

Regarding the Lacamas Shores Biofilter and the City's November 2019 Packet

We are asking the City to reconsider and take a fresh look at this issue. Why? Because Lacamas Lake water quality is now coming to the forefront AND most issues in the City's packet have already been resolved. Only two big issues are still in contention:

1. **The Biofilter is a stormwater treatment wetland, not a "co-mingled" wetland. It cannot be co-mingled, per the DOE's own "Stormwater Management Manual for Western WA".**
2. **The proper maintenance of a stormwater treatment wetland requires regular removal of vegetation, including trees. Also, trees that "hinder" vegetation removal maintenance are supposed to be removed, and therefore should be replaced with native grasses and plants.**

Federal, State and local manuals on stormwater treatment wetlands address these issues clearly.

History:

In 1988, the City approved a permit to demolish the woods known as the "Black Forest" and develop Lacamas Shores. The new development would include over 260 homes built up to the shoreline of Lacamas Lake. An environmental group took the developer, the City, and the DOE to court before the Shoreline Hearings Board. One major concern was what the additional pollution from 100s of acres of new roads, homes, and fertilized lawns would do to the Lake.

Water quality became a key issue. The developer promised to protect the Shoreline and the water going into the Lake. He scrapped some houses planned near the shoreline to make room for a 5.9 acre Biofilter ("biofilter stormwater drainage system") - the largest and most innovative of its kind in the area. Water quality was deemed so important that 5 years of testing was also required to make sure the Biofilter was keeping the stormwater runoff at "predevelopment conditions". See "[Wetlands for Stormwater Treatment](#)" in the 1993 "Water, Environment & Technology" magazine.

This settlement was made official in an [Agreed Order](#) (1988) and preserved in the resulting [Permit](#), the [Lacamas Shores HOA's CC&Rs](#), and the [Deed of Dedication](#) transferring ownership of the shoreline property along the development to the City.

The court order's map showed where to place the Biofilter on the HOA's property, and reserved the surrounding property for potential expansion, should the Biofilter need to be expanded. The entire Biofilter area was bull-dozed and graded to the proper slope and grasses were allowed to grow.

The final 5-year Monitoring Report was completed and given to the DOE in 1994, but after that, the Lacamas Shores HOA did very little, if any, maintenance. As a result, what once looked like a biofilter has grown to look like a natural wetland. It is not recognizable as a Biofilter. In fact, the City reached out to the DOE who said it was a natural wetland because it looks like one. Without the origination documents to prove otherwise, that would be a reasonable assumption.

Where Are We Now?

Two issues remain and have yet to be addressed:

- 1) **A wetland cannot be both a natural wetland and a biofilter at the same time, per the DOE Manual BMP T10.30. There is no such thing as a "merged" or "co-mingled" wetland.**

The DOE's manual states that mitigation (or natural) wetlands and stormwater treatment wetlands are mutually exclusive and explains. (see DOE Manual, BMP T10.30, p.991 or on their [website](#)). Stormwater treatment wetland are filters and like all filters, the filter must be periodically cleaned or changed. That requires annual mowing and removal of the grass clippings and dead vegetation to get rid of the accumulated chemicals. Natural wetlands, however, cannot be mowed because that

would disrupt the wildlife and plants needed to create a mature habitat. Co-existent of the two types of wetlands is not possible.

The origination documents clearly required that the Biofilter be created to treat stormwater. Those documents are:

- 1988 Agreed Order - called it a "biofilter stormwater drainage system";
- The resulting Permit - mirrors the Order, and specifies the HOA's duty to maintain it;
- Lacamas Shores HOA's CC&Rs - make each homeowner liable for maintenance;
- Deed of Dedication - transferred ownership of shoreline wetlands to the City, acknowledges the right of the HOA to maintain it.

Since the Biofilter was required to be created and there is no co-mingling of wetlands possible, the area is ONLY a Biofilter. Therefore, all of the property within the Biofilter area must be maintained by the standards set for a stormwater treatment biofilter.

2) Proper maintenance of a stormwater biofilter requires regular removal of vegetation AND removal of trees that hinder the removal of vegetation.

Federal, state, and local stormwater treatment wetland manuals say that "vegetation harvesting" is a must AND that trees that hinder maintenance must be removed. (See the list of manuals below.) **First, trees are a type of vegetation that should be harvested. Second, tree hinder both the growth and removal of grasses.** Practically, how can you mow plants and grasses in a forest of trees? And how can grasses grow well under a forest canopy?

These are some of the Government Manuals that state that vegetation must be removed regularly and trees that hinder that maintenance should also be removed:

- "Lacamas Shores HOA Interim Trail, Open Space, Wetland and Storm Drainage Maintenance Manual", written by the City of Camas for the HOA.
- DOE - Stormwater Management Manual for Western Washington - 2014, Best Management Practice T10.30, p. 991
- EPA – Stormwater Wet Pond and Wetland Management Guidebook, p 38-40.
- “Managing Stormwater”, a manual by the Stormwater Partners of SW, p.14-15. Washington (including Clark County and City of Camas) created for HOAs
- Stormwater Partners webpage "Guide to Maintenance"
- Clark County Stormwater Manual 2015, Book 4 “Stormwater Facility Operations and Maintenance, p. 67-71

It wasn't until 2015 that some peripheral maintenance was started on the Biofilter. But all maintenance completed (including recently) has been on everything EXCEPT the 5 acres that are the "filter". Every filtering system needs its filter to be cleaned regularly or it stops working and this is no different. A dirty filter mean dirty water going into the Lake.

**A better Biofilter benefits
the lake community,
fishing, boating, lake trails, tourism, and other lake projects,
and is at virtually no cost to the City of Camas.**

WIN-WIN-WIN!

Therefore, we are asking to be on the City Council's agenda to have a two-way discussion on this issue. We ask that the City look at the origination documents and help us improve water quality - to find the solutions and overcome the obstacles!

Thank you for your consideration.

Annotations to City's Nov 2019 Lacamas Shores Biofilter Packet

The majority of information contained in the City's summary packet is now outdated. The packet shows the evolution of the City's position to its current one, i.e., that the area is a large Biofilter mixed with some natural wetlands. It is missing discussion of the original documents binding the City, the HOA, and the DOE to this property. Those documents clearly required the creation of the Biofilter to treat stormwater and continued maintenance - they are the [1988 Agreed Order](#), the resulting [Permit](#), the [Lacamas Shores HOA's CC&Rs](#) and the [Deed of Dedication](#). The packet is also missing discussion of the federal, state and local maintenance standards for stormwater treatment wetlands.

