



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

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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: Court order required a "biofilter storm drainage system" be created with the "man-made wetlands". Permit required the biofilter wetlands be separated from the shoreline 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. Court order required a "biofilter storm drainage system" be created with the "man-made wetlands". The permit and DOE's 1988 letter directed the design to "delineate this wetland [shoreline] as separate from the surrounding wetland area [biofilter]", and it was

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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

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

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.

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.

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.

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.

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."

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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;"

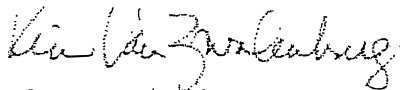
The Biofilter is considered a "utility". Camasonions pay a "stormwater utilities service charge along with their other utility bills.

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 80% non-wetland sites for the purpose of protecting the shoreline wetlands. It is not a natural nor mitigation wetland. Also, the CWA was amended in 2020 to EXCLUDE all "stormwater control features" constructed "upland" of a WUSA.

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.

The 1988 letter from Ecology that clarifies the intention of Ecology to use the entire biofiltration property to safeguard the quality of water going into the Lake. Ecology required the stormwater to be treated, for WQ "triggers" to be set, and for continued maintenance of the system, under threat of requiring an "offsite stormwater facility" to be created if this facility did not work.