



SaveLakeSammamish

TRANSMITTED VIA EMAIL rebekah.padgett@ecy.wa.gov

September 5, 2023

Rebekah Padgett, Shoreline Planner
Department of Ecology Northwest Region Office
PO Box 330316,
Shoreline, WA 98133-9716

Re: Hyla Crossing Stormwater Outfall Discharge, Issaquah
Shoreline Variance Permit – SHO21-00010

Dear Ms. Padgett:

Thank you for your email response to Connie Marsh and Save Lake Sammamish (SLS) dated August 31, 2023 inviting us to send you comments concerning the subject Shoreline Variance. I submit the following comments and attachments on behalf of SLS which is an all-volunteer, non-profit 501(c)3 Washington corporation founded in 1989 to protect the water quality of Lake Sammamish as well as the environmental benefits of its watershed and wildlife, including the wild, native Lake Sammamish Kokanee (*Oncorhynchus nerka*), which is on the brink of extinction.

As you are aware, SLS has submitted comments (as it has since 2012: copy attached dated 2/22/2012), detailing our concerns about this project to the City of Issaquah in response to the City's proposed MDNS SEP11-00005. Most recently on March 14, 2023, SLS filed appeals of the City's approval of a Hyla Crossing Stormwater Outfall Discharge SSDP SHO22-007 and Shoreline Variance SHO21-00010, copies attached. Because these appeals were not argued before the Hearing Examiner, SLS has not yet had the opportunity to present its concerns, arguments and evidence to an impartial judge.

From the Issaquah Staff Report dated February 13, 2023, we learned of the Public Notification dated September 15, 2021 and the subsequent meetings on October 6 and 19, 2021. Although SLS is a Party of Record, this notification was not sent to us, so we missed an opportunity to reiterate our issues about setting a precedent to pump water through a pipeline - traversing I90, NW Sammamish Road and going through a publicly owned wetland - from some distance - into Lake Sammamish. We also first learned of the February 27, 2019 Joint Agency Pre-Application meeting concerning outfall options from the same Staff Report.

Our concerns are detailed in our Appeal Narrative dated March 14, 2023, copy attached. However, some issues merit emphasis as follows:

Continued...

PUBLIC PROPERTY FOR PRIVATE USE

Sammamish Cove (Greenwood Trust Property) is publicly owned property acquired with King County Open Space Bond funds and transferred to the City on April 24, 2007. The property is a previously farmed wetland (Wetland E) associated with Lake Sammamish and bounded by Schneider and Tibbetts Creeks. It is encumbered by covenants restricting its use. The Bargain and Sale Deed E2285605, recording #20070521001826, copy attached, stipulates that:

“The City, as required by RCW 36.89.050, covenants that the Property shall be continued to be used for open space, park or recreation facility purposes or that other equivalent facilities within the county shall be conveyed to the County in exchange therefore.

“The City acknowledges that the Property was purchased for open space purposes with funds from Open Space Bonds authorized in 1989 by King County Ordinance 9071 and covenants that it shall abide by the (sic) enforce all terms, conditions and restriction in Ordinance 9071, including that the City covenants that the Property will continue to be used for the purposes contemplated by Ordinance 9071, which prohibits both active recreation and motorized recreation such as off-road recreational vehicles but allow passive recreation, that the Property shall not be transferred ... and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County or the City shall be received in exchange therefore.”

SLS questions why a private developer, Rowley Properties, is permitted to apply for a Shoreline Variance on property it does not own. This would seem to present an inappropriate precedent. We also question the propriety of the City's approval of this Shoreline Variance on public property for private gain, without compensation. The issue appears to be that because the City made an ill-advised Development Agreement (DA) with Rowley a dozen years ago under a different administration, the City fears being sued and found financially liable.

SLS's interpretation of this Development Agreement is that it does not actually mandate allowing a stormwater pipeline across a public, dedicated open space. Maximum flexibility for stormwater treatment and disposal was built into both DA and Master Drainage Plan (MDP) dated 2011 which in Section 1 Overview, Page 6 states:

“The following alternatives are expressly allowed in this MDP to the extent that they meet City codes and standards in effect at the time of permitting and can be enabled throu (sic) a subsequent SEPA Decision:

Conveyance: Alternative routes and alignments, alternative pipe sizes, alternative methods to separate clean and dirty stormwater systems, alternative discharge locations, alternative pump station locations;

Continued...

Detention: Vaults, covered ponds, open ponds, manufactured wetlands, oversized pipes and the interstitial spaces in gravel structures may all be used to reduce the size of the pump station or pipeline (including eliminating the pump station or pipeline altogether)

Treatment: Bioswales, biofilters, wetponds, sand filters, media filters, pressurized filters, sediment ponds, and LID (low impact development) facilities may be used in lieu of the cartridge filters as long as the treatment is comparable (cost and effectiveness).