For those interested, we have annotated the packet in red and addressed the main updates and gaps below:

1. The City initially relied on an opinion letter from a DOE employee stating that there was no stormwater facility. **That letter is now outdated. The City now understands that the area must treat stormwater.** The City has allowed/required maintenance consistent with stormwater biofilters, such as pipe repair, bio-swale retrenching, sediment removal, etc.. The City is also performing stormwater testing. Natural wetlands require none of that.
2. The DOE Letter, while out-dated, needs many points clarified:
 - a. The main conclusion in the letter is no longer relevant (see above). The author concluded that the Biofilter was a natural wetland that expanded, but based that on finding no evidence that a biofilter was "constructed" or "authorized" for stormwater treatment. **The fact that the origination documents clearly created the Biofilter for that purpose negates this conclusion.** She refers to the Permit to make a separate point, but oddly ignores the part that requires a "biofilter storm drainage system" to be created from "man-made wetlands". It is unclear whether the City provided her those documents.
 - b. **Using the words "likely" makes the letter an opinion letter only** - it has no legal authority.
 - c. The author is a "Wetlands/Shorelands Specialist" and drew her conclusions looking through those lenses. Stormwater issues, however, fall under the Water Quality branch of the DOE, not the Shorelands branch. While the disrepaired Biofilter looks like a wetland, there is no expiration date on the court order. Neglect is not an excuse to stop treating stormwater.
 - d. On the first page, the author falsely assumed the word "wetland" to only mean natural/mitigation wetlands. It meant the "treatment wetland". Stormwater treatment facilities are man-made "wetlands".
 - e. The author applies a narrow interpretation of the Shoreline Management Act (SMA) and the resulting Camas Shoreline Master Program (SMP). She does not mention:
 - i. The Shoreline Hearings Board (created by the SMA) entered the [Agreed Order](#). That court order overrides other interpretations of the SMA/Camas SMP.
 - ii. There are specific exemptions to the SMA, Camas SMP and "critical areas" that apply:
 1. [CMC 16.53.010\(C\)2b](#) - Artificial stormwater facilities are exempt,
 2. [Camas SMP 1.9.5](#) - Previously approved projects are exempt from Camas SMP,
 3. [Critical areas: CMC 16.51.100\(A\)3](#) exempts maintenance and repair of utilities, and [CMC 16.51.110\(D\)](#) or [16.53.010 \(B\)3b](#) exempt if all reasonable use is denied.
 4. [SMA: RCW 90.58.030\(2\)\(h\)](#) exempts many artificial wetlands from the definitions of "wetland"
4. **Permits are given for specific uses and do not expire.** The Biofilter is permitted for both its creation and continued maintenance. Catching up on overdue maintenance is still just maintenance. The fact that the disrepaired Biofilter looks like a wetland is irrelevant.
5. The origination documents require maintenance. **Maintenance of stormwater biofilters is defined in many federal, state, and local manuals**, including one created by the City specifically for the Lacamas Shores HOA for the Biofilter (see the coverletter). They make the same two points:
 - a. **Proper maintenances requires annual/periodic "vegetation harvesting", i.e., mowing and removal.**
 - b. **Trees that hinder maintenance, such as vegetation harvesting, should be removed.**
6. **Stormwater treatment wetlands and natural/mitigation wetlands cannot co-exist** per the DOE's [Stormwater Management Manual for Western Washington \(BMP T10.30\)](#). Since the origination documents show that the area is a Biofilter, it is not another type of wetland. **It is a Biofilter and is needed to protect the shoreline wetlands and the Lake.**
7. **There are currently no plans to fix the filtering part of the Biofilter.** All recent maintenance has been for everything EXCEPT the 5 acres that are the "filter". Every filtering system needs the FILTER be cleaned regularly or it stops working and this is no different. Cleaning around the filter is ineffective.

November 18, 2019

Steve Bang
2701 NW Lacamas Drive
Camas, WA 98607

Re: LS Wetland/Bio Filter Follow Up

Dear Mr. Bang:

Thank you for your communication of October 16, 2019, which posed a number of questions and solicited City input. As an initial matter, please note that this response is being provided to the official representative of the Lacamas Shores Homeowners' Association.

The City appreciates your interest in these matters. The context of the topics requires interpretation and analysis subject to certain claims which may arise in future proceedings and given this fact the City is unfortunately not in a position to provide detailed point by point answers. Therefore, by way of response please note that the City has provided substantial input on the matters outlined within your email of October 16, 2019 over the preceding years. Accordingly, included within this correspondence is the following:

1. August 20, 2017, pre-application meeting notes – Lacamas Shores HOA – Park Development.
2. Correspondence to Jennie Bricker dated February 6, 2018.
3. Correspondence dated February 22, 2018, from Rebecca Rothwell of the State of Washington Department of Ecology.
4. Email communications with Rebecca Rothwell March 5, 2018.
5. Correspondence to Jennie Bricker dated March 26, 2018.
6. Email communications from Emily Nelson of the Washington State Attorney General's office from August 2018.
7. Correspondence from Mayor Shannon Turk to you dated August 29, 2019.

The City will not answer due to the possibility of legal claims?

Initially the City required a "Substantial Development Permit" (SDP)

City changes to a Conditional Use Permit, not an SDP, and agrees that the Biofilter must treat stormwater.

Pt. #2a. States that the property is an expanded natural wetland but bases her opinion on seeing "no evidence" that the property is a stormwater biofilter system.

Shows that DOE did not have the origination documents

City attorney notes that a stormwater design expert's evaluation would be recommended

Pt. 2a Without citation or legal support, declares the Biofilter a wetland and NOT a stormwater treatment system, regardless of the Court Order

Pt. 2e(ii). States concerns about the Shoreline Master Program and the DOE correspondence.

As can be noted, the City has provided continual input on these issues as far as a path forward for the homeowners' association to come into compliance with local, state and federal regulations which govern the wetland/bio filter. By way of an update, the City is currently working with the homeowners' association to review the maintenance activities which have been occurring. The City is currently scheduling water quality sampling tests now that the bubbler systems are clean.

To be completed end of 2020. The testing is limited to whether the water is below the maximum allowable standards, not whether the Biofilter is negatively affecting the water quality. The Biofilter has been tested briefly once in the last 20 years. The results indicate that the water going in is cleaner than the water coming out - the Biofilter is broken.

Beyond the information provided within this correspondence, as well as the other communications which have been previously noted to you or your representatives, the City has no additional information to provide on these matters. We believe this communication replies to your email inquiry of October 16, 2019, and again we thank you for your interest on these topics.

Very truly yours,



Shannon Turk, Mayor

Enclosures

cc: Lacamas Shores Homeowners' Association



The politics of who controls the Lacamas Shores HOA has been the biggest factor in the low maintenance standards for the Biofilter. This is unfortunate for two reasons:

- 1) HOA politics should not be the determining factor in how much pollution is allowed into Lacamas Lake.
- 2) Each LS homeowner is "jointly and severally" liable for Biofilter maintenance, unlike every other HOA issue. This was put into the CC&Rs as an obvious safeguard to protect the Lake from a broken biofilter. Therefore, **each Lacamas Shores Homeowner has an independent interest in ensuring proper maintenance** and should therefore have a voice in the process.

Thus, it is not enough to speak only to the HOA Board - it is more important to follow the standards set based on science.

Pt. # 4

Permits are given for specific USES, not necessarily projects.

The City has acknowledges that there is already a permit for the property to be used as a stormwater treatment facility AND that the Biofilter is actually a stormwater facility, but states that replacing the vegetation is a "manipulation" requiring another permit or that the DOE must approve it. Neither of these are substantiated because:

- 1) Maintenance is allowed/required in the Permit, court order, and Deed for the Conservancy Zone property (the actual shoreline wetland).
- 2) The DOE approval is set in the court order.
- 3) The "manipulation" envisioned by the parties was an expansion of the Biofilter, not catch-up maintenance, per the 1988 letter from the DOE .



