments respond to Prakash's comments in the attached PDF. If you do not want to meet, we are not requiring that you do so. We did want to put this offer out before we moved forward, particularly if there are wetland questions that you would like to ask Kevin O'Brien and Shelby Petro specifically. We do need to move forward with the issuance of the determination.

Lastly, the delineation out in the field does not appear to capture the entire of the wetland. The presence of skunk cabbage a little upslope of the delineated portion of the wetland indicates that it is larger than what was originally shown. This is going to need to be clarified at some point.

Jenny

From: Mike Layes [mailto:acera.consulting@gmail.com]
Sent: Tuesday, May 19, 2015 11:05 AM

To: 'Prak Naki'; Jenny Ngo; Dave Kuhl; Agnes Kowacz
Subject: RE: Modi

All,

I would like the City to address my questions from my last email (originally sent on May 6th) before I attend any meeting. It's been nearly two weeks and no answer.

Thank you,

Mike Layes
Professional Wetland Scientist

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(360) 292-9639

1409 7th Avenue SE
Olympia, WA 98501

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Tuesday, May 19, 2015 9:59 AM
To: Jenny Ngo; Mike Layes Biologist; Dave Kuhl; Agnes Kowacz
Subject: RE: Modi

Thanks Jenny! We are looking forward to your response.

I can make myself available Thursday morning. Let me know what time works for Mike and Shelby and we can try and adjust a bit.

Regards,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; acera.consulting@gmail.com; davek@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us
Subject: RE: Modi
Date: Tue, 19 May 2015 15:01:35 +0000
Prakash,

We provide a response to your questions later today. However, in the meantime, we are emailing to set up a meeting with parties involved to discuss the matter. We believe this will be very helpful to facilitate some of the issues that keep being raised on both sides. We wanted to know if you were available tomorrow or Thursday to meet.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Monday, May 18, 2015 11:42 AM
To: Mike Layes Biologist; Dave Kuhl; Jenny Ngo; Agnes Kowacz
Subject: RE: Modi

Dave, Jenny

I agree with Mike's below email. Please provide a detail response to each of the question raised by Mike below on why you disagree with Mikes response and associated wetland categorization of 4. In addition, please provide "**professional Wetland Scientist**" certification details including **PWS# for Shelby and Kevin** as I will like to know their experience around wetland.

In addition, I am also attaching my comments and additional questions around the scoring done by OTAK. Please see highlighted in yellow along with the comments.

Thanks in advance for your quick response to all Mike below question and also sending us PWS certification # for OTAK's wetland specialist along with the responses to attached scoring flaws.

Thanks,
-Prakash

From: acera.consulting@gmail.com
To: davek@ci.woodinville.wa.us; pmodi2002@hotmail.com; JennyN@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us
Subject: RE: Modi
Date: Fri, 15 May 2015 11:58:48 -0700
All,

Mr. Modi's application is vested under the current ordinance. Why is the City directing him to await the adaption of the CAO update? This will require completely rewriting the assessament report and mitigation plan, and may make the proposal completely unfeasible.

Why has the City failed to answer my questions regarding the wetland classification? This is very unprofessional. I would appreciate an explanation here. I have included this response again below. I have the right to address a peer review that challenges my work.

I've provided a very detailed, logical analysis of my position. I have referenced all the applicable WMC requirements to back up my determination. If the City disagrees with my analysis of the WMC and resulting wetland classification, I would like to know why. Please be specific.

From my May 6, 2015 email:

No explanation has been given to me or Mr. Modi as to why the following provisions (WMC 21.24.320(1) and WMC 21.24.130 are required in the WMC, but are apparently completely ignored and not used to rate wetlands:

"WMC 21.24.320(1) Wetland Rating. Wetlands **shall** be rated similarly to the Department of Ecology Wetland Rating System found in the Washington State Wetland Rating System document, Western Washington, Ecology Publication No. 93-74."

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"WMC 21.24.130 Contents of critical area special study.
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"WMC 21.02.060(4) The word **"shall"** is mandatory and the word "may" is discretionary."

These provisions are then clearly mandatory, and therefore must be considered when rating wetlands.

City Staff response to Mr. Modi:
"the code provides a very clear set of criteria of how wetlands are classified under this jurisdiction. We cannot deviate from this criteria..",

I would very much appreciate a straight answer to this question:

Why are the requirements of WMC 21.24.320(1) and WMC 21.24.130, which are clearly mandatory, not considered "*criteria of how wetlands are classified*"?

As I detailed in my response to the OTAK review and above, the Code does not just intend, but ***requires*** Best Available Science. The Best Available Science for classifying wetlands is: Ecology's Washington State Wetlands Rating System for Western Washington. I will restate a portion of this response here:

The Washington State Growth Management Act (GMA) directs Cities and Counties to use the "Best Available Science" in regards to managing and protecting Critical Areas. The City of Woodinville Municipal Code also requires the use of BAS as follows:
"WMC 21.06.052 Best available science. Best available science: current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 375-195-900 through 375-195-925."

"WMC 21.24.130 Contents of critical area special study.
(1) The critical area special study shall be in the form of a written report and shall contain the following, as applicable:
(a) Using the best available science, identification and characterization of all sensitive areas on or encompassing the development proposal site;"

In addition, The City of Woodinville Municipal Code requires that the City's wetland classification ratings are to be similar to Ecology's wetland rating system "Washington State Wetlands Rating System for Western Washington" as follows:

WMC 21.24.320(1) Wetland Rating.

Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System found in the Washington State Wetland Rating System document, Western Washington, Ecology Publication No. 93-74.

Within the City of Woodinville Municipal Code, the provision WMC 21.24.320(1) Wetland Rating is placed first, before the City's own wetland classification system WMC 21.24.320(2) Wetland Rating Categories. Therefore, it should logically take precedence over the City's classification system which follows. Furthermore, WMC 21.24.320(1) states that "Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System…". The Merriam Webster definition of similar is "having characteristics in common: strictly comparable". WMC 21.24.320(1) therefore takes precedence over, and requires consistency between the City's wetland classification system and Ecology's wetland categories. In addition, WMC 21.24.130(1)(a) requires that BAS shall be used for the "identification and characterization of all sensitive areas".

I did not address the OTAK review regarding the City's Classification System in my earlier response because I did not feel it was necessary. This information was previously detailed in the wetland report and BAS and the WMC require that wetlands be rated *similar* to Ecology's system.

The results of rating Wetland A using the City's classification system is not in any way *similar* to Ecology's Wetland Rating System. If Wetland A was rated as a high functioning wetland (Category I or a high point Category II) using Ecology's Rating System, it would be logical to give it the Class 1 designation. However, it is not even close. Determining the protection requirements of a wetland without considering the functions it actually provides, is certainly *not* using Best Available Science.

OTAK incorrectly rates Wetland A as Class 1:
WMC 21.24.320(2) Class 1 wetlands are those wetlands that meet any of the following criteria:
(iv) Wetlands proximal to and influenced by the main stem of the Sammamish River or Little Bear Creek

The issue of what "proximal" definition one uses in this case i.e. "plain meaning" vs. the geology definition is debatable. It's not defined in the WMC and therefore ambiguous if Wetland A actually meets this criteria.

