

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Meeting and Public Hearing
May 25, 2023, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- a) Commissioner Hudson called the meeting to order at 5:30 pm. Commissioners Hudson, Jorgenson, and Mayulianos were present in person. Commissioner Munson joined via Zoom at 5:32 pm.
- b) Excused Absences – Commissioner Mark submitted a request for absence. Motion to approve made by commissioner Mayulianos, seconded by commissioner Jorgenson, carried 3-0. Commissioner Munson was not yet present on Zoom.
- c) Commissioner Mark joined the meeting via Zoom mid-way through Elisa Rodriguez’s presentation during the Public Hearing. The exact time was not noted.

2) ADDITIONS TO AGENDA

- a) Commissioner Hudson motioned to move the Public Hearing to Section 6 after the Staff Report and before Scheduled Items, seconded by commissioner Jorgenson, carried 3-0. Voting was done prior to commissioner Munson’s presence on Zoom.

3) APPROVAL OF MINUTES

- a) **April 27, 2023**, Regular Meeting minutes
 - i) Motion to approve made by commissioner Mayulianos, seconded by commissioner Jorgenson, carried 4-0. Commissioner Munson was now present via Zoom and cast his vote.

4) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) None at this time.

5) STAFF REPORTS

None

6) PUBLIC HEARING – LU 2023-005 CA Martin Street

- a) Commissioner Hudson called the Public Hearing to order at 5:34 pm.
- b) Commissioner Hudson addressed the Appearance of Fairness doctrine. No issues or conflicts of interest.
 - i) Commissioner Hudson noted for the record that he is very good friends with the owner but believes he can be fair and objective in the decision.
- c) No challenges to the appearance of fairness.
- d) Elisa Rodriguez gave a Staff Report and presentation. See attached.
- e) Applicant Vince Barthels – Shared his background - Biologist and a consultant for 25 years with a private engineering firm in Spokane. In 2020, he began looking into this property, did the wetland work and worked with previous staff with the city, namely Doug Ross (City Administrator) and Scott Duncan (Public Works Director). The current proposed plan is consistent with the requirements in 2020 and has gone through the wetlands mitigation sequencing. Noted that he is a wetlands biologist and practitioner, actively in the field and doing wetland delineations. This is in opposition to the Gonzaga professor that private citizen, Tammy Roberson, hired. Stated there is a difference between an academic and someone that works in the field on-site. Reported that this project will not require much fill dirt to be brought in. Noted that the report validated with the Department of Ecology in 2020 is verified for a 5-year period and therefore is still valid.
- f) Public Testimony
 - i) Proponents
 - (1) Paula Thornton resident – lives across the street from the proposed home site. Recognized work put into the report and proposal. Had some questions/concerns – will the owner be building a home to live in or is he making property attractive for sale? Has soil been tested?
 - ii) Opponents

- (1) Robynn Sleep – not a resident of Medical Lake. Here on behalf of Ms. Roberson. She has a Water Science degree from Spokane Community College and experience using wetland rating systems for Washington. Gave a handout on her research using the D3 Questions. See attached. Stated that using the D3 system, the wetland in question would have 3 points, putting it at a Category 2 Wetland, not a Category 3 as it is currently rated. Went through the 3 D3 questions in her report.
 - (a) The speaker’s time ran out so commissioner Hudson motioned to allow an additional 2 minutes, seconded by commissioner Mayulianos, carried 4-0.
- (2) Tammy Roberson, resident of Medical Lake – hired a certified specialized wetland scientist with a Ph.D. and 30+ years of experience. Shared opposing opinions regarding the application. See attached.
 - (a) The speaker’s time ran out, so commissioner Mayulianos motioned to allow an additional 2 minutes, seconded by commissioner Hudson, carried 4-0.
- (3) Kevin Gaschke, resident of Medical Lake – They are a military family with a home in Medical Lake. Shared his opinion that allowing the proposed building would decrease the quality of life for everyone in the area.
- (4) Marybeth Benson, resident of Medical Lake – Lives next to wetlands on the other side. Has a problem with water in her crawlspace. Concerned about the possibility of a developer coming in and ruining the area.

