

Robynn Sleep
6310 E Sprague Ave No. 241
Spokane Valley, WA 99212

June 15, 2023

Mr. Sonny Weathers, City Administrator
Medical Lake, WA 99022
Submitted via email: sweathers@medical-lake.org

Ms. Elisa Rodriguez, City Planner
Medical Lake, WA 99022
Submitted via email: erodriguez@medical-lake.org

Subject: Comments regarding LU 2023- 005 CA SEPA DNS 2023 06 01

Dear Ms. Rodriguez and Mr. Weathers:

Thank you for the opportunity to comment on the above referenced Critical Areas permit action. I believe this project is likely to have significant adverse environmental impacts as it is presently configured because it is based on a flawed process, as summarized below, and contains other deficiencies as detailed further down. One item in the project information I didn't understand, and consequently can't comment on, is the Forest Practices Activity Map. It has no application number but does show the south edge of the HUC 12 boundary in which the wetland is located. Is a Forest Practices permit required for this site?

The wetland rating is procedurally flawed and cannot legally be accepted by the city.

The Wetland Rating Report (the rating) that drives every aspect of this action does not comply with the methodology, directions, and requirements of the "Washington State Wetland Rating System for Eastern Washington, 2014 Update, October 2014 – Effective January 2015, Publication no. 14-06-030." (the manual)

Failure to follow the requirements set forth in the manual has very likely resulted in an incorrect categorization of the wetland, which in turn invalidates the mitigation plan that is necessarily based on it. The flawed rating means the staff report that incorporates it, and the subsequent presentation of it at the Planning Commission public hearing on May 25th are incorrect. The advisory vote of the Planning Commission, and all public Notice processes are likewise invalidated.

Acceptance of this rating violates the requirement of Medical Lake Municipal Code 17.10.090 Section D, Wetland Ratings, which relies on the proper execution of the manual's prescribed rating methodology to ensure compliance with the city's own requirements:

"The rating system document contains the definitions and methods for determining if the criteria below are met."

The current rating is in material dispute by a qualified wetland consultant, Dr. Hugh Lefcort, retained by the other owner of the wetland to review the applicant's rating. A new, comprehensive assessment should be required.

In addition to requesting a new rating for the reasons described above, a new rating should be required because the content and methodologies of the current rating are in dispute. The Washington State Wetland Rating System is a Level 2 Assessment, a rapid method that has been scientifically validated, but does not rise to the level of a Comprehensive Assessment (Level 3). Since the rating is disputed, and it is asserted that the wetland is a Category 2, NOT a Category 3, it is reasonable to ask for a more comprehensive assessment, as described in the 2014 manual. (Page 12)

The qualified wetland consultant retained to conduct a new rating must have had no prior involvement with the project and be agreed upon by both owners of the wetland.

As far as I can see, the project documents prepared by the applicant and city make no mention of the fact that this wetland is owned by two separate owners. They have not considered the impact of this Critical Area action on the portion of the wetland owned by Ms. Tammy Roberson, nor its impact on her private property rights. The Environmental Checklist (Impact Statement) is also silent on this important fact. I cannot speak to the motivation of others, but this oversight has the appearance of deception. When Ms. Roberson commented at the May 25th public hearing, speaking of her concerns about wetland impacts, she was publicly humiliated and inaccurately criticized by a city official (Zoom meeting transcript available; I was also present and can describe the event).

Since the wetland will likely score as a Category 2, it will be more "difficult, though not impossible, to replace [than a Category 1] ... but still need a relatively high level of protection," according to the 2014 manual, Page 9. This is a further argument in favor of a more comprehensive wetland assessment because, as stated in the 2014 Manual on page 1:

"The rating system, however, does not replace a full assessment of wetland functions that may be necessary to plan and monitor a project of compensatory mitigation."

Project impacts to the wetland are long-term; greater mitigation and longer monitoring are required.

Because this project proposes to cut down three large Ponderosa Pine trees located in the wetland buffer, the eventual mitigation plan needs to be for ten years, not five as originally proposed by the applicant. Cutting three mature conifer trees constitutes a significant long-term impact on the wetland that requires, at a minimum, ten years of monitoring. According to the Department of Ecology's website: "In general, monitoring is required for 10 years. The monitoring period may be extended if performance standards are not being met."