Pre-Application Meeting Notes
Lacamas Shores HOA – Park Development
File PA17-23

Thursday, August 10, 2017
8:00 a.m., Council Chambers
616 NE Fourth Avenue, Camas, WA 98607

Applicant:
Lacamas Shores HOA
PO Box 751
Camas, WA 98607

Contact:
Patrick Lambert
5515 NW Douglas Ct
Camas, WA 98607
(253) 880-9858 ptrc

Representing City of Camas: Robert Maul, Planning Manager
Sarah Fox, Sr. Planner
Anita Ashton, Engineering Project
Bob Cunningham, Building Official
Pete Capell, City Administrator

Location: 2203 NW Lacamas Drive, Open Space

Tax Account: 84839-000

Zoning: R-15

Description: Applicant proposes to modify 5.92 acres of common area that contains stormwater facility, wetlands, and shoreline areas.

NOTICE: Notwithstanding any representation by City staff at a pre-application conference, staff is not authorized to waive any requirement of the City Code. Any omission or failure by staff to recite to an applicant all relevant applicable code requirements shall not constitute a waiver by the City of any standard or requirement. [CMC 18.55.060 (C)] This pre-application conference shall be valid for a period of 180 days from the date it is held. If no application is filed within 180 days of the conference or meeting, the applicant must schedule and attend another conference before the City will accept a permit application. [CMC 18.55.060 (D)] Any changes to the code or other applicable laws, which take effect between the pre-application conference and submittal of an application, shall be applicable. [CMC 18.55.060 (D)]. A link to the Camas Municipal Code ("CMC") can be found on the City of Camas website, <http://www.cityofcamas.us/> on the main page under "Business and Development". The Camas Shoreline Master Program ("SMP") is also available online at: <http://www.cityofcamas.us/images/DOCS/PLANNING/REPORTS/shorelinemasterplancurrent.pdf>

The next letter in this packet makes this document moot by changing the permit required to a Conditional Use Permit.

This document alleges that the HOA must apply for a Substantial Development Permit to replace the trees with aquatic plants and grasses. That is the same type of permit to build a Walgreens on the property and is expensive.

Note that the City does not acknowledge that there is already a permit for the property to be used for a stormwater biofilter that covers maintenance, Pt #4.

This early document was drafted when the City did not yet understand that the entire area was a stormwater facility AND a treatment wetland. None of it was a natural or mitigation wetland. In fact, all of the biofilter area was bulldozed and regraded to allow the water to spread and filter through the grasses before it hit the natural shoreline wetlands and the Lake. There are NO shorelines within the Biofilter area nor the HOA property. The "modification" was merely to replace trees with aquatic grasses and plants. (See July 2017 Draft Plan)

Missing page 2, which discusses the need for a Substantial Development permit (no longer required) and the applicability of the Camas SMP. Pt # 2e(ii)2. It fails to mention that **the Camas SMP grandfathers all previously approved uses**. The biofilter use was approved by agreement of the City and DOE in a Court Order from the Shoreline Hearing Board in 1988.

- d. Location, footprint and setbacks of all existing structures on the site with a lineal distance from OHWM;
- e. Location of sidewalks, street lighting, and street trees;
- f. Location of proposed building envelopes and accessory structures and the lineal distance from OHWM;
- g. Location, dimensions and purpose of existing and proposed easements. Provide recorded documents that identify the nature and extent of existing easements;
- h. Location of any proposed dedications;
- i. Existing and proposed topography at two-foot contour intervals, extending to five feet beyond the project boundaries;

- j. Location of any critical areas and critical area buffers, to indicate compliance with all applicable provisions of the critical areas legislation, as required under CMC Title 16;
- k. Stormwater plan and report;
- l. Description, location and size of existing and proposed utilities, storm drainage facilities, and roads; and
- m. A survey of existing significant trees that is prepared by a certified arborist. The survey must include the species, health, size (height and caliper at breast height).

Associated Reports. The following reports must be submitted to support the proposed modifications to the site.

1. The site is within an area that is considered a moderate-high probability for a presence of culturally significant artifacts. If any ground-disturbing activity is proposed, such as grading or other earthwork, then an Archaeological Predetermination Report is required and must be submitted with the Shoreline Substantial Development Permit application. Reports must follow the standards at CMC§16.31.080.
2. The application must include a State Environmental Policy Act (SEPA) checklist on the city's most current forms. The SEPA checklist must include all applicable environmental studies per CMC§16.07.025. The proposed development might be exempt from a SEPA determination, but the form must be submitted with the shoreline application.
3. Critical area report contents can be found at SMP, Appendix C, §16.51.130. The application must also address the methods used to reduce impacts per SMP§16.51.160 Mitigation Sequencing.
4. Wetlands. Preparation of a preliminary wetland report and mitigation plan must to be prepared by a qualified biologist in accordance with SMP, Appendix C, §16.53.030. As impacts are proposed, then a preliminary mitigation report must be included as described within Chapter 16.53 Wetlands.
5. Habitat Conservation Areas. Lacamas Lake is within the shoreline management area. Shoreline and Habitat Conservation Area standards are applicable. The application must address the specific standards within SMP, Appendix C, §16.61.020.

Fee Estimate:

Archaeological Review = \$ 122
Critical Areas (Wetlands) \$ 690

SEPA = \$ 721
Shoreline Permit = \$ 782

Timing of permit review:

Upon receipt of an application, the city will generally take 28 days to review the materials and respond to the applicant. The city will inform them that the application is technically complete, or that additional materials need to be submitted.

When the application is complete, the city will mail a notice of the complete application to property owners within 300-feet of the site and to all agencies with jurisdiction within 14 days. This notice will inform

February 6, 2018

Jennie Bricker
Land & Water Law
818 SW 3rd Avenue, PMB 1517
Portland, OR 97204

Re: *Lacamas Shores Homeowners Association*

Dear Jennie:

Thank you for your correspondence of January 16, 2018. As an initial matter, the City reiterates the desire to work with the HOA as it pursues the establishment of an accepted maintenance practice for the area. The City is committed to resolving these issues such that there would be clear guidance on both the short term, and for the future.

The position of the City has been, and continues to remain, that the area at issue is a shoreline associated wetland, with mostly native vegetation, subject to the Shoreline Conditional Use Permit process. The existing storm water facility included wetlands when it was established, and these wetlands continue to exist. Wetlands are a part of the facility, and it was established to be a functioning co-mingled facility benefiting the area hydrology. As such, as noted above, the City maintains its commitment to working toward an approval plan for modifying the existing facility and establishing a plan going forward regarding ongoing maintenance.

In relation to the assertions in your recent letter, please note Section 5.8 of the Camas SMP, Vegetation Conservation, which relates as follows:

1. Removal of native vegetation shall be avoided (emphasis added). Where removal of native vegetation cannot be avoided, it should be minimized to protect ecological functions.
3. Clearing by hand-held equipment of invasive or non-native shoreline vegetation or plants listed on the State Noxious Weed List is permitted in shoreline locations if native vegetation is promptly re-established in the disturbed area.

They do not exist. All of the former "natural" wetlands were bull-dozed in 1989 and separated from the natural Conservancy Zone wetlands by a berm and trail - some for the Biofilter, some for the athletic field and parking lot. This protected the CZ wetlands from all unfiltered stormwater.

Section 1.9.5 states that previously approved projects are vested, i.e., a permitted use would be exempt from the Camas SMP

Pt # 6. In this document, the City Attorney agrees that the Biofilter is a stormwater treatment wetland, but claims it is "merged" with a natural wetland. Per the DOE's Best Practices Manual, that is not possible because the maintenance required of a stormwater treatment facility would ruin a mitigation or natural wetland.