iii) Rebuttal

- (1) Vince Barthels – offered rebuttals to oppositions. The regulatory agency, which is the Department of Ecology, has the final say in this matter and they have already given approval in 2020. Addressed the assertions made by the professor (Hugh Lefcort) hired by Ms. Roberson and stated that his report is not a delineation report, but rather an opinion letter.
- (2) Tammy Roberson introduced Professor Hugh Lefcort from Gonzaga (submitted report) on Zoom – He explained that he couldn’t observe the wetland because it’s private property. Stated that the key issue is having the wetland delineated.

iv) Lahnne Henderson, resident of Medical Lake (via Zoom) – Shared that there was a property at the end of W 5th that experienced water in the crawlspace after the city did some excavation to widen the road. She enjoys the nature in Medical Lake and proposes to leave the property (wetland) as is and not build.

v) City Planner, Elisa Rodriguez – Explained that the Wetland Report is good for 5 years and that it is the best available science. Spoke with Bill Towey, City’s wetland specialist consultant, about the letter from Dr. Lefcort. Mr. Towey refuted most of the information and supported the applicant’s report and delineation. Shared that half of the wetland being discussed is on Ms. Roberson’s property. Noted that Ms. Roberson has altered the wetland and its buffer. The wetland on her property has been greatly altered by bringing in the concrete from the public sidewalk to build a retaining wall as well as bringing in additional soil. The concrete can change the pH of the water and hurt the plants. None of these activities are allowed per the Critical Areas Ordinance, therefore Ms. Roberson is in violation.

g) Hearing Body

i) Commissioner Hudson confirmed with Mr. Barthels that the proposed application would result in no net loss to the wetlands. Mr. Barthels confirmed and shared that the report issued on July 21, 2020, by the Department of Ecology, states that there is no net loss of wetland on site.

ii) No other questions or comments from commissioners.

h) Commissioner Hudson closed the Public Hearing at 7:03 pm.

i) Commissioner Mayulianos motioned to table the decision until next month to review everything, seconded by commissioner Jorgenson, motion failed to carry, 2-3 with commissioners Hudson, Mark, and Munson voting nay. The decision will not be tabled.

j) Discussion between commissioners. Ms. Rodriguez answered a question about the needed SEPA Determination of Non-Significance. Explained process and that since everyone being notified received the original notice, she doesn’t expect any new comments.

k) Motion to deny made by commissioner Mayulianos, seconded by commissioner Jorgenson, after further discussion, commissioner Jorgenson withdrew her second. The motion died. Motion to recommend approval with adopting the staff report with the additional Condition H and the requirement that a SEPA is completed, made by commissioner Mark, seconded by commissioner Munson, carried 4-1, with commissioner Mayulianos voting nay.

7) **SCHEDULED ITEMS**

- a) Official Zoning Map
- b) Critical Areas Ordinance-CARA (Critical Aquifer Recharge Area)

- c) City Branding Discussion
- d) Education Packet for New Commission Members
- e) Planning Commission Rules of Procedure
- f) Motion to table all scheduled items made by commissioner Mark, seconded by commissioner Munson, carried 5-0.

8) **COMMISSION MEMBERS' COMMENTS OR CONCERNS**

- a) none

9) **INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS**

- a) Tammy Roberson, Medical Lake resident– stated for the record in response to Ms. Rodriguez’s earlier statement regarding wetland violations, that she got permission from previous City Administrator, Doug Ross, to do what they did to the wetland on their property. Stated that they “shook” on it.

10) **CONCLUSION**

- a) Motion to conclude made by commissioner Mayulianos, seconded by commissioner Jorgenson. Motion carried 5-0 and meeting concluded at 7:25 pm.

Date: July 11, 2023

Roxanne Wright

Roxanne Wright, Administrative Assistant

LU 2023-005 CA

Critical Area Review at N Martin Street

Additional Information

For Public Hearing

At

Planning Commission

5/25/2023

Condition H:

Prior to approval of a building permit, the applicant must submit an Inadvertent Discovery Plan (IDP) to the City of Medical Lake and prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities.

Elisa Rodriguez

From: hmschlpatriot <hmschlpatriot@centurylink.net>
Sent: Tuesday, May 23, 2023 7:33 AM
To: Elisa Rodriguez
Subject: Notice of Application LU 2023-005 CA

We support personal property rights and believe that the property owner, Kim Mangis, has the right to build on his property if he so chooses. It appears he has jumped through all the hoops and has a good wetland buffer mitigation plan to protect the area next to the proposed home. We have watched the folks who are fighting against this proposal so hard spend the last couple of years altering their portion of the wetland with concrete bricks and shrubs, and then hand-watering those shrubs during the hottest part of the summer days when no one is supposed to water. That seems hypocritical to us.