The "Influenced by" criteria can be determined by the Hydrogeomorphic (HGM) Classification of Wetlands (Ecology).

Evidence of why Wetland A is not "influenced by the main stem of the Sammamish River or Little Bear Creek". Is as follows:

For this to be true, Wetland A would need to meet the criteria for the Ecology HGM classification of "Riverine".

- The unit is in a valley or stream channel where it gets inundated by overbank flooding from that stream or river.
- The overbank flooding occurs at least once every two years.

The operative characteristic of Riverine wetlands in Washington is that of being "frequently flooded" by overbank flows.
In western Washington the technical committees developing wetland methods decided that the frequency of overbank flooding needed to call a wetland Riverine is at least once in 2 years (2 yr return frequency). This characteristic, however, cannot be easily measured in the field and needs to be established from field indicators. The following are some field indicators that

can be used to classify a wetland as Riverine:

- Scour marks are common in the wetland.
- Recent sediment deposits.
- Plants are bent in one direction or damaged.
- Soils with layered deposits of sediment.
- Flood marks on plants along the edge of the bank at different levels.

None of these indicators where observed by ACERA (2014) or OTAK (2015) during winter site assessments in these two consecutive years. Field observations document that Wetland A does not flood frequently enough to meet the Riverine criteria. The lower elevation portions of Wetland A may rarely get inundated with water during major flood events. This is infrequent, and not influencing the continuing existence of this wetland, or providing a dominant, regular source of hydrologic input.

OTAK goes into detail about water flowing into Little Bear Creek from Wetland A, but provide no evidence or observations of the influence Little Bear Creek has on Wetland A.

Wetland A has a HGM class of "Slope" according to these criteria from Ecology's rating system:

- The wetland is on a slope *(slope can be very gradual)*.
- The water flows through the wetland in one direction (unidirectional) and usually comes from seeps. It may flow subsurface, as sheetflow, or in a swale without distinct banks.
- The water leaves the wetland **without being impounded,** NOTE: *Surface water does not pond in these types of wetlands except occasionally in very small and shallow depressions or behind hummocks (depressions are usually <3 ft diameter and less than 1 foot deep).*

OTAK and ACERA both agree on the Slope HGM classification. The dominant hydrology of Wetland A is ground water seepage *not* overbank flooding.

Slope wetlands are a source of water flow, they do not store or provide any significantly flood water storage functions. The wetland is on a hillside. Hillsides do not store floodwater.

Wetland A does not meet the requirements of the HGM Classification as a Riverine Wetland because it is not "influenced by" overbank flooding from Little Bear Creek on a regular basis (at least once every two years).

Wetland A should be designated as Class III not Class I.

- BAS/Ecology Rating = Category IV (ACERA) Category III (OTAK) = Low functions. Class III is the "*Similar"* rating.
- BAS/Ecology HGM Classification Slope NOT Riverine (ACERA & OTAK) – Not frequently flooded i.e. not influenced by Little Bear Creek, and does not meet Class I requirements.

Mike Layes
Professional Wetland Scientist

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Advanced Concepts in Environmental Regulatory Assistance
Environmental permitting specialists for projects

that contain wetlands, streams, marine shorelines,
or sensitive fish and wildlife species and habitats.

http://www.aceraenvironmentalconsulting.com/
acera.consulting@gmail.com

(360) 292-9639

1409 7th Avenue SE
Olympia, WA 98501

From: Dave Kuhl [mailto:davek@ci.woodinville.wa.us]
Sent: Friday, May 15, 2015 8:05 AM
To: Prak Naki; Jenny Ngo; Mike Layes Biologist; Agnes Kowacz
Subject: RE: Modi

Prakash,

Jenny is out of the office for a few days so we will catch up with you later next week.

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Thursday, May 14, 2015 8:32 PM
To: Jenny Ngo; Mike Layes Biologist; Agnes Kowacz; Dave Kuhl
Subject: RE: Modi

Jenny,

So if I read Otak's report correctly then based on new rating of 2014 DOE, the **wetland is still categorized as 3 (no change from previous stance)** by OTAK and due to the habitat number that they assigned 6 , now buffer that will be applicable for my parcel is **165 feet which is same as Category 1** wetland. Are you kidding me here?

And according to ACERA, wetland category based on codes/and ground indicator should be **category 4** and hence a buffer of 4**0ft should be applicable** in the new system.

This is significant discrepancy between two scientist and I don't think this is acceptable without OTAK providing details on why wetland category is designated as 3 and NOT 4 under new system.

Based on their own report OTAK marked the wetland as category 3 due to "proximal" aspect of wetland which both biologist agree to be sloped. In new system there is no reference of "proximal" so how does the wetland still remain as category 3 and not changes to category 4.

Please setup a conference call between city, OTAK, ACERA to resolve this asap. Otherwise I will be forced to challenge the scientist via legal route.

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; acera.consulting@gmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Fri, 15 May 2015 00:00:22 +0000
Prakash,

I want to clarify what you're saying in your email below. We discussed this matter at the front counter -- we are not the advocate for applicants on any project. You will need to be the one that supports your case. Although we do review for compliance with the code, we do not play a role in supporting or opposing development proposals. Our stance is to stay neutral and to verify compliance with code requirements.

We are proposing a classification system in the new code that will not be using the same language in the existing code. It will use scores based on the 2014 DOE rating system. Otak's rating and Acera's rating under this existing system would no longer apply and instead what they rate the wetland as under the 2014 rating system will apply.

I have asked Shelby Petro and Kevin O'Brien for their rating worksheet, attached. They told me that the based it off the entire wetland, not just what was delineated. It looks like several areas on the western edge were excluded in Acera's delineation.

The table shows the *draft* buffers. This is subject to change.

Table 21.24.310(1) – Wetland Buffer Widths

Wetland Category	Buffer width based on habitat points			
	3-4 habitat points	5 habitat points	6-7 habitat points	8-9 habitat points
Category I	75 feet	105 feet	165 feet	225 feet
Category II	75 feet	105 feet	165 feet	225 feet
Category III	60 feet	105 feet	165 feet	225 feet
Category IV	40 feet			

I am going to suggest we have a conference call with Otak at some point soon to discuss the matters of the rating both from a wetland science and from a code standpoint. Procedurally, we are running up against the 120 day time clock. If it's agreeable, we will put the extension at 3 week (June 4, 2015) so that we can continue to work through these issues. At the end of 3 weeks, we can re-evaluate timing or whether a final decision of the determination needs to be made.

If we can't come to an eventual resolution on the matter, we will make a final decision on the critical areas determination. This will be your opportunity to appeal the decision should you disagree with the findings and conclusions. At this moment, moving forward with the reasonable use permit would not be appropriate if we can't agree on the fundamental topic of the wetland category and buffer.