As such, from a wetland perspective, avoidance followed by minimization of impacts to wetlands is the order of preference under the Shoreline Management Plan by protecting this resource.

February 6, 2018

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In simple terms, the City believes that, from a storm water perspective, the facility should:

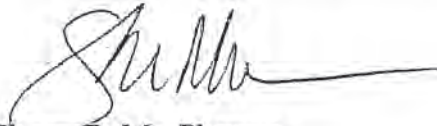
1. Be capable of accepting the storm water coming into it from its intake; **Yes!**
2. Effectively treat the storm water; and **Yes!**
3. Provide for appropriate outfalls of treated storm water. **Yes!**

To reach these goals, a Shoreline Conditional Use Permit must be obtained. The City commits to aid in the process of having submittal materials reviewed by its own staff of consultants prior to being presented to the Shoreline Management Committee and the state for final approval. Further, the City has requested the Department of Ecology to submit correspondence relating to its review of this issue, which we believe will be helpful in constructing a resolution to these issues. It is understood that the Department of Ecology correspondence should be available within the next few weeks. We will of course forward it upon receipt.

Thank you again for your consideration. If you have any questions, please let me know.

Very truly yours,

KNAPP, O'DELL & MacPHERSON PLLC



Shawn R. MacPherson
City Attorney

Pt # 4. City agreed on the goals but did not explain why the 1988 Conditional Use Permit for a Biofilter stormwater treatment system that specifically allows for maintenance would not be acceptable. Permit uses do not expire - the permit still is legally in effect.

SRM/gg



This letter was written before the City conceded that the area includes a large Biofilter needed to treat stormwater. They are now testing it based on stormwater standards. Pt #2a

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

February 22, 2018

Mr. Robert Maul
Planning Manager
City of Camas
616 NE 4th Avenue
Camas, WA 98607

Mr. Shawn MacPherson
Attorney at Law
430 NE Everett Street
Camas, WA 98607

Re: Lacamas Shores Wetlands

Dear Mr. Maul and Mr. MacPherson:

Thank you for contacting me about the Lacamas Shores' Homeowners' Association (HOA) proposal to remove native trees in the wetland upslope of the pedestrian trail.

Ms. Bricker's letter of January 16, 2018, suggests that the wetland is an artificial wetland created as part of a stormwater facility. However, multiple documents show that the wetland existed prior to construction of the residential development: Yes, and the parts needed for the Biofilter were bull-dozed and regraded per court order. The Biofilter cleans the water running into the natural wetlands.

- In the June 15, 1988, Camas shoreline permits for the "Lake Shore Development," Condition #7, discusses "Manipulation of the emergent wetlands adjacent to and upslope of the forested wetlands..." The contemplated "manipulation" was for the expansion of the Biofilter, if needed, per other documents.
- The two-page brochure entitled "Lacamas Shores Keeping Our Lake Clean" identifies the wetlands as having existed at least since 1988. It states that "Scientific Resources, Inc. (SRI), an environmental consulting firm in Lake Oswego, Oregon, has been monitoring the wetlands located in Lacamas Shores since 1988." It also discusses "...the wetlands, which are being used to treat stormwater runoff from the development..." and "The wetlands are essentially being used as a low-tech (and low cost) biofilter!" Pt #2d. SRI conducted the 5-year monitoring report for the developer starting in 1988 and created the pamphlet. The "wetlands" discussed means the man-made, not natural, wetlands.

Pt 2a. It is clearly stated in the Agreed Order of Remand that the Biofilter was REQUIRED to treat stormwater. And in the permit.

I have found no evidence to show that the wetland was constructed from uplands for the purpose of stormwater treatment or detention. Nor have I found evidence that the City, Ecology, or the Corps of Engineers authorized conversion of this existing wetland to a dedicated stormwater treatment or detention facility for which mitigation to offset wetland impacts was required. What is clear is that the City authorized routing of stormwater through an existing wetland. The wetland therefore is subject to applicable regulations. In addition, the wetland may have become larger over time due to the stormwater inputs. The regulations apply to the wetland as it exists currently, not its original boundaries.

Quotes from the Permit, but not the "biofilter stormwater drainage system" created from the "man-made wetlands"?

Pt 2a. The Order/Permit/etc. prove that the area is NOT a mitigation wetland - A Biofilter was mandated protect the Lake

It is not logical that if an owner refuses to maintain a facility, he then can get out of having to maintain it, i.e., he can stop treating stormwater. Pt #4

No, the court order specifically required a biofilter be created. There was no merging. The natural wetland fingers were bull-dozed and then graded to become a Biofilter. Pt # 2a and #6

Mr. Robert Maul
Mr. Shawn MacPherson
February 22, 2018
Page 2 of 4

RCW 90.58.030(2)(h) Exempts wetlands created from non wetland sites, noting that mitigation wetlands might not be exempt, implying that biofilter wetlands are.

Pt #2e(ii)2. The Camas SMP exempts previously approved projects in Section 1.9.5. This project use already has a permit

The wetland is shoreline associated due to its proximity (within 200 feet) to Lacamas Lake, a shoreline of statewide significance. This brings the wetland under the jurisdiction of the state Shoreline Management Act (SMA) and the Camas Shoreline Master Program (SMP). If a portion of a wetland is within shoreline jurisdiction, the entire wetland is within shoreline jurisdiction.

In 1988, the DOE envisioned "manipulation" for the purpose of expanding the Biofilter's capacity if it did not work well enough to clean the water. See 1988 DOE Letter

Maintenance is the written into the permit. It is not a "new" use.

The 6-15-88 shoreline permits allow manipulation of the wetland "should future monitoring show such a need." The allowed manipulation techniques are focused on slowing drainage from the wetland to the lake. They do not include removal of native vegetation.

We can replace with native vegetation.

Tree removal would not qualify for the exemption for maintenance under the SMP. The Lacamas Shores HOA pre-application draft proposal, dated July 26, 2017 ("HOA pre-app"), states that "The LSHOA wishes to properly manage the vegetation of the Project Area for more efficient functioning. To improve biofiltration, the vegetation would be restored to the original widespread grassy wetland plants from the current forested channeled runoff." The suggestion that removing trees from the wetland will improve stormwater treatment is unsupported.

Pt #5a. All manuals for stormwater treatment wetlands say maintenance requires periodic removal of vegetation (annually or more often). Trees are not as "removable" as grasses and plants.

Vertical plant structure slows and filters pollutants. Live stems (whether herbaceous or woody) and roots are also important due to their capacity to uptake and modify contaminants. The major processes by which wetlands reduce metals and toxic organic loading to downstream receiving waters are through sedimentation of particulate metals, adsorption, chemical precipitation, and plant uptake.

Airborne? Not the job of a stormwater filter. Canopies prohibit growth on the floor by blocking sunlight.

The canopy offers trapping and filtering of airborne contaminants, and the canopy is also an indicator of the extent of root growth in the system. Even in systems where the water moves quickly (e.g., in riverine wetlands), significant removal of contaminants occurs through the action of tree roots. An assumption that deciduous trees in wetlands would be less chemically active or be of less value than a non-forested wetland would be premature without addressing specific nutrients/metals of concern and/or providing specific data for a site.