<https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Monitoring-requirements>

Accessed June 13, 2023

The Determination of Non-Significance is in error.

Unless conditioned as a Mitigated DNS, the impacts to the wetland are assuredly NOT insignificant. I know from attending the May 25th public hearing that the applicant and city of Medical Lake have agreed to certain mitigating conditions. It would be helpful, once issues of the wetland rating and categorization are resolved, if proposed conditions of approval, mitigation and monitoring were to be provided for early comment by the public and public agencies.

Since the construction process is so damaging to the environment under the best of circumstances, let alone in a wetland buffer, I would like to see thoughtful conditions of construction attached to this project action. I think they are best included in the action at hand, rather than waiting until a building permit application. Both the city of Medical Lake and the applicant have experience in this arena; I also have suggestions, included as a separate list at the end of these comments.

Research is needed to determine if the property owner qualifies for the reasonable use exception.

I don't believe the owner of the wetland property is entitled to the reasonable use exception he seeks because his ownership of a non-buildable lot is the result of his own actions. He purchased the lot in 2007. As a developer he can be expected to know what he was buying and know of the restrictions in place at the time. I have seen no evidence that the city of Medical Lake researched or considered the possibility that the owner's situation is because of his own actions.

Further evidence of the owner's knowledge of his actions is found in Spokane county property records, accessed through SCOUT, that show that the property taxes he has paid are a fraction of the amount owners of buildable lots pay. For example, the owner's 2023 tax obligation for his largest parcel (14073.0253, 18,300 square feet) is \$36.95 while just across Martin Street from his wetland parcel a vacant land parcel (14073.0274, 11,250 square feet) has a 2023 tax obligation of \$514.07—almost 14 times higher than the owner of the wetland pays, and for a much smaller lot.

Below are detailed comments about the prescribed methodology and instructions in the 2014 Eastern Washington Wetland Rating Manual, and why the rating does not meet the requirements.

The manual can be accessed on the Department of Ecology's website and at this link <https://apps.ecology.wa.gov/publications/SummaryPages/1406030.html> Accessed June 13, 2023

Manual Section 3. Overview for Users

The manual states: "Several of the questions require analyzing and preparing figures." "The list of figures needed to correctly answer the questions is on the back of the first page of the rating form in Appendix A." (Page 12}

The rating summary sheet was provided with the rating, but the list of “Maps and figures required to answer questions correctly for Eastern Washington” which is contained on the back of the rating summary, is not included in the public materials.

Several attachments are included with the rating, but not the listed required maps and figures. For convenience, I’ve attached a screen capture image, below, of the requirements for Depressional Wetlands.

Wetland name or number _____

Maps and figures required to answer questions correctly for Eastern Washington
Depressional Wetlands

Map of:	To answer questions:	Figure #
Cowardin plant classes and classes of emergents	D 1.3, H 1.1, H 1.5	
Hydroperiods (including area of open water for H 1.3)	D 1.4, H 1.2, H 1.3	
Location of outlet (<i>can be added to map of hydroperiods</i>)	D 1.1, D 4.1	
Boundary of area within 150 ft of the wetland (<i>can be added to another figure</i>)	D 2.2, D 5.2	
Map of the contributing basin	D 5.3	
1 km Polygon: Area that extends 1 km from entire wetland edge - including polygons for accessible habitat and undisturbed habitat	H 2.1, H 2.2, H 2.3	
Screen capture of map of 303(d) listed waters in basin (from Ecology website)	D 3.1, D 3.2	
Screen capture of list of TMDLs for WRIA in which wetland is found (website)	D 3.3	

According to the manual: “Some of the questions on the rating form can only be answered by drawing polygons on aerial photos of the site and by calculating the relative area of these polygons” **“The pictures or figures used to make these estimates have to be included with the rating form for the rating to be considered as complete.”** (Page 13, bold type emphasis from the manual)