Design: Alternative assumptions regarding the metrics and methods of stormwater modeling (for the purposes of sizing conveyance, detention and treatment systems) may be made as allowed by City codes in effect at the time of permitting.

(Emphasis added). The MDP goes on to say:

1.3 Applicability

The standards listed in this MDP for stormwater management are in effect for the term of this Development Agreement.

It is the intent of this Development Agreement that all redevelopment on the site and all existing development of the site (in other words, the entire site) will eventually be served and supported by stormwater system that complies with the above referenced standards. That stormwater system may be built in phases (2 phases are identified in this MDP); or, may be built in its entirety, in advance of redevelopment, at the Master Developer discretion.

Subsequent Revisions to City Codes that affect these applicable standards may be used a (sic) Master Developer's Discretion, and as approved by the Designated Official.

Thus, while clearly acknowledging the need and standards for a compliant drainage system, there is no obligation for the City or the public to host that system, nor would it be allowed under the Bargain and Sale Deed.

CRITERIA FOR SHORELINE VARIANCE NOT MET

WAC 173-27-170(2)(a) and Paragraph 8.2.5 of the Issaquah SMP, which sets standards for shoreline variances, provides that the applicant must demonstrate: (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property; (Emphasis supplied).

Continued...

The reasonable use of the property, as specified in the Deed, is open space and passive recreation.

The Staff Report for the shoreline variance (Sec. 8.2.5.3 Staff Findings), indicates that the “unnecessary hardship” requirement of WAC 173-27-170 is fulfilled by

An unnecessary hardship would result from strict compliance with IMC 18.10.610.B.2. The Rowley’s have a development agreement with the City to redevelop the Hyla Crossing neighborhood. The method of stormwater provided for the development was indicated in the Hyla Crossing and Rowley Center EIS, Planned Action Ordinance and DA for the site. Changes to the DA of this magnitude will constitute a breach of contract and/or make the City liable for monetary costs incurred for changes to stormwater infrastructure. (Emphasis supplied).

Again, in Staff Findings Sec. 6.a – Staff emphasize that the hardship is caused by the City’s Development Agreement, which is self-inflicted.

The Rowley’s have a DA with the City to redevelop the Hyla crossing neighborhood. The method of stormwater provided for the development was indicated in the Hyla Crossing and Rowley Center Environmental Impact Statement and the DA for the site. Changes to the DA of this magnitude will constitute a breach of contract and/or make the City liable for monetary costs incurred for changes to stormwater infrastructure.

The Project proposes an outfall directly to Lake Sammamish in order to bypass Tibbetts Creek from certain ranges of stormwater releases from the Hyla Crossing development. The intent of the outfall is to manage future stormwater as per NPDES as the Hyla Crossing collective properties are redeveloped. The Property through which this pipeline will pass, and on which the outfall will be located, requires a shoreline variance because the Project proposes a utility through a wetland on the Sammamish Cove property.

The Staff Report cites the applicable SMP regulations that apply to the application for a Shoreline Variance Permit:

Sec. 6.b That the hardship described in (1) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions; [WAC 173-27-170(2)(b)]

Staff Findings: The hardship requiring the variance is specifically tied to the presence of a wetland on the City-owned Sammamish Cove property and is not related to any action of the Applicant. The wetland is a large system that extends between Schneider and Tibbetts Creeks. No path to the lakeshore exists that would require less critical area impacts than what is proposed by the Project.

Continued...

Rowley's consultant (KPFF, Scott Meurn, PE) claims in its Technical Memorandum dated September 9, 2015 entitled Force Main Preliminary Sizing Study that the re-developed site of Hyla Crossing will generate less stormwater run-off than its current condition. If this is correct, why would it be necessary to "pump and pipe" it over a quarter mile away into Lake Sammamish?

The only alternatives that seem to have been evaluated were either to extend the stormwater pipeline into the Lake for an underwater outfall or a dispersion trench at the upper limits of Wetland E. Ecology previously rejected (promised to "look askance at") such in-water stormwater outfalls following *Save Lake Sammamish v. King County and DOE*, SHB 93-040 (1993) No serious consideration, other than a vault extending into the groundwater table – later deemed infeasible - has been given to upland stormwater retention or dispersion.

WAC 173-27-180 9.m requires that application for Shoreline Variance include plans showing

"physical features and circumstances on the property that provide a basis for the request."

Such plans are not included in this Variance Application. Proposed pipeline route, setbacks and intersections with Washington Department of Transportation (DOT) plans for Schneider and Tibbetts Creeks have yet to be determined. Copy of DOT Fish Passage memo is attached. As part of court-mandated removal of fish-impeding culverts, DOT has budget and imminent plans to provide improved fish and wildlife passage on both Tibbetts and Schneider Creeks under I-90, under NW Sammamish Road, into wetland and open space habitat and into Lake Sammamish. These plans anticipate raising NW Sammamish Road on bridges. Because of elevation differences between current surface roads, construction of retaining walls for both projects would be necessary along the south side of Wetland E. Such walls would intrude into the wetland area itself.