The questions that you ask in the May 7th email that you're asking for clarification on apply to the existing code, not the new code. I'll give a general response to your questions. The requirements in WMC 21.24.320(1) and WMC 21.24.130 are not used in determining the category of the wetland by our code. Best available science should be used in your critical areas report and the wetland per the DOE system should be included, but it is not the categories that our code prescribes nor the categories in which we base our buffers on. The wetland can be and should be rated under that system, but our code provides an additional rating system that we are required to use. Section (2) clearly states "wetlands shall be designated as Class 1, Class 2, and Class 3 according to the criteria in this section." We are following the categories pursuant to WMC 21.24.320 and the subsequent buffers required under WMC 21.24.330(1). We cannot reduce buffers different than what our code can allow. This section provides no scoring or ranking using the DOE wetland rating system. From a previous email: Although I don't disagree with what I believe are the code's intention of updating how ratings are done in light of DOE's best practices, the code provides a very clear set of criteria of how wetlands are classified under this jurisdiction. We cannot deviate from this criteria unless it's proven that our buffers are inadequate (read: does not provide enough protection) and require more protection (see WMC 21.24.330(1)(g)).

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Thursday, May 14, 2015 1:44 PM

To: Mike Layes Biologist; Jenny Ngo; Agnes Kowacz; Dave Kuhl
Subject: RE: Modi

Dave, Jenny

Per our conversation, can you please tell me in a more black & white way, if you go forward with OTAK report, then under NEW wetland/stream codes that City is planning to move forward, what will be my buffer determined? Will my current application to subdivide the parcel into 3 will have city's support?

Additionally, according to you, in the new proposal, City is moving towards "**Ecology's Wetland Rating System"** and also getting away from "proximal" concept to determine wetland Class and hence OTAK classification as it stand today (Class 1) will no longer stand valid. Please let me know if this is inaccurate.

Additionally, to avoid further delay, you will be asking OTAK to map their current rating sheet to new rating sheet and share the results on which buffer will be applicable to me?

Since the resolution around wetland classification is not yet reached, I will like to ask City to extend my application expiry date by couple of weeks.

Thanks,
-Prakash

From: pmodi2002@hotmail.com
To: acera.consulting@gmail.com; jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Wed, 13 May 2015 23:50:33 +0000
Dave, Jenny

Any chance I can get a response or at least a timeframe when I can get a response to below raised question.

Thanks,
-Prakash

From: pmodi2002@hotmail.com
To: acera.consulting@gmail.com; jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Tue, 12 May 2015 22:59:27 +0000
Jenny, Dave

I will really appreciate a response here.

Thanks,

-Prakash

From: pmodi2002@hotmail.com
To: acera.consulting@gmail.com; jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Mon, 11 May 2015 05:22:40 +0000
Jenny, Dave

Otak issue is not my creation. It's City's responsibility as they have hired them. Asking me or my Biologist is not right. I have not heard or seen any to the point response from city to any of the below raised question by me or Mike from ACERA.

In addition, I have spent several thousands $$$$ more just to convince City that the report and the codes is being misinterpreted both by City and Otak and that City's sticking with wetland as Class I is wrong especially since all facts/codes and onsite indicators doesn't support City's stance. This cost shouldn't have been my responsibility especially since I as an applicant has followed all rules and provided all response including responses to various comments that came my way.

I sincerely believe I have provided everything that City asked for and MORE . Its now City's responsibility to review all my responses including additional details that Mike an experienced Biologist has provided.

Asking applicant to further spent more money on something that is City's responsibility is not fair at all.

So I request City to respond to each of the below raised question and let us know why City still believes the wetland is Class 1. Based on all the facts and data provided to City, I sincerely hope City will support my RUP to subdivide my parcel into 3 lots with the hearing committee.

Thanks,
-Prakash

From: acera.consulting@gmail.com
To: JennyN@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
CC: pmodi2002@hotmail.com
Subject: RE: Modi
Date: Fri, 8 May 2015 17:30:42 -0700
All,

I would appreciate a response to the questions from my last email. These questions are pertaining to the WMC, not the review by OTAK.

Thanks,

Mike Layes
Professional Wetland Scientist

ACERA Environmental Consulting Services

Advanced Concepts in Environmental Regulatory Assistance
Environmental permitting specialists for projects
that contain wetlands, streams, marine shorelines,
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(360) 292-9639

1409 7th Avenue SE
Olympia, WA 98501

From: Jenny Ngo [mailto:JennyN@ci.woodinville.wa.us]
Sent: Friday, May 08, 2015 12:01 PM
To: Prak Naki; Mike Layes Biologist; Agnes Kowacz; Dave Kuhl
Subject: RE: Modi

Dave called Mike Layes yesterday to suggest communicating with staff from Otak to discuss this matter. This may be the best course of action. I would suggest either calling or scheduling a meeting to discuss.

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Friday, May 08, 2015 11:50 AM
To: Mike Layes Biologist; Jenny Ngo; Agnes Kowacz; Dave Kuhl
Subject: RE: Modi

Jenny, Dave

Can I get a response here please?

Thanks,
-Prakash

From: pmodi2002@hotmail.com
To: acera.consulting@gmail.com; jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Thu, 7 May 2015 17:13:26 +0000
Thanks Mike for sending a detail around how wetland is not influenced by Little Bear Creek!

Jenny, Dave

I hope by now you would have got a chance to review Mike's (Biologist) response below.

I will sincerely like to understand from city why City is adamant around marking the wetland as Class 1 even though all codes and facts doesn't support. I will like city to reconsider their stance and rethink their position of wetland being Class 1. This has already delayed the project significantly and would appreciate a faster resolution on the wetland classification.

As Mike clearly stated time and again and also provided explanation how/why wetland is NOT influenced by Little Bear Creek both from various WMC code perspective as well as Hydrogeomorphic (HGM) classification of Wetland (Ecology) perspective, I will like to understand from City

1. **Why are the requirements of WMC 21.24.320(1) and WMC 21.24.130, which are clearly mandatory, not considered "*criteria of how wetlands are classified*"?**

2. Why City preferring its own City's classification system even though it is not in any way *similar* to Ecology's Wetland Rating System?

3. Why is City preferring OTAK's report even though it is flawed and doesn't give any evidence or observations of the influence Little Bear Creek has on Wetland A?

4. Why is city imposing protection requirements of a wetland without considering the functions it actually provides?

5. Why is city adamant around assuming that dominant hydrology is overbank flooding when all facts/observation and data clearly sates that's not the case?

Please let me know will city reconsider its stance around wrongfully sticking with Wetland as Class1 despite all facts/codes/onsite field indicators are not supporting it to be Class1.

Thanks,
-Prakash

From: acera.consulting@gmail.com
To: JennyN@ci.woodinville.wa.us; pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Wed, 6 May 2015 01:52:51 -0700
All,

The question of the appropriate wetland category for Wetland A needs to be resolved.

No explanation has been given to me or Mr. Modi as to why the following provisions (WMC 21.24.320(1) and WMC 21.24.130 are required in the WMC, but are apparently completely ignored and not used to rate wetlands:

"WMC 21.24.320(1) Wetland Rating. Wetlands **shall** be rated similarly to the Department of Ecology Wetland Rating System found in the Washington State Wetland Rating System document, Western Washington, Ecology Publication No. 93-74."

Why is this skipped over, and why does WMC 21.24.320(2) take precedence? Please explain.

"WMC 21.24.130 Contents of critical area special study.
(1) The critical area special study **shall** be in the form of a written report and shall contain the following, as applicable:
(a) Using the best available science, identification and characterization of all sensitive areas on or encompassing the development proposal site;"

"WMC 21.02.060(4) The word **"shall"** is mandatory and the word "may" is discretionary."