Thank you for your time.

Sincerely,

AJ and Kelli Burton
850 N Minnie Street

Sent from my Galaxy

Elisa Rodriguez

From: DAHP SEPA (DAHP) <sepa@dahp.wa.gov>
Sent: Tuesday, May 23, 2023 3:14 PM
To: Elisa Rodriguez
Cc: Randy Abrahamson; guy.moura@colvilletribes.com
Subject: RE: Notice of Application for LU 2023-005 Critical Area Review (DAHP Project Tracking # 2023-05-03355)

Hi Elisa,

Thank you for contacting the Washington State Historic Preservation Officer (SHPO) and Department of Archaeology and Historic Preservation (DAHP) and providing documentation regarding the above referenced project. These comments are based on the information available at the time of this review and on behalf of the SHPO in conformance with Washington State law. Should additional information become available, our assessment may be revised.

Our statewide predictive model indicates that there is a high probability of encountering cultural resources within the proposed project area. However, due to the small footprint of the project, DAHP is not requesting a cultural resources survey at this time. We do ask that you prepare an Inadvertent Discovery Plan (IDP) and prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities.

Please note that the recommendations provided in this letter reflect only the opinions of DAHP. Any interested Tribes may have different recommendations. We appreciate receiving any correspondence or comments from Tribes or other parties concerning cultural resource issues that you receive.

Thank you for the opportunity to comment on this project. Please ensure that the DAHP project Tracking Number is attached to any future communications about this project.

Should you have any questions, please feel free to contact me.

All the best,

Sydney Hanson, MA (she/her) | **Local Government Archaeologist**
Eastern Washington & Columbia River Counties
360.280.7563 | sydney.hanson@dahp.wa.gov

Department of Archaeology & Historic Preservation | www.dahp.wa.gov
1110 Capitol Way S, Suite 30 | Olympia WA 98501
PO Box 48343 | Olympia WA 98504-8343

 Please consider the environment before printing this email

From: Elisa Rodriguez <ERodriguez@medical-lake.org>
Sent: Thursday, May 11, 2023 10:06 AM
To: Mayor Terri Cooper <tcooper@medical-lake.org>; Sonny Weathers <SWeathers@medical-lake.org>; Scott Duncan <sduncan@medical-lake.org>; Steve Cooper <scooper@medical-lake.org>
Cc: DAHP SEPA (DAHP) <sepa@dahp.wa.gov>; COM GMU Review Team <reviewteam@commerce.wa.gov>; Sikes, Jeremy (ECY) <JSIK461@ECY.WA.GOV>; Westerman, Kile W (DFW) <Kile.Westerman@dfw.wa.gov>; DNR RE SEPACENTER <SEPACENTER@dnr.wa.gov>; Hubenthal, Bob (DSHS/FFA) <robert.hubenthal@dshs.wa.gov>; Figg, Greg

<FiggG@wsdot.wa.gov>; Kline, Randy (PARKS) <Randy.Kline@PARKS.WA.GOV>; Davis, Dean (DSHS/BHA/ESH) <dean.davis@dshs.wa.gov>; Chad Moss <cmoss@mlsd.org>; Spokane Clean Air: <jsouthwell@spokanecleanair.org>; Spokane County Building and Planning Department: <tmjones@spokanecounty.org>; Spokane County Fire District 3: <abollar@scfd3.org>; Spokane County Sheriff: <mkittilstved@spokanesherriff.org>; Spokane Regional Health District <emeyer@srhd.org>; Spokane Regional Transportation Council: <rstewart@srtc.org>; Spokane Transit: <kkotterstrom@spokanetransit.com>; Avista: <Eric.Grainger@avistacorp.com>; Davis Communications: <timothygainer@netscape.net>; Cheney Free Press: <jmac@cheneyfreepress.com>; Greater Spokane: <skey@greaterspokane.org>; West Plains Chamber of Commerce: <mark@westplainschamber.org>
Subject: Notice of Application for LU 2023-005 Critical Area Review

External Email

Good Morning,

Attached you will find a notice of application and a wetland report for application LU 2023-005 CA, a Critical Area Review for a new single-family residence on a single lot containing a wetland.

Please let me know if you have any questions.

