

May 12, 2016
Jenny Ngo, Senior Planner
City of Woodinville
17301-133rd Avenue NE
Woodinville, WA 98072

RE: Wetland A – Analyzed by 4 different consulting firm and Reaching four different conclusion for the Modi Property, Project Number: SEP14023 / CAE14001

Dear Ms. Ngo:

I am writing you this letter in response to recent comments by Department of Ecology Wetland Scientist, Paul S. Anderson and request you to enter it as part of hearing for my property. I will like to highlight two key concerning area and key ask from City as part of upcoming hearing:

Concern:

1. Four Different Wetland consulting Firms with 4 different conclusions
2. Delay of almost 2 plus years to get approval to build 1 single family home

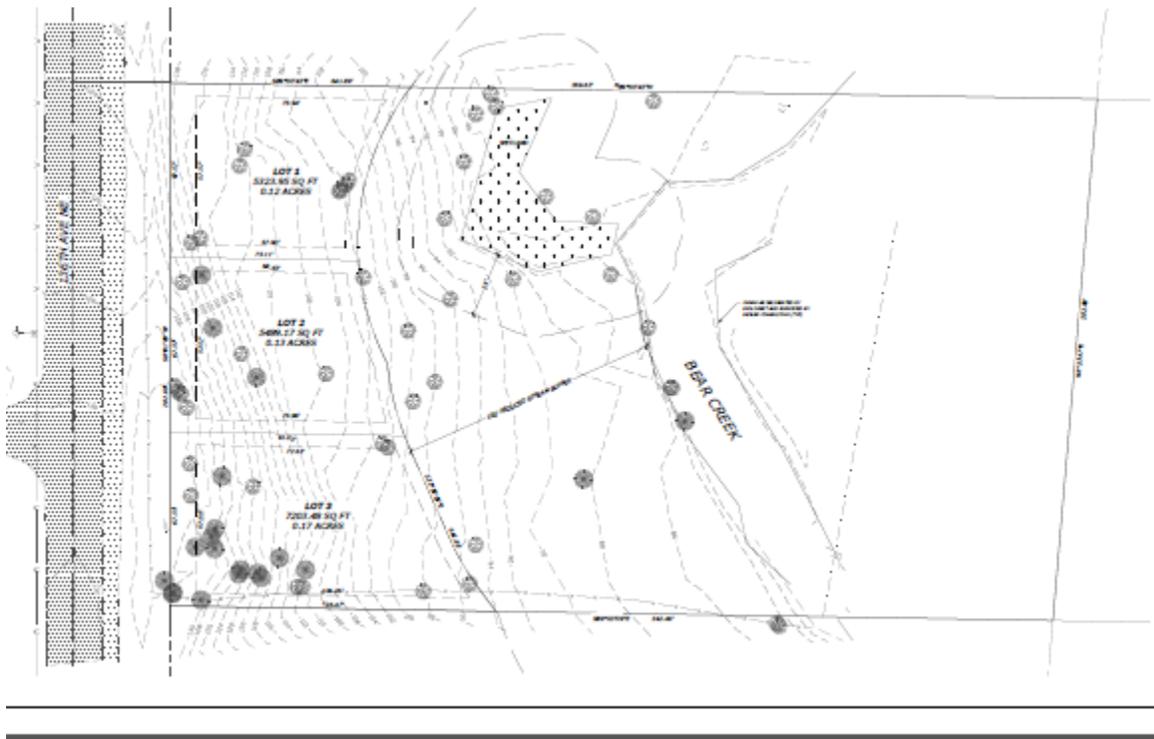
ASK:

- Will City allow me to build my **one** single family home on entire 1.6 plus acres R6 zoned parcel?

1. Concerns: Four different Wetland consulting Firms with 4 different conclusions:

As you can see and review all the four wetland reports (**ACERA Original, Otak report, ACERA response letter questioning Class1, , Cooke Scientific report** and now new report from **Department of Ecology**), each one of them visited the site, reviewed wetland and reached different conclusions on the extent and category of wetlands on the site. I have included summary of each report with detail report already submitted to City as part of original application to sub-divide the parcel into 3 lots and later revised application to build just one single family house.