These provisions are then clearly mandatory, and therefore must be considered when rating wetlands.

City Staff response to Mr. Modi:
"the code provides a very clear set of criteria of how wetlands are classified under this jurisdiction. We cannot deviate from this criteria..",

I would very much appreciate a straight answer to this question:

Why are the requirements of WMC 21.24.320(1) and WMC 21.24.130, which are clearly mandatory, not considered "*criteria of how wetlands are classified*"?

As I detailed in my response to the OTAK review and above, the Code does not just intend, but ***requires*** Best Available Science. The Best Available Science for classifying wetlands is: Ecology's Washington State Wetlands Rating System for Western Washington. I will restate a portion of this response here:

The Washington State Growth Management Act (GMA) directs Cities and Counties to use the "Best Available Science" in regards to managing and protecting Critical Areas. The City of Woodinville Municipal Code also requires the use of BAS as follows:
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In addition, The City of Woodinville Municipal Code requires that the City's wetland classification ratings are to be similar to Ecology's wetland rating system "Washington State Wetlands Rating System for Western Washington" as follows:

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Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System found in the Washington State Wetland Rating System document, Western Washington, Ecology Publication No. 93-74.

Within the City of Woodinville Municipal Code, the provision WMC 21.24.320(1) Wetland Rating is placed first, before the City's own wetland classification system WMC 21.24.320(2) Wetland Rating Categories. Therefore, it should logically take precedence over the City's classification system which follows. Furthermore, WMC 21.24.320(1) states that "Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System…". The Merriam Webster definition of similar is "having characteristics in common: strictly comparable". WMC 21.24.320(1) therefore takes precedence over, and requires consistency between the City's wetland classification system and Ecology's wetland categories. In addition, WMC 21.24.130(1)(a) requires that BAS shall be used for the "identification and characterization of all sensitive areas".

I did not address the OTAK review regarding the City's Classification System in my earlier response because I did not feel it was necessary. This information was previously detailed in the wetland report and BAS and the WMC require that wetlands be rated *similar* to Ecology's system.

The results of rating Wetland A using the City's classification system is not in any way *similar* to Ecology's Wetland Rating System. If Wetland A was rated as a high functioning wetland (Category I or a high point Category II) using Ecology's Rating System, it would be logical to give it the Class 1 designation. However, it is not even close. Determining the protection requirements of a wetland without considering the functions it actually provides, is certainly *not* using Best Available Science.

OTAK incorrectly rates Wetland A as Class 1:
WMC 21.24.320(2) Class 1 wetlands are those wetlands that meet any of the following criteria:
(iv) Wetlands proximal to and influenced by the main stem of the Sammamish River or Little Bear Creek

The issue of what "proximal" definition one uses in this case i.e. "plain meaning" vs. the geology definition is debatable. It's not defined in the WMC and therefore ambiguous if Wetland A actually meets this criteria.

The "Influenced by" criteria can be determined by the Hydrogeomorphic (HGM) Classification of Wetlands (Ecology).

Evidence of why Wetland A is not "influenced by the main stem of the Sammamish River or Little Bear Creek". Is as follows:

For this to be true, Wetland A would need to meet the criteria for the Ecology HGM classification of "Riverine".

- The unit is in a valley or stream channel where it gets inundated by overbank flooding from that stream or river.
- The overbank flooding occurs at least once every two years.

The operative characteristic of Riverine wetlands in Washington is that of being "frequently flooded" by overbank flows.
In western Washington the technical committees developing wetland methods decided that the frequency of overbank flooding needed to call a wetland Riverine is at least once in 2 years (2 yr return frequency). This characteristic, however, cannot be easily measured in the field and needs to be established from field indicators. The following are some field indicators that

can be used to classify a wetland as Riverine:

- Scour marks are common in the wetland.
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OTAK goes into detail about water flowing into Little Bear Creek from Wetland A, but provide no evidence or observations of the influence Little Bear Creek has on Wetland A.

Wetland A has a HGM class of "Slope" according to these criteria from Ecology's rating system:

- The wetland is on a slope *(slope can be very gradual)*.
- The water flows through the wetland in one direction (unidirectional) and usually comes from seeps. It may flow subsurface, as sheetflow, or in a swale without distinct banks.
- The water leaves the wetland **without being impounded,** NOTE: *Surface water does not pond in these types of wetlands except occasionally in very small and shallow depressions or behind hummocks (depressions are usually <3 ft diameter and less than 1 foot deep).*

OTAK and ACERA both agree on the Slope HGM classification. The dominant hydrology of Wetland A is ground water seepage *not* overbank flooding.

Slope wetlands are a source of water flow, they do not store or provide any significantly flood water storage functions. The wetland is on a hillside. Hillsides do not store floodwater.

Wetland A does not meet the requirements of the HGM Classification as a Riverine Wetland because it is not "influenced by" overbank flooding from Little Bear Creek on a regular basis (at least once every two years).

Wetland A should be designated as Class III not Class I.

- BAS/Ecology Rating = Category IV (ACERA) Category III (OTAK) = Low functions. Class III is the "*Similar"* rating.
- BAS/Ecology HGM Classification Slope NOT Riverine (ACERA & OTAK) – Not frequently flooded i.e. not influenced by Little Bear Creek, and does not meet Class I requirements.

Mike Layes
Professional Wetland Scientist

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that contain wetlands, streams, marine shorelines,
or sensitive fish and wildlife species and habitats.

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(360) 292-9639

1409 7th Avenue SE
Olympia, WA 98501

From: Jenny Ngo [mailto:JennyN@ci.woodinville.wa.us]
Sent: Tuesday, May 05, 2015 11:52 AM
To: Prak Naki; Agnes Kowacz; Dave Kuhl; Mike Layes Biologist
Subject: RE: Modi

Prakash,

We can set up a meeting, but I would like to know which approach you will be taking. Bringing in Otak for a meeting is an expense that isn't covered under your permit fees. We need to know what route you are taking and if Otak needs to get involved.

We will keep the Category 1 designation unless you demonstrate that the wetland is not hydraulically connected. The wetland is within the floodplain of the river and there is a hydraulic connection to the creek. The wetland gets inundated with water from the creek and serves as water storage. It is not just about water from the wetland going into the creek.

If you strongly believe that you provided the documents for a RUP, then it is your decision to move forward or not. I can't provide you answers on how you should move forward– you need to evaluate the code for yourself and then to pick a route. The code has not been passed yet and is subject to some changes. We don't know what those are yet.

The information provided to you is the information I have on the review. If you are questioning the rating and the way it was categorized for the purposes of the new code, then a meeting would be more appropriate. You should decide between the new or old code, and then to also consider whether you want to continue down this process or if a single home (without a RUP under the new code) is more appropriate.

It sounds to me like you are trying to get answers and recommendations from the City, when it is really the other way around for us. We need you to make a decision and we can move forward appropriately. I've tried to give you all the answers we can, but at some point we cannot really move forward without you making a decision on how you want to move forward.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Friday, May 01, 2015 11:00 AM
To: Jenny Ngo; Agnes Kowacz; Dave Kuhl; Mike Layes Biologist
Subject: RE: Modi

Jenny,

Will you be helping setup a meeting between Otak and Acera to facilitate option 1? I will like to get the discrepancies between Otak's (Wetland A being category 3 and Class 1) and ACERA's (Wetland A being category 4 and Class 3) sorted out asap so that we can proceed forward. I strongly believe that I have provided you all the documents and responses and more to make a strong case for getting RUP approved for sub-division of my parcel.