Elisa Rodriguez
City Planner
Medical Lake
509-565-5019
Monday-Thursday 8-2
Friday 9-2

Elisa Rodriguez

From: Anderson, Cindy (ECY) <CYAN461@ECY.WA.GOV>
Sent: Wednesday, May 24, 2023 7:06 AM
To: Elisa Rodriguez
Cc: Ladd, Hallie (ECY)
Subject: re: Mangis Wetland LU-2023-0005
Attachments: Step-by-Step instructions to set up your SRS account.pdf; SRS Portal -Getting Started.docx

Good morning, Elisa...

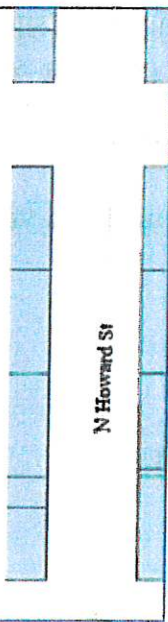
I'm the SEPA Planner for the WA Department of Ecology's Easter Region Office. Several documents for the Mangis Wetland proposal were forwarded to Ecology staff by Tammy Roberson.

I noticed the NOA (attached) states this project is SEPA Exempt per [WAC 197-11-800\(1\)\(b\)\(i\)](#).

required accommodation(s).

Environmental Review:
Per WAC 197-11-800 (1)(b)(i), the construction of a detached single family residential unit is exempt from a SEPA review.

Direct Comments to:
Elisa Rodriguez
City Planner
erodriguez@medical-



Normally, this would be a true statement, however, the Project Description in the NOA states wetlands are present on site.

PROPOSAL DESCRIPTION: The applicant proposes to build a single-family residence. The subject site contains a wetland, therefore, a Critical Area Review is required.

PROPOSAL LOCATION: Parcel #'s 14073.0253 & 14182.0402

ZONING: Single-Family Residential (R-1)

The exemptions listed in -800(1)(b)(i) *do not apply* when the site is located on Lands Covered By Water, such as this wetland.

(1) Minor new construction - Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. **They apply except when the project:**

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-;

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt:

(i) The construction or location of four attached or detached single family residential units.

(ii) The construction or location of four multifamily residential units.

(iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct

Because of the exception to the exemption, SEPA Rules require SEPA Review and a threshold determination with comment period for this proposal.

The City should submit a DNS and checklist (along with any other supplemental documents that may make it easier for a good review) to the SEPA Register via the SEPA Record Submittal Portal, aka SRS (Instructions on accessing SRS are attached above). The comment period for the SEPA Review should begin on the date of issue for the DNS, which coincides with the date your DNS and Checklist is sent to the SEPA Register via SRS.

Please let me know if you have any questions or if I can help you.



~Cindy

Cindy Anderson, CFM

SEPA Planner, SEA-ERO | Dept. of Ecology | 509-655-1541 work cell

Email: Cindy.Anderson@ecy.wa.gov

Work Hours: M-Th, 6a-4:30p Off on Fridays
In ERO office on Tuesdays, 9a-3p,
Telework all day on M, W-Th; T 6-9a/3-4:30p

Visit the [SEPA Homepage](#) to learn more about SEPA and how it applies to you and your project.

Please note: This communication is public record and may be subject to disclosure as per the Washington State Public Records Act, RCW 42.56.

Elisa Rodriguez

From: Megan Gaschk <mmgaschk@gmail.com>
Sent: Thursday, May 25, 2023 11:09 AM
To: Elisa Rodriguez
Subject: Written Comments about Brooks & N. Martin Proposal

Good morning,

We live at 854 N. Martin St. I am writing to state that we are **STRONGLY** opposed to the proposal of building a residence on the parcel on Brooks & N Martin (Critical Area Review).

Thank you,
Megan and Kevin Gaschk

Elisa Rodriguez

From: Tammy Roberson <tmroberson61@gmail.com>
Sent: Thursday, May 25, 2023 1:43 PM
To: Elisa Rodriguez; Roxanne Wright; Sonny Weathers; Mark Hudson; Judy Mayulianos; Marye Jorgenson; Andie Mark; Carl Munson
Cc: Trevor Matthews
Subject: Comments for Planning Commission Meeting Tonight 25 May 2023
Attachments: 25 May 2023 Signed Comment Letter.pdf; 25 May 2023 Updated Lefcort report.pdf; Prof Lefcort letter.pdf

Good afternoon, Ms Rodriguez,

Please acknowledge receipt. I will be sending one more email for the City to print out to the Commissioners due to email size limitations.