ACERA Wetland Report: Done by ACERA in Jan 2014 and updated again in May 2015. Performed by **Mike Laves**, a certified wetland scientist with 20 plus year of experience who was also contracted by City of Gig Harbor for all their wetland delineation between 2007-1010, reported Wetland A as Category IV slope wetland per Ecology and Class 3 wetland per WMC. Below is the snippet from his report: *“Wetland A appears to be artificially created and may be an excavated borrow pit or a rudimentary storm water pond related to the development of the adjacent property, north of the Site”*. According to him, *“Although this wetland is adjacent to Little Bear Creek, it is neither proximal (in the center of the creek); nor is it hydrologically influenced by Little Bear Creek. Wetland A therefore does not meet the requirements of a Class 1 Wetland”*. Below figure reflects the resulting wetland A boundaries as part of the work done by Mike back in 2014. As shown, initial plan was to sub-divide the parcel into 3 and build single family home on each parcel.



Otak Wetland Report: Dated April 8, 2015. Performed by **Shelby Petro** a non **WBE certified scientist with limited field experience**. Ms. Shelby in her report stated that wetland is a “Sloped Wetland” and disagreed with ACERA report and determined that Wetland A is a Category III per Ecology rating system and Class 1 per Woodinville Municipal Code. **Below is a brief snippet from Otak’s report:**

“Otak generally agrees with the northern, eastern, and southern boundaries of ACERA’s delineation of Wetland A from January 2014. In addition, the Ordinary High Water Mark (OHWM) flags appeared to be correctly placed to delimit the OHWM for Little Bear Creek. However, during the site visit on March 30, 2015, Otak determined that the western boundary of Wetland A extends beyond that of ACERA’s delineation in January 2014”.

In addition, Otak’s mentioned following in their support for Class 1 wetland: *“Otak further determined that Wetland A is a Class 1 wetland per WMC 21.24.320(1)(a). “Class 1 wetlands are those wetlands that meet any of the following criteria: (i) Documented habitat for Federal or State listed endangered or threatened fish, animal, or plant species; or (ii) Wetlands documents as high quality habitats in the natural Heritage Information System; or (iii) Wetlands of exceptional local significance or irreplaceable ecological functions, including sphagnum bogs and fens or natural forest swamps; or (iv) Wetlands proximal to and influenced by the main stem of the Sammamish River or Little Bear Creek” (WMC 21.24.320(1)(a). Wetland A does not meet the criteria i-iii for a Class 1 wetland; however, Wetland A meets criteria IV as it is proximal to Little Bear Creek and influenced by Little Bear Creek.”*

Key Point: There is no black and white way Otak was able to determine that ACERA classification of Category IV/Class III is wrong. They just used and interpreted codes in one way and said it is Category III despite “functions scores” shows more closer to Category 4 than Category 3. Net result, impact to applicant as City choose to adopt Otak’s report rather than 20 plus year wetland scientist report and in the process took away almost 75% of the property as critical area.

ACERA Wetland Response Letter questioning Class I specification: Dated April 22, 2015. Mike Laves responded to City’s decision to adopt with Otak’s Class 1 rating without providing any justification or explanation for agreeing with Otak and disagreeing with ACERA. Here is brief snippet from Mike’s response: *“ACERA has rated and classified Wetland A as Category IV/Class III based on the results of the Washington State Department of Ecology’s (Ecology) wetland rating system “Washington State Wetlands Rating System for Western Washington” and the requirements of WMC 21.24.320. This wetland rating system has been extensively used by the majority of local permitting jurisdictions throughout Washington for many years. It is currently the “Best Available Science” (BAS) for determining the appropriate wetland category for wetlands in Washington State”. He further states in his report that “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"

In his conclusion he further states that "The determination by OTAK that Wetland A should be reclassified from Class 3 to Class 1 is not correct. OTAK did not consider the requirements of WMC 21.24.320(1) or the use of BAS which both supersede WMC 21.24.320(2) in making their determination of the appropriate wetland class. The Class I determination is therefore not valid."