I am also assuming that new code which removes language around of "proximal and influenced by" definition will make the "proximal issue" that is raised null and void. Is this correct understanding?

According to you OTAK demonstrated that wetland is hydraulically connected based on water flowing from sloped wetland to Little Bear creek? Is this the only argument to state that makes wetland as hydraulically connected? Please confirm . Don't you think that slope will always flow down and if at the end of the slope is creek then it will always enter there weather a wetland or not.

Lastly, Otak states Wetland A has the opportunity to improve water quality and has opportunity to provide habitat for number of wildlife species... Is this really true or just speculation? Is there any evidence that wetland has improved water quality based on some experiment or has Otak scientist saw habitat for significant wildlife species? Please share evidence.

Please also check following page in Otaks report for clarification:

- **Page 18 Q S1.3:** Is this true that greater than 1/4 of the wetland area is dense uncut herbaceous vegetation? Is there a measurement they can share?
- **Page 19 S4:** Does this wetland reduces water velocity and provides help to protect downstream property and aquatic resources from flooding? Otak says yes. Is this really true or just a speculation?
- **Page 20 H1.1**: Otak marks "Emergent plants" . Please provide details on what kind of emergent plant was found on the property?
- **Page 20 H1.2**: Otak states more than 10% of the wetland is "seasonally flooded" as well as "occasionally flooded" . Are you saying every season wetland gets flooded. What evidence exists to prove that wetland is both seasonally flooded as well as occasionally flooded?
- **Page 20 H1.3**: Otak states that 5-19 species of plant species covers more than 10 sq.ft each. Can you please provide the list and the approx. sq.ft covered?
- **Page 20 H1.4**: I will like to get more clarification on this why Otak chose Moderate?
- **Page 23 H2.3:** Can OTak please clarify what what kind of Biodiversity Areas and corridor exists between 330 feet of wetland?

Thanks in advance for all your help in providing clarification and working with me to resolve the discrepancies between two Biologist.

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us; acera.consulting@gmail.com
Subject: Re: Modi
Date: Thu, 30 Apr 2015 22:56:52 +0000

Options 1 or 3 are going to be most likely. I do not think including Otak on this email chain will clear anything up as my issues have still not been answered.

The response that the commenter is not a wetland biologist is not acceptable. I have discussed extensively with Otak on the proximal and influenced language. There is not a special definition of proximal that means "in the middle of" in either plain language terms or in the field in of wetland science. Regardless of what definition we look at, demonstrate that the wetland is in fact isolated and not hydraulically connected to the stream.

The new code uses the 2014 wetland rating system as established by DOE. As I mentioned in an earlier email, proximal and influenced by is not used in this draft version.

From: Prak Naki <pmodi2002@hotmail.com>
Sent: Thursday, April 30, 2015 2:32:33 PM
To: Jenny Ngo; Agnes Kowacz; Dave Kuhl; Mike Layes Biologist
Subject: RE: Modi

Jenny,

As I understand from your below response...

1. **Resolution between Acera's category IV and Otak's category III is required to move forward:**
   a) **Option 1:** Does this require a meeting at city of Woodinville to resolve or
   b) **Option 2:** Can we add Otak's biologist to this email thread and provide response to ACERA's flaws raised or
   c) **Option 3:** Should Otak's biologist call directly to ACERA's and vice-versa and come to some conclusion/resolution around wetland categorization.
   d) **Option 4:** Any specific suggestion City has that will make city accept ACERA's report and associated responses

Please suggest which option is acceptable to City.

2) **Issue around wetland is not proximal and influenced by Little Bear Creek**:

- Do you think waiting until June for new resolution to pass will remove this proximal issue that was raised?
- Additionally, I disagree with you that ACERA has not responded to your wetland not being "proximal" . I have included his response as part of the response letter submitted to city dated March 9th . I have attached this again for your reference.
- Are you raising the issue that wetland is influenced by Little Bear creek or Little Bear creek is influenced by wetland? Your assessment of wetland being influenced by Little Bear Creek seems inaccurate because there is no waterflow from Little Bear creek to wetland and that is not even in Otak's report. I read Otak's report and studied all the pictures. In the report and pictures, water is flowing downhill by virtue of wetland and entire parcel being sloped…which is a logical flow.

Please clarify.

Thanks,

-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us; acera.consulting@gmail.com
Subject: RE: Modi
Date: Thu, 30 Apr 2015 16:11:02 +0000
Prakash,

I am not sure if there are many more ways to explain the issue at hand. Acera's response still does not include a discussion of how the wetland is not proximal and influenced by Little Bear Creek. The response does go into the discussion of best available science and how the code was intended to newer rating systems when they become available. Although I don't disagree with what I believe are the code's intention of updating how ratings are done in light of DOE's best practices, the code provides a very clear set of criteria of how wetlands are classified under this jurisdiction. We cannot deviate from this criteria unless it's proven that our buffers are inadequate (read: does not provide enough protection) and require more protection (see WMC 21.24.330(1)(g)).

There information available from DOE that allows "translation" between the rating that Acera has done with the new 2014 system. http://www.ecy.wa.gov/programs/sea/wetlands/ratingsystems/2014updates.html

For June - the critical areas report may need some minor updates to address new report requirements, but a new report would not be required. A resolution between Acera's Category IV and Otak's Category III designations will need to be addressed to determine the buffers. I do not necessarily want to bring in another biologist to do another review, so I am hopeful that if this is the route that you are going to take that the two professionals will be able to discuss and come to an agreement on the rating.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Wednesday, April 29, 2015 8:55 PM
To: Jenny Ngo; Agnes Kowacz; Dave Kuhl; Mike Layes Biologist
Subject: RE: Modi

Jenny, Dave

Can you please respond back to my previous email and give some clarity around next steps?

Thanks,
-Prakash

From: pmodi2002@hotmail.com
To: jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us; acera.consulting@gmail.com
Subject: RE: Modi
Date: Tue, 28 Apr 2015 21:42:46 +0000
Hey Jenny,

I read through the draft and still need to compare the buffer in the proposed new draft Vs existing. But in the meantime, key question still remains weather the wetland is category 1 or category 4 and why City is more inclining towards Otak report Vs ACERA report. Please note, I am not asking city to circumvent any code but

asking it to reconsider Otak categorization based on Acera report and additional response identifiying flaws in report.

I am not sure how the categorization of wetland will change under new draft. Will city ask another Biologist to come and assess the wetland using new draft in June or will city accept ACERA categorization and associated reports/response etc.

I would appreciate an amicable solution to resolve wetland classification issue.

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us; acera.consulting@gmail.com
Subject: RE: Modi
Date: Mon, 27 Apr 2015 22:40:06 +0000
You can find that within the draft code under the wetland section. The draft code uses habitat score as well as category for the buffer width. Mike Layes should be able to help you with that and your questions you ask below.