Per the instructions in the Meeting Agenda written public comments, here is the requested information:

1. Meeting Date is 25 May 2023
2. Tammy Roberson
3. City Resident (lives at 424 W Brooks Rd)
4. Notice of Application LU 2023-005 CA. FYI - will be speaking during the Public Hearing portion and also will be speaking during the 2nd interested citizens portion.

Thank you and take care,
Tammy Roberson

P | L | M | S
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BRIAN G. HIPPERSON
D. ROGER REED
STEPHEN D. PHILLABAUM (Ret.)

May 25, 2023

*Admitted in Washington and Idaho

www.spokelaw.com

RE: Comments on LU 2023-005 CA

May 25, 2023

Dear Members of the Medical Lake Planning Commission:

My name is Trevor Matthews, and I represent Tammy M. Roberson, a citizen of Medical Lake. I am writing on her behalf about permit application LU 2023-005 CA, an application for a critical areas permit for a property located on N. Martin Street in Medical Lake. Submitted with this letter is a delineation report prepared by Hugh Lefcort, PhD. Dr. Lefcort is a professor of Biology at Gonzaga who specializes, among other things, in wetland science. Dr. Lefcort has also prepared an opinion letter examining the applicant's submissions.

In Ms. Roberson's view, the applicant has not met the burden imposed by the Medical Lake Municipal Code, either for issuance of a critical areas permit, or for issuance of a reasonable use exception. The applicant fails to provide a variety of required information and fails to explain what the effect the proposed elimination of 2700 square feet of wetland buffer will have on the environment or why the miniscule mitigation plan will prevent those effects. Therefore, for the reasons I will lay out below, the Commission should recommend denial to the City Council. This Commission has a duty to protect the precious environmental resources of Medical Lake. The best way for this Commission to fulfill this duty is to require applicants to conform to the letter of the law. This is a standard that the applicant in this case has not met.

The Condition of the Critical Area Has Changed Since the Applicant's 2020 Rating.

In the applicant's 2020 wetland rating report, the wetland on the subject property was found to be Category III. In 2023, Dr. Lefcort has shown that the hydrological conditions at the site have changed and that the wetland should now be classified as Category II.

Both the Medical Lake Municipal Code and state law require applicants to use the "best available science." Given that the hydrological conditions at the project site have changed, the applicant's documents do not represent the best available science. Furthermore, the applicant's materials understate the significance of the subject wetland and the degree of protection that the law affords

to it. The Commission should recommend denial so that the plan can be reconsidered and resubmitted in light of changed circumstances.

The Applicant's 2020 Boundary Delineation Is Likely to Be Wrong Because of Changed Hydrologic Conditions

The applicant relies on a 2020 boundary delineation to support its plans. As Dr. Lefcort explains in his letter, it is very likely that the wetland has grown in the three years since the applicant delineated the wetland. This means that the Commission should recommend denial until a new, complete delineation occurs. If this is not done, there is a significant risk that the project will, inadvertently allow work, to occur within a wetland without SEPA requirements being met.¹

The Applicant's Plans Propose Severe Incursions into the Buffer.

The Medical Lake Municipal Code declares wetlands *and* their buffers to critical areas in need of ecological protection. See MLMC 17.10.060. The applicant's project proposes construction activities located entirely within the buffer. Pursuant to MLMC 17.10.090(F) and accompanying tables, a category II wetland is entitled to a buffer of *at least* 100 feet. In some situations, the Code requires a much larger buffer. The applicant's project gets as close as 21 feet to the edge of the wetland. The Commission should construe the applicant's permitting documents and request for a **reasonable use exception** in light of this fact.

The applicant is seeking permission to make alterations to the buffer in very close proximity to the critical area. The exceptions requested by the applicant are *big exceptions*. The Commission should make certain that the applicant has met the requirements of the MLMC before allowing work to proceed. Based on the submissions provided by the applicant, that burden has not been met.

The Mitigation Plan Does Not Meet the Minimum Requirements Set for Mitigation Activities by the MLMC 17.10.090(H)(4).

The application proposes to permanently eliminate approximately 2700 square feet of category II wetland buffer. To compensate for this, the applicant proposes to engage in compensatory mitigation, as allowed by MLMC 17.10.090(H). The applicant does not state what kind of mitigation (replacement, rehabilitation, etc.) will be employed. This failure means that the application is not complete and should be sent back for more information.