Page 14 addresses "Treatment Wetlands" too. Note: the DOE doesn't have a problem using a "Stormwater Facilities Manual", only with the wetpond section. The Treatment Wetland section says basically the same thing. Pt #5 a, b

The HOA pre-app cites "Managing Stormwater: an introduction to maintaining stormwater facilities – for private property owner and HOAs," a manual by Stormwater Partners of SW Washington. In the manual, one of the tips for fixing problems and general maintenance for ponds is to remove all unplanned trees or saplings that block parts of the facility or hinder maintenance. What the HOA pre-app fails to acknowledge is that; (a) the wetland is not a pond; and, (b) the wetland trees are not blocking the facility or hindering maintenance.

Pt #5b. Trees hinder the growth of mowable / easily-removable vegetation and make removing them difficult, i.e., they hinder maintenance.

The HOA pre-app cites the Clark County 2015 Stormwater Manual in recommending controlling trees in filter strips. However, the wetland itself is not a filter strip. The HOA pre-app also references the section of the 2015 Clark County Stormwater manual that states that "Bioretention facilities need maintenance when less than 75% of planted vegetation is healthy with a generally good appearance." Not only has the HOA not made the case that less than 75% of the planted vegetation is healthy, but when I visited the site in 2015, I observed a wide array of healthy native wetland vegetation.

P. 65 of the manual addresses "Treatment Wetlands". Note that for treatment wetlands, none of the suggested vegetation are trees.

The assertion that the wetland is not a critical area is baseless. Wetlands are critical areas, and because it is a shoreline-associated wetland, the regulations in the Critical Areas Ordinance of the SMP (Appendix C) apply to the wetland. Specific requirements in the SMP's CAO include the following:

Pt #2e(ii)1, and 3. Stormwater treatment facilities are not "critical areas". They safeguard critical areas. In this case, the LS Biofilter's purpose is to protect the Shoreline wetlands in the Conservancy Zone and Lacamas Lake. See 1988 DOE Letter.

16.53.010 - Purpose, applicability and exemptions
B. Applicability.

Pt. 2e(ii)1. in the same section, CMC 16.53.010(C)2b exempts artificial stormwater facilities from "critical areas"

1. The provisions of this chapter apply to all lands, all land uses and development activity, and all structures and facilities in the City, whether or not a permit or permit authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the City. No person, company, agency, or applicant shall alter a wetland or wetland buffer except as consistent with this chapter (emphasis added).

16.51.150 - Mitigation requirements

A. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas.

In addition, section 5.8 of the SMP, Vegetation Conservation states the following:

Pt # 2e(ii)2. SMP Section 1.9.5 exempts the Biofilter from the Camas SMP

1. Removal of native vegetation shall be avoided (emphasis added). Where removal of native vegetation cannot be avoided, it shall be minimized to protect ecological functions.

Certain residents of the Lacamas Shores housing development have repeatedly made it clear to Ecology and the City that their primary purpose in pursuing removal of trees from the wetland is to improve their views of the lake. This is explicit in the 8-10-17 Camas Pre-Application Meeting Notes for the Lacamas Shores HOA – Park Development. It is also stated in the HOA pre-app: "This will also allow for over one-third of the LSHOA members to have a better view(s) of Lacamas Lake, the Pittock-Leadbetter House, and/or Mt. Hood and thereby help to improve both the individual lot and subdivision property values and home enjoyment." Reframing the goal as "maintenance" of a stormwater facility does not obscure the original purpose.

An irrelevant point. There is no reason wanting to protect both property values AND the lake water quality should conflict.

Find the WIN-WIN!

Tree removal would trigger the City's regulatory authority and would require authorization. I understand that the City would process the application as a shoreline conditional use permit (CUP). Ecology has the authority under the SMA to approve, approve with conditions, or deny shoreline CUPs. In this case, Ecology is unlikely to approve the CUP because the proposal is inconsistent with the vegetation management and wetland criteria in the Camas SMP.

The City may want to advise the HOA that removal of trees from the wetland without authorization may necessitate enforcement action based on the following provision of the SMP's CAO:

In fact, view purposes are approved "goals" in the Camas SMP, mentioned 40+ times, including:

- 3.7.1 and 5.5 - The goal of public access includes the ability to "view the water and the shoreline",
- 3.12.1 - "The goal for views and aesthetics is to assure that the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water, is protected to the greatest extent feasible."
- 3.12.2.3 - Under "Policies" states "Encourage development design that minimizes adverse impacts on views enjoyed by a substantial number of residences."

Mr. Robert Maul
Mr. Shawn MacPherson
February 22, 2018
Page 4 of 4

Pt # 2e3. There are at least two reasons the property is exempt from the "critical areas" designation. First, CMC 16.51.100 (A)(3) exempts the "Operation, maintenance or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems that do not further alter or increase the impact to, or encroach further within, the critical area or management;"

The Biofilter is considered a "utility". Camasonions pay a "stormwater utilities service charge along with their other utility bills.

16.51.190 - Unauthorized critical area alterations and enforcement

A. When a critical area or its management zone has been altered in violation of these provisions, all ongoing development work shall stop and the critical area shall be restored. The City shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of these provisions.

If you have any questions, please don't hesitate to contact me at 360-407-7273 or rebecca.rothwell@ecy.wa.gov.

Sincerely,



Rebecca Rothwell
Wetlands and Shorelands Specialist

Pt # 2e1. Second, CMC 16.53.010(C)2 exempts artificial "wetlands created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, **stormwater facilities**, farm ponds, and landscape amenities; provided, that wetlands created as mitigation shall not be exempted;"

The Biofilter was created from "non-wetland sites", including former wetland that had been bull-dozed and regraded for the purpose of protecting the Shoreline wetlands. It is not mitigation or natural wetlands.

What is missing from this letter?

- Any mention of the 1989 Agreed Order that mandated the Biofilter to be built and maintained. Or that the Permit mandated the same. Or the DOE's role in obtaining and policing the 5 years of monitoring negotiated.
- The exemptions applicable to the Biofilter regarding the SMA, the Camas SMP, or Camas' Critical Areas regulations.
- The DOE's best practices for stormwater treatment wetlands, which state that vegetation should be harvested (i.e., cut and removed) periodically and trees hindering maintenance should be removed. Stormwater Management Manual for Western Washington, p 991, BMP T10.30. The EPA Manual says the same but more forcefully (p.38-41).
- The fact that "trees" are a type of vegetation. "Vegetation removal" does not exclude trees.
- While trees might make better carbon sinks, trees are NOT more efficiency at contaminant removal from a property because they cannot be easily and regularly removed. In fact, they return unwanted chemicals back into the Biofilter through decay of leaves and dying trees. In other words, ALL chemicals that have entered the biofilter in the last 30 years have either entered the lake or stayed in the biofilter.

Robert Maul

From: Rothwell, Rebecca (ECY) <rebs461@ECY.WA.GOV>
Sent: Monday, March 5, 2018 2:15 PM
To: Jennie Bricker
Cc: John McConnaughey; Shawn R. MacPherson; Lund, Perry (ECY); Robert Maul
Subject: RE: Lacamas Shores wetlands

See responses below in red

Rebecca Rothwell

Wetlands/Shorelands Specialist
Shorelands and Environmental Assistance Program

WA Department of Ecology | Southwest Regional Office | 360-407-7273
300 Desmond Drive SE, Lacey, WA 98503 | PO Box 47775 Olympia, WA 98504-7775

This communication is a public record and may be subject to disclosure per RCW 42.56.