In SLS's opinion, two potentially invasive and impactful projects (Rowley pipeline and DOT Fish passage improvements) in the same sensitive area within a short period of time need to be thoroughly coordinated and sequenced to minimize damage to the public's habitat resources. Such planning coordination is not apparent.

CUMULATIVE IMPACTS ON LAKE SAMMAMISH

Another glaring deficit in meeting the requirements for a Shoreline Variance is the lack of any analysis of other similar future variances for cumulative impact on Lake Sammamish, its water quality and quantity, per RCW 90.58.020. Given current and forecast rapid growth of the Seattle Metropolitan Area, it is reasonable to anticipate

Continued...

such “pump and pipe” applications would be forthcoming. Indeed, this proposal itself is only the first phase (60 acres) of large redevelopment projects proposed by Rowley Properties. As the rest of the Valley floor is redeveloped we are concerned that requests for “add-ins” to the proposed pipeline will proliferate.

As the Lake Sammamish watershed has been converted from forest to impervious surfaces the Lake’s health has deteriorated, despite the Sensitive Lake Protection Standards mandated by the Stormwater Drainage Manuals. This was forecast in the Quality of Local Lakes and Streams 1987-1988 Status Report, produced in 1989 by Metro scientists. That Report was an inspiration for the formation of SLS. It also provided foundational technical support for the development of the Lake Sammamish Water Quality Management Project adopted in September 1990 by Interlocal Agreement between King County, Issaquah, Bellevue, Redmond, and the Municipality of Metropolitan Seattle (Metro).

Stormwater runoff now flows from roofs and roads directly into nearby creeks and directly into the Lake. Thirteen and a half miles of I-90 bisect our watershed delivering all road pollutants and debris generated to the Lake without impediment or filtration. As the suburbs have grown, infiltration diminished, runoff increased and small tributary streams, feeding the Lake, became occasional unpredictable torrents, destabilizing their banks and delivering naturally occurring phosphorus from the glacial till into the Lake.

The resulting loss of cold, clean, well oxygenated water from groundwater and numerous small creeks means Lake water is warmer, stratifies more quickly, has stimulated more aquatic vegetation and is rapidly becoming unsuitable for salmonids. These include Coho and Chinook returning to the Issaquah Hatchery and wild, native Lake Sammamish Kokanee (*Oncorhynchus nerka*) found only at the south end of the Lake where they spend their entire life cycle. Global climate change is exacerbating these trends. In winter months, forecast to be warmer and wetter than previously, rainfall runoff reaches the Lake more rapidly than in the past. Lake water levels regularly exceed Ordinary High Water Mark (OHWM) and stay above it for longer than historic (since the construction of the Ballard Locks) duration. Damage to shoreline properties and docks have become a major issue for some homeowners who now want to fortify their bulkheads and dredge the Sammamish River.

Exceedance of the OHWM is of particular concern for no bank wetland areas such as the Sammamish Cove property. The proposed pipeline bubble-up outfall, 10 feet landward of the OHWM, is quite likely to be inundated at exactly the time when the pipeline will have the most flow. Therefore, mixing of stormwater with lake water in a stratified Lake and attendant fish habitat issues are of major concern and need to be specifically addressed in a cumulative impact analysis.

Finally, we think that analyses of both environmental impacts and possible alternatives were made so long ago that rapidly changing circumstances, e.g., climate change and

Continued...

increased stormwater flows, render them obsolete. With the lack of consideration of alternatives, such as upland water detention or reuse in new residences both specifically listed as possibilities in the DA, resorting to “pump and pipe” is unacceptable.

We appreciate your consideration of our concerns and comments. Please feel free to contact me or Connie Marsh if you have questions. Thank you.

Yours truly,

Joanna Buehler
SAVE LAKE SAMMAMISH
1430 NW Gilman Blvd. Suite 2 - PMB 2565
Issaquah, WA 98027

M: 206-251-7177
joanna@contractleathers.com

Attachments:

Comments dated 12/12/2011 (Connie Marsh)
SLS Comments dated 2/22/2012 (Erika Vandenbrand)
SLS appeals of the City’s approval of a Hyla Crossing Stormwater Outfall Discharge
SSDP SHO22-007 and Shoreline Variance SHO21-00010
SLS Appeal Narrative dated March 14, 2023 (J. Richard Aramburu)
Master Drainage Plan Pg 1 Flexibility & Pg 6 Allowable Alternatives (screenshots)
Bargain and Sale Deed, King County E2285605, recording #20070521001826
Washington DOT Fish Passage Projects dated October 2022

cc: Connie Marsh auntgrumpy@comcast.net
J. Richard Aramburu Rick@aramburulaw.com
Johnathan Frodge jdeweyfrodge@msn.com