Key Point: There is no straight forward and scientifically proven determination of Wetland A. Each one has their own interpretation of codes resulting in suffering received by the applicant to build his home.

Cooke Scientific Wetland Report: Dated February 24, 2016. Performed by **Dr. Sarah Spear Cooke**, a 15 plus years of wetland ecological research experience in Pacific Northwest and a **WBE certified** consulting firm. Based on the correspondence with the City, Dr. Cooke performed the re-delineation of western boundary between the edges identified by City of Woodinville as shown in figure 1 and resulting in 6 new flags along the western edge as shown in updated Wetland A (2nd figure). Here is a brief snippet from Dr. Sarah Cooke report

"Based on my professional experience a re-evaluation of western boundary was done between the edges identified by the City of Woodinville in January 2016. New wetland flags, shown on Figure 1 correctly reflect the new wetland boundaries at the time of the site visit in January 2016."

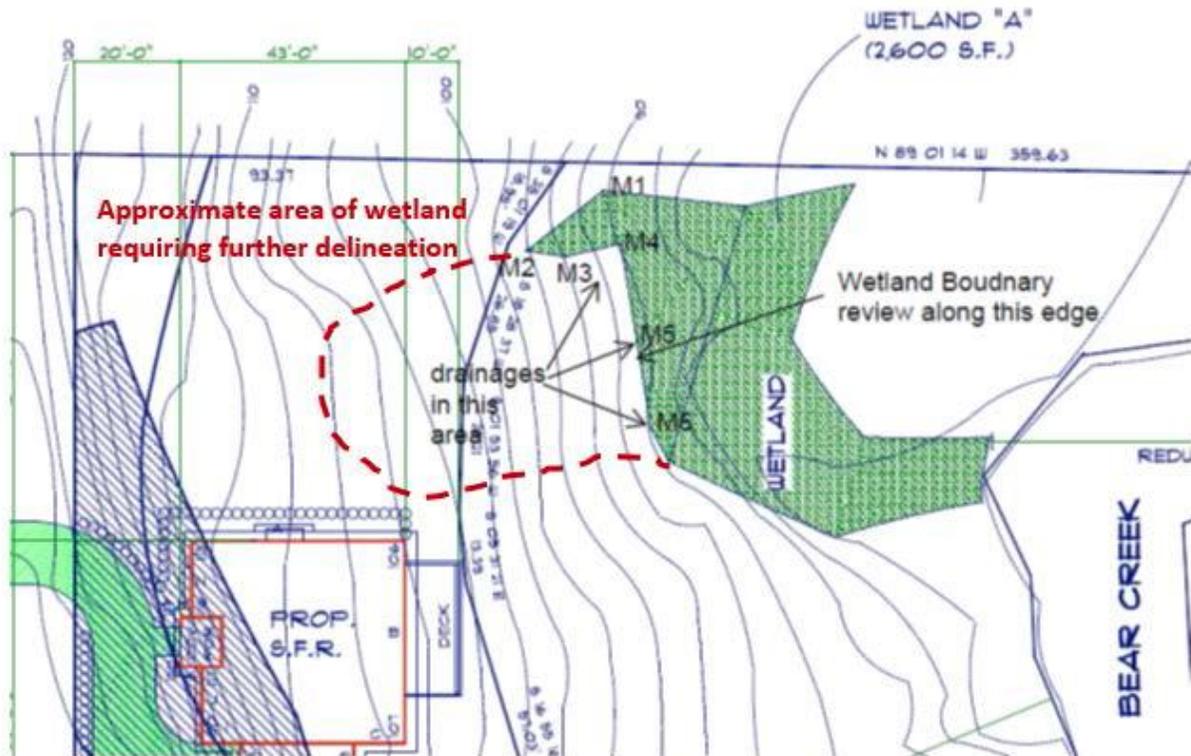
Figure 1: City of Woodinville asked to re-delineate western portion of the wetland as shown in below red marking:

keep getting delayed and resulting in more stress to the applicant and more financial losses and personal impacts to family who is trying to build their one home.