Manual Section 4. Identifying Wetland Boundaries for Rating

The applicant has attached to the rating aerial images of the land parcels that contain the wetland, yet he has not drawn a boundary of the wetland as required by the manual: “To begin, determine the location and approximate boundaries of all wetlands at the site you are investigating.” “The rating form identifies the information that needs to be included on aerial photos or maps and submitted with the form.” (Page 15)

Additionally, the applicant’s rating is solely of the portion of the wetland on property owned by his client. Yet, the manual states and emphasizes with bold type and all capital letters: **“The entire wetland has to be scored.”** “The method is not sensitive enough, or complex enough, to allow a division of a wetland into smaller units based on level of disturbance, property lines, or plant communities. **DO NOT SCORE ONLY THE PART BEING ALTERED OR MITIGATED.**” (Page 15)

When the entire wetland is scored it includes the “priority habitat” on the south end as listed by the Washington Department of Fish and Wildlife (WDFW) and shown in Appendix B, page 1 of the manual. Specifically: Snags and logs. The south end of the wetland has both snags (standing dead tree) and logs (horizontal dead tree) that far exceed the minimum size requirement to qualify as this type of priority habitat. When correctly rated, this feature gives the wetland one additional point for question H 1.6 and one point for question H 3.1.

Manual Section 5. Detailed Guidance for the Rating Form: Scoring Functions

5.2 (Classifying the plant communities)

According to the manual, different classes of plants need to be shown by drawing a polygon on an aerial photo. For example: “Each polygon within a wetland unit can only have one Cowardian class. For this reason, it is useful to map the Cowardian class on an aerial photo.” (Page 37)

The list of required maps and figures also specifies mapping of the Cowardian plant classes by drawing polygons. (Appendix A)

5.3 (Water quality, hydrologic functions)

D 1.2 (Soil)

The applicant’s rating includes a soil map but there is no indication in the rating of a field test of the soil as required: “If it is not mapped as an organic or a clay soil, you will need to take at least one sample at the site and determine its composition.” (Page 39)

In addition to the lack of evidence of a field test of soils, the rating answers no to question D 1.2 (is the soil true clay or organic). According to the U.S. Department of Agriculture NRCS web soil service, the Rocky-Fourmound Complex does contain 4 percent hydric soil in the depressional areas. If answered correctly, this question could give the wetland an additional 3 points.

D 1.3 (Persistent plants)

The required map or figure is not included in the rating. As stated in the manual: “You will need to draw the area of persistent plants on a map or aerial photo before you can feel confident that your estimates are accurate.” (Page 40)

D 1.4 (Seasonal ponding)

There is no information in the rating that shows how the area of seasonal ponding was calculated, although the manual states: “Avoid making visual estimates of area covered by seasonal ponding when standing at the wetland edge. These estimates can be very inaccurate. Drawing the boundary on an aerial photograph and using a ... grid to calculate area is a more accurate way ... “

D 2.4 (Other sources of pollution)

The manual states that “Waterfowl droppings are a source of both excess nutrients and bacteria.” (Page 45)

The rating answers no to this question, denying the wetland 1 point, despite photographs presented at the public hearing showing ducks in the wetland.

D 3.0, D 3.1, and D 3.2 (water quality functions)

I addressed these questions at the May 25th public hearing. I provided maps showing the location of the wetland in the watershed, screen capture images of Ecology's Water Quality Atlas (WQA) showing the wetland within the TMDL plan area boundary, and detailed instructions for using the WQA so the information could be independently verified.

These questions are discussed in the manual, including the use of Ecology's tools. (Page 46-47)

A yes response to question 3.2 alone (is the wetland in a TMDL area) gives the wetland an additional 2 points. The list of required maps and figures requires a screen capture image of all TMDL plans for the WRIA in which the wetland is found. (Appendix A). The wetland is found in Water Resource Inventory Area (WRIA) 54, Lower Spokane. The TMDL for the Spokane River is for Dissolved Oxygen. The Water Quality Atlas on the Department of Ecology website clearly shows the wetland located within the plan area.