Because the type of mitigation is not explained, commenters are left to make assumptions about the nature of the proposed plan. Ms. Roberson believes that the applicant intends to engage in enhancement mitigation, MLMC 17.10.090(H)(2)(d). This kind of mitigation imposes specific requirements, including informational requirements on the applicant, that have not been met. As the MLMC explains, enhancement mitigation is:

¹ The State Environmental Policy Act (SEPA) exemption claimed by the applicant is only applicable for so long as the proposed work does not occur in lands covered by water. As soon as the work invades the wetland boundary, SEPA processes become required.

The manipulation of the physical, chemical or biological characteristics of a biological wetland to increase or improve specific functions or to change the growth stage or composition of the vegetation present. **Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or wildlife habitat.** Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations to result in open water ponds, or some combination of these. Enhancement results in a change in certain wetland functions and can lead to a decline in other wetland functions. It does not result in a gain in wetland acres.

Other than proposing that its prescribed plantings will “compensate for the mature Ponderosa Pine tree or trees that will be removed,” the applicant absolutely fails to provide the necessary scientific information. The applicant’s silence on this issue is not surprising because the plan is not likely to benefit the wetland. Dr. Lefcort has studied the plan and determined that it is likely to harm or provide no benefit to the wetland given its already high level of biological diversity and dense vegetation.

More importantly the applicant utterly fails to engage with the requirements of the MLMC regarding mitigation ratios. As the MLMC explains, mitigation is “Avoiding, minimizing, or compensating for adverse critical area impacts.” The Code is specific about just how much compensation is required for mitigation to be legally acceptable. MLMC 17.10.090(H)(4) and Table 17.10.090(6) require applicants engaging in enhancement mitigation to use a ratio of 12:1 for a category II wetland and 8:1 for a category III wetland. The applicant proposes to disturb 2700 feet of wetland buffer. Therefore, to qualify for enhancement on this Category II wetland, the applicant would need to enhance 32,400 square feet of a wetland buffer. The applicant’s proposal enhances, at most, a few hundred feet of buffer. This is unacceptable. The City should require the applicant to know and address the requirements of the Code in its application materials—to say nothing of actually following those requirements.

Even the applicant admits that the mitigation ratio requirements have been ignored. The applicant writes, “Cottonwood trees are to be planted at a replacement ratio of 2:1 for each of the mature Ponderosa Pine trees to be removed.” The ratio imposed by the code is 12:1, or at the very least, 8:1.

These greater than 1:1 mitigation rules are directly referenced in WETLAND MITIGATION IN WASHINGTON STATE—PART 1, VERSION 1 (2006), which is cited by the applicant in the mitigation plan. There, the Department of Ecology explains, “When compensatory wetland mitigation was first required, the loss of one unit of area (acre) of wetland generally would require one unit of area (acre) of compensation (a 1:1 ratio). However, a 1:1 mitigation ratio is generally no longer considered sufficient (Castelle et al. 1992, King et al. 1993, National Research Council 2001, Granger et al. 2005) due to the risk of failure and temporal loss.” *Id.* at 68. This is precisely why the City of Medical Lake imposed the mitigation ratio rules. The Commission should recommend denial.

The Applicant's Request for a Reasonable Use Exception Does Not Excuse the Scientific and Technical Failings of the Submission

The Commission might be tempted to ignore the failings of the applicant's submission based on the idea that the applicant has requested a reasonable use exception to the requirements of the Code. The Commission should not do this. The Code's requirements are designed to set the minimum requirements for permit applications and mitigation plans. It is precisely the fact that the applicant is requesting special treatment—a relaxation of the rules—that means that the applicant must actually address and consider the specific requirements of the Code before seeking to be excused from them. As MLMC 17.10.020 explains, "Where the applicant seeks an exception to any requirement imposed by this code or believes said requirement denies all reasonable economic use of the subject property, justification in support of an exception must be clear and convincing." This standard is not met here because the applicant hasn't even shown that compliance is not possible.

Likewise, as will be addressed in greater detail below, 17.10.100(B) requires applicants to show, "The proposal mitigates for the loss of critical area functions to the greatest extent feasible" and "The proposal is consistent with other applicable regulations and standards." The applicant has a duty to limit requests for exceptions to the issues that are truly *unavoidable*. The applicant has not submitted evidence to meet that burden. The applicant has not even complied with the proportionality requirements necessary for successful mitigation.