This email chain shows that the City did not provide the DOE representative with the origination documents.

Note also that the author of the DOE's 2018 letter is a Wetlands/Shorelands Specialist (conservation), not a Water Quality specialist. Water Quality is a different branch of the DOE and in charge of stormwater issues.

From: Jennie Bricker [mailto:jennie@jbrickerlaw.com]
Sent: Monday, March 05, 2018 2:00 PM
To: Rothwell, Rebecca (ECY) <rebs461@ECY.WA.GOV>
Cc: Robert Maul <RMaul@cityofcamas.us>; Shawn R. MacPherson <macphersonlaw@comcast.net>; Lund, Perry (ECY) <plun461@ECY.WA.GOV>; John McConnaughey <johnm@etcenvironmental.net>
Subject: Re: Lacamas Shores wetlands

Ms. Rothwell:

Thank you. Before we schedule such a call, please allow me two questions:

1. Has Ecology reviewed the February 2017 delineation report by Environmental Technology Consultants? I have reviewed a version of the report that does not contain Appendices A, B, or D, or the supporting documents listed in Appendix G.
2. Does state law follow the jurisdictional determinations of the Army Corps, for wetlands and other WOTUS, or does the state have different standards for Section 404? Under the Clean Water Act, the Corps makes the jurisdictional determination for WOTUS. Any wetlands or other waters considered isolated under the CWA may still be regulated by the state under RCW 90.48. Ecology also makes jurisdictional determinations for waters regulated under the state Shoreline Management Act.

Please feel free to pass these questions on to the AG's office, if appropriate.

Jennie Bricker
Land & Water Law
503-928-0976
jennie@jbrickerlaw.com
www.jbrickerlaw.com

Shows that the DOE had not been given the origination documents. The listed appendices that she did not receive from the City include: the Agreed Order creating the Biofilter (G2), the results of the court-ordered 5-year Water Quality Monitoring Report (G7), the City's official 1999 Maintenance Manual created specifically for the Lacamas Shores HOA and Biofilter (G3), and more. The LS HOA gave these to the City in both hard copy and electronically

On Mar 5, 2018, at 9:54 AM, Rothwell, Rebecca (ECY) <rebs461@ECY.WA.GOV> wrote:

Ms. Bricker:

March 26, 2018

City Attorney
Shawn R. MacPherson

Jennie Bricker
Land & Water Law
818 SW 3rd Avenue, PMB 1517
Portland, OR 97204

Re: *Lacamas Shores Homeowners Association*

Dear Jennie:

You had inquired as relates to the process for a jurisdictional determination of the wetland area. Please note that this is a process driven by the Corps of Engineers, and what was related is as follows:

For wetlands, the boundaries can be:


1. Verified – this is to confirm the delineated wetland boundary with no determination of jurisdiction and typically used prior to site planning.
2. Approved Jurisdictional Determination (AJD) – this is to confirm the delineated wetland boundary and determine whether or not the wetland would be under Corps jurisdiction.
3. Preliminary Jurisdictional Determination (PJD) – this is to confirm the delineated wetland boundary with no determination of jurisdiction and is associated with an existing site plan.

I wanted to reiterate that the path forward, as outlined in my letter to you of February 6, 2018, still stands. I noted in your communication to the Department of Ecology that your clients were considering having a storm water design expert evaluate the facility to make appropriate recommendations. This process fits in with the recommendations made in my letter, and the City has contacts in this area which could be shared.

Please let me know if this remains open for discussion. Thank you.

Very truly yours,

KNAPP, O'DELL & MacPHERSON


Shawn R. MacPherson
City Attorney

This did not happen. By this point, the HOA had spent over \$3500 on a Wetland Delineation at the City's directive, only to have the City decide afterwards that the Delineation was not what they wanted.

SRM/gg

This email chain shows the DOE/AG final communication at the bottom of this page. The AG defends the DOE's response, but without legal insight and ignoring the origination documents. Note this email chain is in reverse chronological order.

Nelson, Emily (ATG) <emilyn1@atg.wa.gov>

8/9/2018 10:13 AM

RE: Lacamas Shores storm water bio-filtration system

To Steve Bang <stevendbang@comcast.net> • Rothwell, Rebecca (ECY) <rebs461@ecy.wa.gov> Copy
levo.brian@epa.gov <levo.brian@epa.gov> • Lund, Perry (ECY) <plun461@ecy.wa.gov> •
Sarah Fox <sfox@cityofcamas.us> • Robert Maul <rmaul@cityofcamas.us> •
Shawn R. MacPherson <macphersonlaw@comcast.net> • Thomas Kelly <tomkellyevi@aol.com> •
JohnM@etcEnvironmental.net <johnm@etcenvironmental.net> • Lynda Wilson <lyndadwils@gmail.com>

Mr. Bang,

I represent the Department of Ecology and cannot provide you legal advice. I recommend that you speak with an attorney if you are interested in challenging Ecology's position on this matter. You can also consult the procedural rules for the Pollution Control Hearings Board and Shorelines Hearings Board, which explain the appeal process: <http://www.eluho.wa.gov/Procedure/Rules>.

Sincerely,
Emily

Pt #2b. This is not appealable because this is not an actual decision, only a "likely" opinion that the City was relying on to make its decisions.

From: Steve Bang <stevendbang@comcast.net>

Sent: Wednesday, August 08, 2018 12:19 PM

To: Nelson, Emily (ATG) <EmilyN1@ATG.WA.GOV>; Rothwell, Rebecca (ECY) <rebs461@ECY.WA.GOV>

Cc: levo.brian@epa.gov; Lund, Perry (ECY) <plun461@ECY.WA.GOV>; Sarah Fox; Robert Maul; Shawn R. MacPherson; Thomas Kelly; JohnM@etcEnvironmental.net; Pike, Liz <liz.pike@leg.wa.gov>; Vick, Brandon <brandon.vick@leg.wa.gov>; Lynda Wilson <lyndadwils@gmail.com>; Rivers, Ann <Ann.Rivers@leg.wa.gov>; Orcutt, Ed <ed.orcutt@leg.wa.gov>; Kraft, Vicki <vicki.kraft@leg.wa.gov>

Subject: RE: Lacamas Shores storm water bio-filtration system

Dear Emily,

Please point me to the independent appeal review process. I am also confused regarding your statement about who your client is. I thought that was supposed to be me.

Thanks
Steve

From: Nelson, Emily (ATG) [EmilyN1@ATG.WA.GOV]

Sent: Wednesday, August 8, 2018 8:29 AM

To: Steve Bang; Rothwell, Rebecca (ECY)

Cc: levo.brian@epa.gov; Lund, Perry (ECY); 'Sarah Fox'; 'Robert Maul'; 'Shawn R. MacPherson'; Thomas Kelly; JohnM@etcEnvironmental.net

Subject: Lacamas Shores wetlands

Pt. 2a. To say that the area is not a stormwater treatment system is to directly contradict the Agreed Order, the Permit and the Deed of Dedication. No reason is given for doing so.

Mr. Bang,

Ecology fully understands the issues you have raised. My client has already conducted a site visit with the Corps, the City, and members of the Lacamas Shores HOA. Ecology will not be making another visit. My client has concluded 1) the area you have identified are associated wetlands of Lacamas Lake, and not a stormwater

Pt # 2a. The DOE has given its approval for this use already according to the 1989 Agreed Order. Note again the word "likely", making this a statement of opinion instead of a decision. Pt #2b

treatment system; 2) the wetlands are not causing a violation of the federal Clean Water Act; and 3) Ecology will not likely approve an application to cut down trees in the wetlands given that it would be inconsistent with the Shoreline Management Act and the City of Camas's Shoreline Master Program.