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Monday, April 27, 2015 3:29 PM
To: Jenny Ngo; Agnes Kowacz; Dave Kuhl; Mike Layes Biologist
Subject: RE: Modi

Also..can you please share what is the current buffer requirement Vs proposed against each of the wetland category?

From: pmodi2002@hotmail.com
To: jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us; acera.consulting@gmail.com
Subject: RE: Modi
Date: Mon, 27 Apr 2015 18:59:58 +0000
Thanks Jenny! Will try and review the draft that you sent and will also ask Mike from ACERA to look into how this if it helps my project.

I have few comments though with regard to your statement "The diagrams and photos show that the wetland is a few feet away, if not abutting the stream. Indications that the wetland is within the 100-year floodplain and discharges into Little Bear Creek indicate that the wetland is influenced by the stream" ... Since the parcel is sloped...which means wetland is sloped then any water that is flowing down either from wetland or from any part of the property will only flow downhill to the Bear creek only as that is the only logical flowpath for water going down from any part of the land uphill and not just the wetland. Key question is ...does the water from Little Bear creek goes into the wetland and not the other way. All pictures that is in the Otak report shows water flowing down from wetland into the Little Creek which is logical since wetland or any other part of the parcel is higher than little bear creek.

Additionally, I will like to know how can one determine if the stream is hydraulically connect or not. I certainly feel that just because water is flowing downhill thru its logical path is not a factor to prove that wertland is hydraulically connect otherwise, we can say that entire parcel is hydraulically connect because water is flowing from the street level onto the sloped parcel down through drainage pipe onto to the Little Bear Creek and some of it via wetland to little bear creek.

Let's talk further and look for options to determine possible way to move forward.

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us; acera.consulting@gmail.com
Subject: RE: Modi
Date: Mon, 27 Apr 2015 18:24:45 +0000

Prakash,

I have to apologize – I didn't see Acera's response in the attachments when I first looked at your email. The discussion regarding best available science and when that should be used in the course of a critical area determination is a good point to bring up in light of this project. I understand that using the 2004 rating system results in a different Category. You are welcomed and encouraged to use the newer rating system for wetland.

The issue at hand is that staff isn't in a position where we can ignore or circumvent our code that provides clear categories (albeit different than DOE) for wetlands. The fact that the system should be rated similar to the DOE Wetland Rating System and is followed by categories that do not necessarily line up with that rating system is understandably confusing. However, we do not have the authority to modify the criteria or definitions within the classes. The diagrams and photos show that the wetland is a few feet away, if not abutting the stream. Indications that the wetland is within the 100-year floodplain and discharges into Little Bear Creek indicate that the wetland is influenced by the stream. To determine that the stream is not hydraulically connect and is in fact isolated from Little Bear Creek is an argument that needs to be made to deviate from the Category I designation.

This wasn't mentioned earlier as this is a very recent occurrence – The City is in the process of updating the critical area ordinance. This is intended to be a major overhaul of this code and will clear up the language throughout. It has recently just gone to City Council for its first review. Although this ordinance is subject to change, I would recommend that you review this to see whether or not this new code could benefit your project. This new code removes the "proximal and influenced by…" language, and refers instead to the 2014 rating system for classification and buffers. Buffers are different in this draft and should be reviewed closely. Proposed buffers for a Category III wetland is 60 feet. The draft is *anticipated* to be adopted on June 30th, but that date is subject to change. Holding off until the code changes or going through the critical areas determination now is something to consider, particularly if a RUP no longer becomes necessary.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Friday, April 24, 2015 2:52 PM
To: Jenny Ngo; Agnes Kowacz; Dave Kuhl; Mike Layes Biologist
Subject: RE: Modi

Jenny, Dave

Please help me here how should we resolve this issue and proceed forward. I am being told that city will not

support the proposal of sub-division based on Otak report in front of the hearing committee despite additional response to the flaw identified in the Otak report including the experience of the Biologist. I believe I have submitted all documents and responded to each and every comments/issue raised by city only to find myself that city will stick with Class 1 definition of wetland as laid in Otak report.

At this juncture, I am not sure what additional evidence I can provide if the city won't even acknowledge their own code requirements as detailed in the response memo by a highly experienced Biologist.

Hope to hear from you and I am hopeful that we can find a solution here in a amicable way.

Thanks,
-Prakash

From: pmodi2002@hotmail.com
To: jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us; acera.consulting@gmail.com
Subject: RE: Modi
Date: Thu, 23 Apr 2015 20:13:42 +0000
Adding Mike from ACERA

Jenny,

I am puzzled here as I don' understand what kind of scientific information is in OTAK report that contradicts ACERA report around wetland classification other than saying OTAK biologist doesn't agree with ACERA biologist. I have read the report thrice and I can't find any scientific evidence in OTAK report which proves that wetland is Category 1 other than referring criteria defined in WMC which ACERA response letter states its misguided.

You stated that "In Otak report, the biologist layouts out the discussion of how the wetland fits into a Class 1 definition. The decision to adopt Otak's findings is not arbitrary – it is based on whether evidence or proof is clearly provided to support a designation." so my question to you is does ACERA report and Mike-the biologist doesn't layout or provide proof how the wetland fits Class 3 definition?

Mike, can you please response to "We have not seen information provided by your biologist that presents a clear scientific argument that would demonstrate otherwise. "

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Thu, 23 Apr 2015 19:12:38 +0000
Prakash,

This letter does not provide evidence or scientific information that supports the dispute of the designation. If you are disputing the classification, you should provide evidence of how the wetland delineation was done incorrectly based on the criteria in WMC 21.24.320. I want to make a point clear -- we did not accept the nature and type of the designation of

the critical areas on the first review. This simply does not happen. The acceptance of a designation occurs when a decision is issued, not while we are evaluating the project for more information.

If you would like a formal justification of the determination, this is when issuance of the decision would be appropriate, and thus starting the formal process. In Otak report, the biologist layouts out the discussion of how the wetland fits into a Class 1 definition. The decision to adopt Otak's findings is not arbitrary – it is based on whether evidence or proof is clearly provided to support a designation. We have not seen information provided by your biologist that presents a clear scientific argument that would demonstrate otherwise.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Thursday, April 23, 2015 11:46 AM
To: Jenny Ngo; Agnes Kowacz; Dave Kuhl
Subject: RE: Modi

Jenny,

Please see the attached documents and response letter disputing OTAK wetland assessment. I will also like city to provide justification or explanation for agreeing with OTAK, and disagreeing with ACERA on this matter.

My preference will be to resolve this issue informally but if City prefer to go via legal route then please suggest appropriately.

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; davek@ci.woodinville.wa.us
Subject: RE: Modi
Date: Thu, 23 Apr 2015 16:19:15 +0000
Prakash,
If you are disputing the wetland categorization, please provide us documentation based on the code criteria of how the code was misapplied in the third party review. This must be based off scientific facts and evidence and using the code criteria. I know that Dave and Agnes spoke to you about having a potential meeting with both biologists or providing another review from a separate biologist. These informal avenues can be beneficial to working through these issues. If we cannot get this classification resolved, we will issue our determination wherein you can appeal. This is reviewed by the hearing examiner, and each party can make their case.
To answer your previous email -- As I've mentioned several times in our discussions, the ability to develop your property is contingent on what you and your team propose. We cannot guarantee approval of a RUP application, as there are many factors that impact the idea of "reasonable use." Is the house appropriate for the zone and site conditions? Is it placed in the least impactful area of the lot? What sort of environmental restoration or protection is afforded to these critical areas? There are many variables that you need to consider that we cannot design for you. The RUP must include a proposal that shows the location, square footage, engineering techniques, and similar details as part of the application. The proposal will need to meet the code criteria for reasonable use that I've sent in previous emails. You will need to demonstrate your case to show compliance.