Department of Ecology Wetland Report by Paul S. Anderson: Mr. Paul states he agrees that Wetland A is a Category III slope wetland and Class I per City code because it is proximal to and influenced by the main stem of Little Bear Creek and provided supporting argument that Wetland A is discharging water directly to the creek and believes Creek will flood the area during high flow events. Mr. Paul also shared in his report that based on his analysis, there is potentially additional “**few hundred feet of wetland**” as shown in below figure and marked by red dotted line that needs re-delineation and re-visit for verification.

My logical mind thinks simple and ask simple question...by virtue of this being a sloped wetland and Creek being down, water will always flow down from an upslope area. This means Wetland A is influencing Little Bear Creek and **NOT** other way round as mentioned by Mr. Paul and City. In order for Wetland A to be Class 1, it must be influenced **BY** Little Bear Creek; not the other way around. Mr. Paul mentioned that “*Wetland A occurs within floodplain of Little Bear Creek*”. So my question is, by that rational, all wetlands within the 100 year-floodplain of Little Bear Creek and the Sammamish River are then Class 1? Really? In addition, Mr. Paul stated that “*wetland would be flooded during high flow events*” is this true? Based on the site visit by ACERA in 2014, OTAK in 2015 and Cooke Scientific in 2016 and Dept of Ecology in 2016, none of the folks have seen the wetland to be flooded despite some of the wettest months ever recorded. There was NO scour marks which should have been common in the wetland, NO recent sediment deposits, NO plants bent in one direction or damaged, NO indication of soil with layered deposits of sediment and NO flood marks along the edge of the bank at different level.

Again, but since I have already given up the desire to sub-divide my parcel based on City’s decision to classify wetland as Class 1, it’s no point debating wetland category any more.



Key Point: Per Mr. Paul, possible wetland is also in the dotted area and he will again come back and re-validate to identify more hole since anyhow City will not accept whoever comes and re-do delineation again, based on past experience. Net result, there is no end to this cycle of city asking something, applicant hire best of the scientist, surveyor with significant experience to do work, and City or someone from the City side rejecting....more delays, more \$\$ loss and more frustration for individual who is trying to build his one home and raise his family. Is this the right process?

2. Concern: Delay of almost 2 plus years to get approval to build 1 single family home and still no resolution/closure

Date	Work Done	Done By	Key Conclusion	Resulting Impact
Jan 2014	ACERA completed site analysis for Wetland and Stream Buffer work	Mike Layes	Wetland Category IV/Class III	
Nov 2104	Application to sub-divide submitted			
March 2015	City decided to hire Otak			
April 2015	Otak completed their site visit and Wetland report	Shelby Petro	Wetland Category III/Class 1	
April 2015	City decided to adopt Otak's report		Wetland Category III/Class 1	No more sub-division
April 2015	ACERA response to Otak reported disagreeing their wetland categorization	Mike Layes	Wetland Category IV/Class III	
Nov 2015	City asked more information, more comments and re-delineation of western part of wetland			
Jan 2016	Cooke Scientific completed re-delineation of western wetland	Sarah Cooke	Wetland A size slightly increased	
Feb 2016	Re-submitted all paperwork including updated docs, wetland reports etc. as per City's demand			
May 2016	Department of Ecology comes back with "new areas that needs to be delineated"	Mr. Paul Anderson		