Pt #2e. No reason given other than that it falls under the Camas SMP

As I stated before, Ecology's position is clearly articulated in Ms. Rothwell's detailed letter dated February 22, 2018. At this point, from my client's perspective, there is nothing further to discuss regarding this matter.

Sincerely,

Emily

Pt # 2e(ii)2. This use is exempted from the Shoreline Master Program. Section 1.9.5 of the Camas Shoreline Master Program (as required by the Shoreline Management Act) states that "Projects in the shoreline jurisdiction that have been previously approved through local and state reviews are vested." Note that the unmentioned Agreed Order came from the Hearing Board created by the Shoreline Management Act.

From: Steve Bang <stevendbang@comcast.net>

Sent: Thursday, August 02, 2018 5:17 PM

To: Nelson, Emily (ATG) <EmilyN1@ATG.WA.GOV>; Rothwell, Rebecca (ECY) <rebs461@ECY.WA.GOV>

Cc: levo.brian@epa.gov; Lund, Perry (ECY) <plun461@ECY.WA.GOV>; 'Sarah Fox' <SFox@cityofcamas.us>; 'Robert Maul' <RMaul@cityofcamas.us>; 'Shawn R. MacPherson' <macphersonlaw@comcast.net>; Thomas Kelly <tomkellyevi@aol.com>; JohnM@etcEnvironmental.net

Subject: RE: Lacamas Shores bio-filter

Dear Emily,

This is simply way too important to get wrong. There is too much at stake – like violating the Clean Water Act and polluting Lacamas Lake. We all know email is not the best medium for real communication. May I suggest we hold a meeting in Camas where we can walk the site and then meet to fully discuss the property until it is fully understood by all parties.

Please expedite this request as every day pollutes the Lake further.

Thanks

Steve

From: Nelson, Emily (ATG) [EmilyN1@ATG.WA.GOV]

Sent: Thursday, August 2, 2018 12:21 PM

To: Rothwell, Rebecca (ECY); Steve Bang

Cc: levo.brian@epa.gov; Lund, Perry (ECY); Sarah Fox; Robert Maul; Shawn R. MacPherson

Subject: RE: Lacamas Shores wetland

Mr. Bang,

Thank you for your patience while Ecology completed its research. My client has reviewed the file for this matter, as well as historical aerial images, and has determined that Ms. Rothwell's original response to the City of Camas by letter dated February 22, 2018 remains Ecology's position. I have attached that letter here for your reference.

Ecology found no evidence indicating that the wetlands on parcel #84339000 have been graded or otherwise altered for the purpose of creating a stormwater treatment system. Accordingly, they are associated wetlands of Lacamas Lake, and therefore fall under the City and Ecology's jurisdiction to regulate pursuant to the state Shoreline Management Act, RCW 90.58, and the City of Camas's Shoreline Master Program.

States that there is no evidence it is a stormwater treatment facility, but then contradicts herself in the next paragraph, calling it a "stormwater treatment system" and referencing the 1988 permit. The DOE ignores the fact that the entire area was bulldozed and regraded and has pipes running through it to create the Biofilter.

Admits that the Biofilter is a stormwater treatment system and must be maintained! And that there already is a permit!

You are correct that under the terms of the 1988 permits, the Lacamas Shores Homeowners Association is responsible for maintaining its stormwater treatment system. However, any such maintenance must comply with the terms of the permits, as well as the SMA and SMP. As Ms. Rothwell stated in her letter, Ecology would not likely approve a conditional use permit allowing removal of trees in the wetlands as it would be inconsistent with the vegetation management and wetland criteria in the Camas SMP.

Sincerely,

Emily C. Nelson
Assistant Attorney General
Ecology Division
(360) 586-4607
Emily.Nelson@atg.wa.gov
Confidential Communication

Pt #5a. This is incorrect. Replacing trees with wetland flora is part of the DOE's best practices for all stormwater treatment wetlands. See p.991 (BMP T10.30) of the DOE 2012 Stormwater Management Manual for Western Washington

Pt # 2b. Shows that this is only an opinion letter with no actual legal weight.

Note: This communication is intended only for the addressee shown above. It may contain information that is privileged, confidential, or otherwise protected from disclosure. If you have received this communication in error, please delete it and notify me immediately.

From: Rothwell, Rebecca (ECY)
Sent: Wednesday, June 06, 2018 10:33 AM
To: Steve Bang <stevendbang@comcast.net>
Cc: levo.brian@epa.gov; Nelson, Emily (ATG) <EmilyN1@ATG.WA.GOV>; Lund, Perry (ECY) <plun461@ECY.WA.GOV>; Sarah Fox <SFox@cityofcamas.us>; Robert Maul <RMaul@cityofcamas.us>; Shawn R. MacPherson <macphersonlaw@comcast.net>
Subject: RE: Lacamas Shores wetland

Per the SMA, the property fits an exemption from the definition of "wetlands". RCW 90.58.030(2)(h)

Mr. Bang,

The wetland on parcel #84839000 is under the jurisdiction of the state Shoreline Management Act (RCW 90.58) and the Camas Shoreline Master Program.

Rebecca Rothwell

Wetlands/Shorelands Specialist
Shorelands and Environmental Assistance Program
WA Department of Ecology | Southwest Regional Office | ☎ 360-407-7273
📍 300 Desmond Drive SE, Lacey, WA 98503 | 📮 PO Box 47775 Olympia, WA 98504-7775

This communication is a public record and may be subject to disclosure per RCW 42.56.

Pt #2e. No criteria/documentation is identified support the assertion of jurisdiction, nor are possible exemptions mentioned (at least two).

The statement also does not address the initial question of a possible violation of the Clean Water Act and the City's NPDES permit, i.e, **the discharging of untreated stormwater into a "Water of the USA"**. Lacamas Lake is a "WUSA".

From: Steve Bang [stevendbang@comcast.net]
Sent: Monday, June 04, 2018 8:16 AM
To: Rothwell, Rebecca (ECY) <rebs461@ECY.WA.GOV>
Cc: levo.brian@epa.gov
Subject: FW: Whistleblower program inquiry

Rebecca,

Please send me the criteria your department uses to answer my request. I will also require a list of what has been done against that criteria. Additionally, I will require the statute or RCW or law that gives your department authority or jurisdiction over this private property. Note that I am referring to the bio-filter on our private property, not the actual wetland on the south side of the lake that goes up ~100 feet from the shoreline.

Thanks
Steve Bang

From: Levo, Brian [Levo.Brian@epa.gov]
Sent: Monday, May 21, 2018 8:55 AM
To: STEVE
Subject: RE: Whistleblower program inquiry

Hi Steve,

I forwarded this matter to the WA Department of Ecology's Environmental Reporting system (ERTS) for review and follow-up back on May 4th. I spoke to Rebecca Rothwell (360-407-7273) from Ecology's Shorelands and Environmental Assistance program on May 7th and she said that this is an issue that her team was engaged on.

Ms. Rothwell would be an appropriate point of contact for further updates. Let me know if you have any questions.