I want to reiterate that the City is not the one who classifies the critical areas on your property. Your biologist is supposed to be the professional that makes the determination -- should the determination be questioned during our review or during the public process, as in this case, we will investigate. I know you are not familiar with this process, but we are/were in the preliminary stages of this permit. An evaluation at the first review is quite common. I understand your frustration that the rating has changed, but the City has not changed our perspective or approach to this permit. New information has come out in light of the review and we must take that into consideration as we move forward.

We provide all information to our biologist to peer review the property. They cannot determine whether your biologist's report was correctly completed without this report. This biologist is called in during disagreements in determination. We do not tell the biologist what they should be classifying or rating critical areas, nor do we have an interest in doing so. The benefit of using a third-party biologist for reviews is that they do not have an interest in the outcome – they review strictly for whether the code criteria was correctly applied during the designation process.
Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Wednesday, April 22, 2015 8:28 PM
To: Jenny Ngo; Agnes Kowacz; Dave Kuhl
Subject: RE: Modi

Adding Dave Khul.

I will really appreciate a response here. Please also note, I will be sending you all a formal wetland dispute letter and responses to miss-categorization of Otak's wetland classification.

Thanks,
-Prakash

From: pmodi2002@hotmail.com
To: jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us
Subject: RE: Modi
Date: Mon, 20 Apr 2015 20:30:08 +0000
-Ryan, + Dave Kuhl

Hey Jenny, Agnes

Can one of you please add Dave Khul to this thread?

Just to bring everyone on the same page... I am summarizing my discussion with Agnes and Dave on Friday. Please feel free to add anything I may have missed per our conversation or correct me as appropriate.

Meeting Date: 4/17/2015. **Attended by**: Agnes, Dave Khul and Prakash Modi

I have brought up various concern in the way things have unfolded from city of Woodinville end especially where city failed to dispute the wetland categorization even when the full report was submitted back in

November. City further only asked for additional detailed engineering and planning information based on the site plan submitted with the existing proposed buffers. There was absolutely no concern around wetland classification. This has led to significant cost impact to me and I am ata a stage of loosing my entire 1.5 acre R-6 zoned parcel.

There are several open questions that requires info from city of Woodinville end to ensure city will allow me to construct any home on my property.

1. I need a bit more high confidence possibility from city of Woodinville end around how much sq.ft of land I can use for construction. Since there is absolutely NO land left after city's last minute change, will city allow to put a single family home in the landslide hazard area as shown in the attached survey map? I have already provided the geotech report. Will city allow home to be constructed on roughly 6825 sq.ft of landslide + approx. 842 sq.ft of land as buildable land to give me approx. 8000 sq.ft land for construction?

2. What is the max footprint of the house will be allowed on this land?

3. Will I be forced to put remaining land which is almost 90% plus as separate tract or can I keep one single family on 1.5 acre parcel (no sub-division)?

4. Since city is taking away 90% of my R-6 zoned land , will city buy this parcel and compensate owner?

5. Do I still need to go through RUP process and if so, what additional information is required from my end?

6. If my Biologist find discrepancies and conflict in city's biologist assessment on wetland, then what is the course of action?

7. Why did City provided all backend information like current report, public feedback etc. to the new biologist leading to make the biologist go in the direction that city wanted? If city really need to challenge the wetland categorization , then city should have asked for unbiased assessment from new biologist around wetland categorization? The way new assessment done indicates city has already made up its mind to align with Sno comments. This is not acceptable.

Please respond back so that we can move forward without endlessly pouring money and not getting any confidence from city of Woodinville end.

Thanks,
-Prakash

From: pmodi2002@hotmail.com
To: jennyn@ci.woodinville.wa.us; agnesk@ci.woodinville.wa.us
CC: ryanm@ci.woodinville.wa.us
Subject: RE: Modi
Date: Tue, 14 Apr 2015 21:46:07 +0000
Removing my development team for time being...

Jenny,

Thanks for sending the below update. I will work with my surveyor to see how much land is even left after city change of heart :(

In the meantime, I will also like to know why city failed to dispute the wetland rating and delineation when the initial report was provided back in late November/December. All I received from the city in the comment letter was asking for additional detailed engineering and planning information based on the site plan submitted with the existing proposed buffers. There was absolutely no concern around wetland classification.

Failure from city end has resulted in huge financial loss for me as I have invested further to get you responses to all your comments. With one brush of stroke, city has essentially taken away my entire 1.5 acre land and my ability to create 3 homes or even one home. Right now I am left to struggle in finding space for even one home and that too on a property which is R6 zoned.

This is absolutely a very frustrating experience for individual owner like me. I am not a developer or big construction company who has lot of financial backing to fight with city but an individual who wanted to invest back in Woodinville where I lived for past 8 years and build my own home for future.

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us; acera.consulting@gmail.com
CC: landon@beylerconsulting.com; RyanM@ci.woodinville.wa.us; brandon@beylerconsulting.com
Subject: RE: Modi
Date: Mon, 13 Apr 2015 15:57:13 +0000

Prakash,

The required buffers would be for a Class 1 wetland, which is a standard 150 foot buffer and may be reduced down to 100 feet with mitigation. The third party report was intended not to determine where the buffers lie, but whether the classification of the stream is correct or not. The report states that the wetland flags appear to be in the right location, so only the buffer width would change.

I presented the options below – you'll need to discuss with your team on what approach makes the most sense given the classification of the wetland.

1. If you would like to proceed to the hearing, we will prepare the materials and staff will make a recommendation. However -- given the results of the third party review, staff would not recommend approval of this application as it is currently presented. If you choose this path, you have the opportunity to present your case to the hearing examiner and it provides you an avenue to appeal the decision if you so choose.

2. Another alternative is to find a developable area outside of all critical areas and buffers. If you propose a development scheme to fit all of your required structures (home, driveway, etc.) outside the critical areas, then a RUP would not be required. In this instance, you may want to consider withdrawing the RUP.

3. If there is not enough developable area outside the critical areas, you may consider revising your RUP application to include the construction of one home (no subdivision). As the site is mostly covered with critical areas based on this new information, it looks like any development on this site would likely encroach into a critical area.

The classification of the wetland would not change regardless of the pipes. As an aside, pipes do not necessarily indicate that a wetland is manmade or not. Utility pipes running through wetlands or buffers do occur, and may be routing elsewhere.

To construct a home, you will need to look into options 2 and 3 – we wouldn't be able to make that determination for you.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Friday, April 10, 2015 4:07 PM
To: Jenny Ngo; Agnes Kowacz; Mike Layes Biologist
Cc: landon@beylerconsulting.com; Ryan Miller; Brandon Loucks
Subject: RE: Modi

Adding Mike Layes (Biologist who prepared initial wetland report). Mike, can you please comment on the attached report.