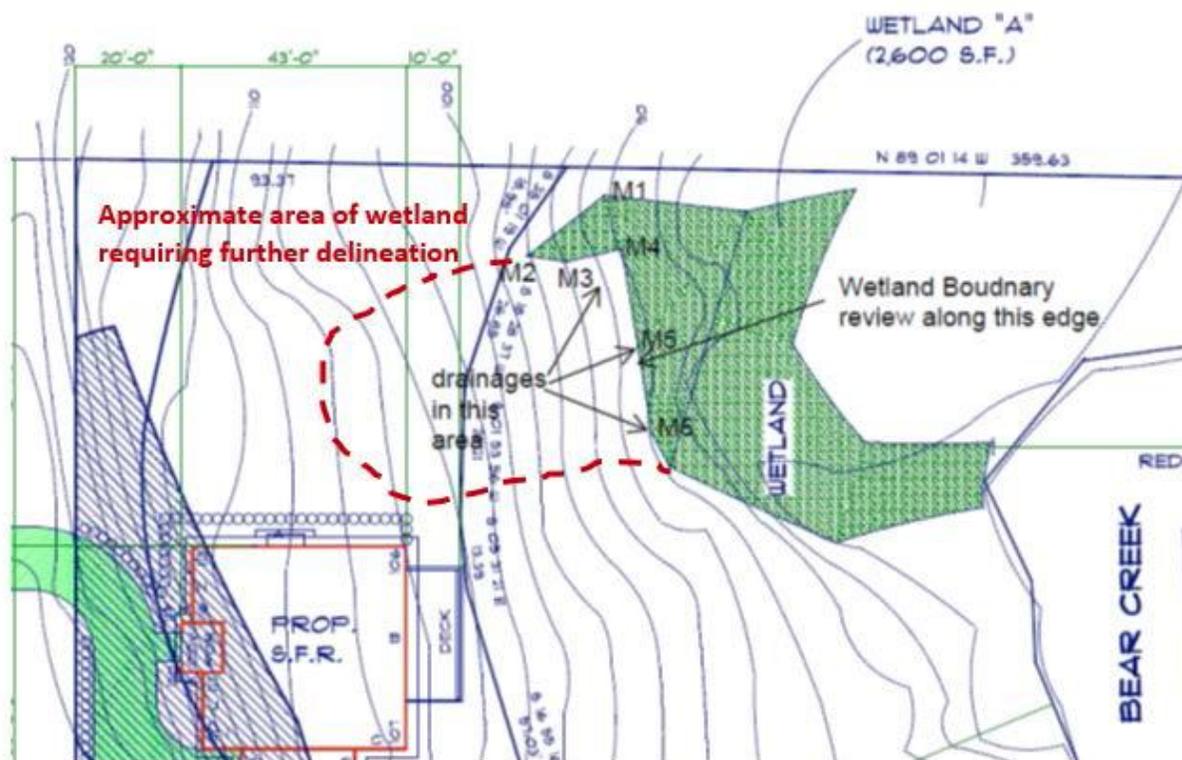
Key Point: What more and how long I need to wait and continue doing the same thing?

3. My sincere ASK to City:

After spending almost 2 plus years of my time and my family's time, spending significant amount of my hard earned money in hiring Geologists, Surveyor, Wetland Scientists, Tree specialist etc. etc. and providing numerous paperwork's that City asked for and satisfying each and every demand from City, I will like City and hearing commission to simply tell me **Can I build ONE single family home** that I can enjoy with my small family. I have already given up more than 75% of my parcel to critical areas and have committed to improve the quality of wetland and little bear creek passing through my parcel as well as ensuring that we keep maximum number of trees on my parcel... I am still struggling to understand what more I need to give up just to make one single family home on my own parcel. I have never imagined such a frustrating experience in dealing with City of Woodinville in getting necessary approval to build one single family home.

I am even willing to go to an extent of letting City include additional "**few hundred feet**" as suggested by Mr. Paul without any more delineation work as marked by red dashed line in below figure, as Wetland, if that helps in reaching some conclusion and granting me a RUP to build my ONE single family home. I will also like to state that my single family house as shown in the site Plan is still outside the dotted red lines. Worst come, City can even consider (even though the dotted line is still outside the house footprint and is not expected to be excavated/filled) that this dotted wetland will get disturbed and filled and hence whatever is the mitigation/compensation that City deemed right can be included

as part of the RUP approval so that I can move forward to building application.



Conclusion:

At this junction and after going through this process 4 times and waiting for more than 2 years to get RUP, I don't see any more faith in the system and don't see any value in hiring another wetland scientist and wetland consulting firm and repeating the same process of delineating, only to find that Department of Ecology or City comes back and say your scientist missed this or that despite hiring 20 plus year veteran Wetland Scientist and spending so much money just to meet City's repeated ask for same thing. Hope some sanity prevail and right things get done so that I can move forward with my life.