Thank you,

Brian Levo
NPDES Enforcement Coordinator
Water and Wetlands Enforcement Unit
U.S. Environmental Protection Agency - Region 10
1200 6th Avenue, Suite 155, MS OCE-101, Seattle, WA 98101
Phone: (206) 553-1816, Fax: (206) 553-4743

From: STEVE [stevendbang@comcast.net]
Sent: Monday, May 21, 2018 6:58 AM
To: Levo, Brian <Levo.Brian@epa.gov>
Subject: RE: Whistleblower program inquiry

Brian

Please let me know how I can track the progress of this request or if there is any additional information you need.

Much appreciated.
Steve

Sent from XFINITY Connect Application

—Original Message—

From: Levo.Brian@epa.gov
To: stevendbang@comcast.net
Sent: 2018-05-03 12:52:12 PM
Subject: RE: Whistleblower program inquiry

Mr. Bang,

As discussed on the phone this morning, please send me the additional information about this issue so that I can route this matter to the WA Dept. of Ecology for their follow-up/response.

Thank you,


Brian Levo
NPDES Enforcement Coordinator
Water and Wetlands Enforcement Unit
U.S. Environmental Protection Agency - Region 10
1200 6th Avenue, Suite 155, MS OCE-101, Seattle, WA 98101
Phone: (206) 553-1816, Fax: (206) 553-4743

From: Szerlog, Michael
Sent: Tuesday, May 01, 2018 11:57 AM
To: Kowalski, Edward <Kowalski.Edward@epa.gov>
Subject: FW: Whistleblower program inquiry

Thanks

Michael J. Szerlog, Acting Director
Regional Administrator's Division (RAD)
Office of the Regional Administrator
Environmental Protection Agency
1200 Sixth Avenue, Suite 155, Mailstop RAD 202
Seattle, Washington 98101
(206) 553-0279

szerlog.michael@epa.gov

 http://www2.epa.gov/sites/production/files/styles/small/public/epa_seal_verysmall.gif?itok=dn2or5RS

From: Steve Bang [stevendbang@comcast.net]
Sent: Tuesday, May 01, 2018 10:15 AM
To: Szerlog, Michael <Szerlog.Michael@epa.gov>
Subject: RE: Whistleblower program inquiry

Michael,

I still have not heard back. Is there someone I should contact directly?

Thanks
Steve


From: Szerlog, Michael [Szerlog.Michael@epa.gov]
Sent: Monday, April 23, 2018 10:01 AM
To: STEVE BANG
Subject: RE: Whistleblower program inquiry

Steve,

Hi. I received your message and forwarded it to the appropriate staff in the Office of Compliance and Enforcement. You should be hearing from someone either today or later this week.

Thanks

Michael J. Szerlog, Acting Director
Regional Administrator's Division (RAD)
Office of the Regional Administrator
Environmental Protection Agency
1200 Sixth Avenue, Suite 155, Mailstop RAD 202
Seattle, Washington 98101
(206) 553-0279
szerlog.michael@epa.gov

 http://www2.epa.gov/sites/production/files/styles/small/public/epa_seal_verysmall.gif?itok=dn2orSRS

From: STEVE BANG [stevendbang@comcast.net]
Sent: Monday, April 23, 2018 7:43 AM
To: Szerlog, Michael <Szerlog.Michael@epa.gov>
Subject: Whistleblower program inquiry

Michael,

FYI, a broken biofilter may be a possible violation of the Clean Water Act and could pose a future problem.

I live in Camas. I have been told by three professionals in the field that we have a situation where untreated storm water is being directly discharged into a wetland and then into a lake and then into the Columbia river. They have told me that this is a violation of the Clean Water Act. The man-made biofilter storm water treatment system has failed due to lack of maintenance which is the cause of the problem. There are a few people in positions of authority who are obstructing and preventing the maintenance and repair.

May I please ask if you could provide me some assistance to help point me in the right direction for how to proceed? I would like the system repaired so that it complies with the Clean Water Act again.

Any advice is greatly appreciated.

Thanks,

Steve Bang

360-991-5196



COMMUNITY DEVELOPMENT DEPARTMENT
616 NE 4th Avenue
Camas, WA 98607
www.ci.camass.wa.us

August 29, 2019

Steve Bang
2701 NW Lacamas Drive
Camas, WA 98607

RE: Lacamas Shores Homeowners Association

Dear Mr. Bang,

Thank you for taking the time to come speak to the City Council on Monday, August 19th 2019 regarding the wetlands/storm water facility for the Lacamas Shores subdivision. Subsequent to your City Council presentation I requested staff fully brief me and City Council on all of the elements related to this complex issue. This included a rundown of all of the correspondence from the Washington State Department of Ecology (DOE) and The Washington State Attorney General's office over the last five years in addition to all relevant city records. The City has, and continues to maintain its commitment in working collaboratively with the Lacamas Shores Homeowners Association (HOA) in finding a positive solution to the issues at hand.

As you are aware, the position of the City has been, and continues to remain, that the area at issue is a shoreline associated wetland containing mostly native vegetation, which is subject to the Shorelines Master Program. **The existing storm water facility included wetlands when it was established, and those wetlands continue to exist and have in fact expanded. Wetlands are part of the facility, and it was established to be a functioning co-mingled facility benefiting the area hydrology.** Many of the steps you suggest in your draft enforcement letter will not likely be permitted by DOE given the current conditions of the site. This has been well documented with you and HOA representatives over the last five years.

Fortunately, **the City has coordinated in recent months with HOA representatives on repairing defective storm pipes and filters next to the wetland/storm facility.** As we understand it Nutter Corp has been contracted by the HOA to conduct some of the initial work in the coming weeks. The City will also be conducting some water sampling sometime in late October, or early November to test water quality.

We recognize this is likely only a first of several steps to negotiating the issues at the wetland facility and not the final solution. If there are additional steps needed then the City will continue to discuss with the HOA on tenable solutions, which may require different design strategies given the critical areas on site.

Because of the HOA's ongoing efforts to repair broken infrastructure and to find workable solutions to the issues out at the facilities, the City will not take enforcement action at this time. The City's approach to code enforcement has always leaned heavily on education and enabling responsible parties to mitigate rather than issuing fines.

Again, thank you for your time and efforts and we do look forward towards continued coordination with the HOA.

Respectfully,

Sharmon Turk,

Pt #6. The City realizes that the entire area must treat stormwater but does not yet understand that it cannot be both a Biofilter AND a natural wetland.

Pt #6. The DOE Stormwater Management Manual specifically addressed the idea of "co-mingled facilities" stating that they CANNOT co-exist. Stormwater treatment wetlands must have vegetation removed periodically (at least annually), which would disrupt/destroy a natural or mitigation wetland.

Pt #7. Unfortunately, the completed project likely made the problem worse. As explained in a November 1, 2018 email to Pete Capell, "If the bubblers are unclogged, and nothing else is done, the storm water will spread out over an exponentially larger area of the surface, which is covered in years of debris . . ." This, probably washed some of the 30 years of accumulated decay into the Lake, increasing the nitrogen/phosphorus content of the water. The Biofilter is supposed to clean the water, but fixing only the pipes without fixing filter made the water worse. **Now we have toxic algae blooms in April -probably not a coincidence.**

Pt. #7. None of the solutions posed by the LSHOA or the City address the "bio" of the Biofilter, i.e., the cleanable/replacable "filter" that all filtering systems must have in order to work long-term. We should therefore expect more algae blooms.