Jenny,

I am not sure I understand my options here... I didn't saw any buffer /survey details in biologist report to state what is developable land here. Additionally, I see lot of pictures of black pipes which indicates this may be due to manmade event... Is there a way to find if the drainage pipes were laid down due to the road construction or by neighbors. What are my options here

How do I know if I can develop one home at least without sub-division?

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us
CC: landon@beylerconsulting.com; RyanM@ci.woodinville.wa.us
Subject: RE: Modi
Date: Fri, 10 Apr 2015 22:44:14 +0000
Prakash,

Attached is the third party review we received today. The report indicates that the wetland is a Class 1 wetland, not the Class 3 wetland as indicated in the submitted reports. We will adopt the findings of the third party review and the wetland will be designated as a Class 1. The Class 1 wetland buffers, even with a reduction, encompasses a majority of your site. The critical areas on the site appear to leave little buildable area on the site. Rather than go through the points of the report, I've attached it so you can review and we can discuss if you have questions.

In this instance, you have a few options to move forward. You'll have to make a decision on which alternative will suit your needs best. There are benefits and disadvantages to each one of the options which you'll have to weigh.

1. If you would like to proceed to the hearing, we will prepare the materials and staff will make a recommendation. However -- given the results of the third party review, staff would not recommend approval of this application as it is currently presented. If you choose this path, you have the opportunity to present your case to the hearing examiner and it provides you an avenue to appeal the decision if you so choose.

2. Another alternative is to find a developable area outside of all critical areas and buffers. If you propose a development scheme to fit all of your required structures (home, driveway, etc.) outside the critical areas, then a RUP would not be required. In this instance, you may want to consider withdrawing the RUP.

3. If there is not enough developable area outside the critical areas, you may consider revising your RUP application to include the construction of one home (no subdivision). As the site is mostly covered with critical areas based on this new information, it looks like any development on this site would likely encroach into a critical area.

You may want to discuss these options with your team, as they will be best recommending what option may be best for this site.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Friday, April 10, 2015 10:35 AM
To: Jenny Ngo; Agnes Kowacz
Cc: landon@beylerconsulting.com; Ryan Miller
Subject: RE: Modi

Thanks Jenny! Please do share as soon as you hear back from the wetland reviewer.

Regards,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us
CC: landon@beylerconsulting.com; RyanM@ci.woodinville.wa.us
Subject: RE: Modi
Date: Thu, 9 Apr 2015 19:59:26 +0000
Hi Prakash,

I am expecting to hear back from the wetland reviewer today.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Monday, April 06, 2015 2:13 PM
To: Jenny Ngo; Agnes Kowacz
Cc: landon@beylerconsulting.com; Ryan Miller
Subject: RE: Modi

Hey Jenny,

Do you have any update from your wetland consultant that you can share?

Thanks,
-Prakash

From: JennyN@ci.woodinville.wa.us
To: pmodi2002@hotmail.com; agnesk@ci.woodinville.wa.us
CC: landon@beylerconsulting.com; RyanM@ci.woodinville.wa.us
Subject: RE: Modi
Date: Tue, 24 Mar 2015 16:37:31 +0000
Prakash,

We do not have a tentative timeline -- we will know more in the upcoming weeks. There is a large amount of information to review at the moment.

Based on the responses and findings in the stream and wetland report submitted, we are contacting our wetland consultant to conduct a third party review. They will need to make a determination on the wetland typing before we move forward.

Jenny

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Monday, March 23, 2015 3:07 PM
To: Agnes Kowacz
Cc: landon@beylerconsulting.com; Ryan Miller; Jenny Ngo
Subject: RE: Modi

Agnes,

Is there any tentative timeline?

Thanks,
-Prakash

From: agnesk@ci.woodinville.wa.us
To: pmodi2002@hotmail.com
CC: landon@beylerconsulting.com; RyanM@ci.woodinville.wa.us; JennyN@ci.woodinville.wa.us
Subject: RE: Modi
Date: Mon, 23 Mar 2015 21:36:40 +0000
Prakash-

We are in the process of review. Thanks,

Agnes Kowacz | Associate Planner
City of Woodinville
17301 133rd Ave NE
Woodinville, WA 98072
Office: (425) 877-2293
Email: agnesk@ci.woodinville.wa.us

From: Prak Naki [mailto:pmodi2002@hotmail.com]
Sent: Monday, March 23, 2015 2:35 PM
To: Agnes Kowacz
Cc: landon@beylerconsulting.com; Ryan Miller; Jenny Ngo
Subject: RE: Modi

Agnes,

Any update?

Thanks,

-Prakash

From: pmodi2002@hotmail.com
To: agnesk@ci.woodinville.wa.us
CC: landon@beylerconsulting.com; ryanm@ci.woodinville.wa.us; jennyn@ci.woodinville.wa.us
Subject: RE: Modi
Date: Mon, 16 Mar 2015 18:56:17 +0000
Hey Agnes,

Hope you are doing great! I am wondering if you all got a chance to review some of the documents and if so do you need any additional information/clarification from our end.

I will like to make sure we provide you all the information to best of your satisfaction to build a solid case going into hearing meeting.

Thanks again for all your help and guidance so far.

Regards,
-Prakash

From: pmodi2002@hotmail.com
To: agnesk@ci.woodinville.wa.us
CC: landon@beylerconsulting.com; ryanm@ci.woodinville.wa.us; jennyn@ci.woodinville.wa.us
Subject: RE: Modi
Date: Mon, 9 Mar 2015 22:44:45 +0000
Hello Agnes,

Just for the benefit of other folks on the thread... I have submitted following documents to city of Woodinville today. Please let me know if you need any additional information/clarification.
Following documents in 3 copies are included in this submission along with a CD with all submitted documents in PDF.

1. Tree Plan report

    a. Tree report includes density calculation, tree species, and canopy diam, tree type etc. including trees to be retained and removed.

    b. Rough Tree map provided by Tree Assessor

2. Updated Geotech Report

3. Biologist:

    a. Updated Stream and Wetland Assessment Report

b. Biologist response to Comment#3-#8 and Muckleshoot Indian Tribe responses

c. Biologist responses to Letter from Sno-King Watershed Council

4. Surveyor/Engineer:

a. Preliminary Technical Information Report

b. Response to comment 10a and 10b under Public Works comment from city

c. Response to Sno-King Watershed Council

d. Response to Muckleshoot Indian Tribe

e. Updated survey Map

Please let us know if you need any additional information from our end to move forward with the Reasonable Use Permit.

Thanks and Regards,
-Prakash

From: agnesk@ci.woodinville.wa.us
To: pmodi2002@hotmail.com
CC: landon@beylerconsulting.com; RyanM@ci.woodinville.wa.us
Subject: Modi
Date: Tue, 6 Jan 2015 21:45:57 +0000
Good afternoon-

Please see the attached letter requesting additional information. Thank you.

Agnes Kowacz | Associate Planner
City of Woodinville
17301 133rd Ave NE
Woodinville, WA 98072
Office: (425) 877-2293
Email: agnesk@ci.woodinville.wa.us