<https://apps.ecology.wa.gov/waterqualityatlas>

Accessed June 13, 2023

5.7 (Habitat functions)

As noted in my comment on page 4 and repeated below, failure to rate the entire wetland, which has two owners, resulted in underscoring the habitat value of the wetland. In an urban area subject to development pressure this function takes on greater importance.

“When the entire wetland is scored it includes the “priority habitat” on the south end as listed by the Washington Department of Fish and Wildlife (WDFW) and shown in Appendix B, page 1 of the manual. Specifically: Snags and logs. The south end of the wetland has both snags (standing dead tree) and logs (horizontal dead tree) that far exceed the minimum size requirement to qualify as this type of priority habitat. When correctly rated, this feature gives the wetland one additional point for question H 1.6 and one point for question H 3.1.” (Robynn Sleep comment)

The rating manual requires the use of the current version of the WDFW “Priority Species and Habitat List” to confirm the most up-to-date definitions. Links to access the 2023 updated publication are below, both links were accessed June 13, 2023.

WDFW webpage with link to the publication

<https://wdfw.wa.gov/publications/00165>

Direct link to the publication

<https://wdfw.wa.gov/sites/default/files/publications/00165/wdfw00165.pdf>

Suggestions for Conditions of Construction to protect the wetland and its buffer

As a former construction project manager and a current Certified Erosion and Sediment Control Lead (CESCL) in Washington I understand how hard construction can be on the environment and the extreme risk it poses to a wetland. Given that a wetland and its buffer comprise this entire site, best practices, such as those listed below, are essential conditions of construction that should be included in the action at hand. Waiting to address these issues as part of the building permit process risks inadequate protection, and an increased likelihood of unacceptable and avoidable impacts.

Allow no access to the site other than the area of disturbance specified in the plan documents.

No material storage or spoils stockpiled on site.

No use of pesticides.

No porta-pottys on site, they should be placed on the street.

No heavy or motorized equipment onsite; excavation and grading take place from the street.

Install construction fencing on Martin Street and all other points of access to maintain control of the buffer.

Install interior construction fencing around the wetland at the high-water mark to protect the soils.

Post signage reminders of wetland protection guidelines.

Use other, more effective sediment control best management practices (BMPs) along with silt fencing. Also use orange construction net fencing to increase visibility of the BMPs.

No petroleum products on site, no refueling on site.

Maintain spill prevention and control kits on site and train crews in their use.

Formalize wetland protection training for crews along with safety training.

Require that a Certified Erosion and Sediment Control specialist, or other environmental specialist, prepare a site-specific plan to ensure protection of the wetland.

Use straw or coir mats to cover bare soils, don't use vegetated covers that could introduce invasive species.

No concrete wash out on site or in the adjoining street.

Require excavation and concrete contractors to wash equipment before coming to the site to prevent the spread of invasive species.

Collect and store trash, recycling, and hazardous waste offsite.

Conclusion

At the May 25th public hearing, the city of Medical Lake defended its acceptance of the rating largely based on the applicant's expertise, and on the Department of Ecology's 2020 emailed approval of the mitigation plan presented to them by the applicant. (Jacob McCann (former DOE employee) email to applicant and city of Medical Lake former administrator, Tuesday, July 21, 2020, 9:57 a.m.) The city's wetland consultant also approved the mitigation plan, based on the flawed rating.

The city continues to defend their acceptance of the rating in the face of well-supported and verifiable opposition, partly because it is under five years old, the Ecology cut-off for requiring a new rating. The age of this rating is irrelevant because of its errors and omissions. Based on the requirements of the city's ordinance 17.10.090 Section D, referenced at the beginning of this letter, acceptance of the flawed rating is a violation of the Medical Lake Municipal Code

I don't understand how the rating provided for public review has been so influential despite its flaws. I realize wetland conditions can change in three years, but that fact doesn't explain the methodological shortcomings.

I believe a new, comprehensive rating is justified. I hope the city will rectify past mistakes and require one by an impartial qualified wetland scientist acceptable to both owners of the wetland.

Thank you for your consideration of my comments. Please don't hesitate to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Robynn Sleep".

Robynn Sleep, AAS Water Science

509-621-0230 (text or call)

SleepRobynn@gmail.com