The Applicant Has Failed to Meet the Requirements for Issuance of a Critical Areas Permit

MLMC 17.10.050(B)(6) requires an applicant to submit "A written response to each of the approval criteria in section 17.10.060." In turn, MLMC 17.10.060(D) requires a written showing that "The proposal protects the critical area functions and values and results in no net loss of critical area functions and values." The applicant has produced a summary assertion that this will not happen, but has not offered sufficient explanation to support the claim.

The applicant has not explained how elimination of 2700 sq. ft. of wetland buffer will affect the wetland, nor why the substandard mitigation plan will prevent those effects, other than to simply allege that it will. Dr. Lefcort refutes this in his letter to the Commission, "this proposal suggests that the developer can disturb 2700 square feet of a functioning, healthy wetland buffer without replacing or otherwise compensating for the loss. The result will be a reduction in wetland functions." The Commission must recommend denial because these failings cannot be remedied without resubmission and redesign of the mitigation plan. As proposed, the applicant's submission violated 17.10.060(D).

The Applicant Has Not Met the Requirements for Issuance of a Reasonable Use Exception

To be eligible for a reasonable use exception, the applicant must show, pursuant to MLMC 17.10.100(B):

1. The application of this chapter's buffer requirements] would deny all reasonable economic use of the property;

2. No other reasonable economic use of the property has less impact on the critical area;
3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter, or its predecessor;
5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;
6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible; **and**
7. The proposal is consistent with other applicable regulations and standards.

The use of the word “and” in the requirements shows that the applicant must demonstrate that all seven requirements are met before a permit can issue. At least three of these criteria are unmet: The applicant has failed to meet this burden in the following ways.

2. The applicant has asserted, but not supported or explained why the regulation denies the property “all reasonable economic use” unless the applicant can build a house. This burden has not been met. The applicant has not analyzed any other means of producing income from the land. For example: the applicant could potentially operate an apiary on the property while imposing a much reduced ecological cost on the subject wetland. The application makes no attempt to consider alternative land uses and thereby assumes without evidence that building a house is the only economic activity available.
3. The applicant does not seem to have considered means of moving the disturbance further away from the wetland. The applicant has not sought permission to move the building further away from the wetland by having the lot and front yard setbacks reduced. By moving the building closer to the property line, the applicant could get further away from the wetland which would reduce the impact of the project on the critical area.
6. Because the applicant has not complied with, or even addressed, the mitigation ratio requirements contained in the MLMC, the applicant has failed to demonstrate that the proposal “mitigates for the loss of critical area functions to the greatest extent feasible.” This issue has not been considered nor addressed and the criterion is necessarily unmet.

The Mitigation Plan Does Not Meet the Requirements imposed by MLMC 17.10.050(F)

According to the Code, critical areas applicants who request a mitigation plan must submit detailed construction plans which include grading and excavation details. The submission does not meet this requirement. There is no excavation and grading details nor detailed construction plans for the building.

Conclusion

The applicant is proposing to make serious incursions into the buffer of a Category II wetland. In support of this request the applicant has:

- Relied on a wetland delineation report that fails to reflect the current status of the critical area;
- Relied on application documents which cite to an out-of-date version of the critical areas ordinance;
- Failed to consider other less ecologically burdensome potential economic uses for the property before selecting this one;
- Failed to demonstrate that this building is the only available economic activity for the property;
- Failed to explain how elimination of 2700 sq. ft. of buffer will affect the subject wetland;
- Failed to explain how the proposed mitigation will compensate for the loss of buffer land;
- Failed to follow, or even address the mitigation ratios imposed by the MLMC;
- Failed to demonstrate that the proposed mitigation will be effective to the "greatest extent feasible" as required by the MLMC;
- Proposed mitigation that Dr. Lefcort believes may actually be deleterious to the wetland.
- Failed to demonstrate that there will be no net loss of function after the project is accomplished.

For these and other failings, the Commission should recommend denial.

Sincerely,



Trevor Matthews
Phillabaum, Ledlin, Matthews & Sheldon, PLLC
Attorneys for Tammy M. Roberson

Wetland name or number TR Tommy Roberson

RATING SUMMARY – Eastern Washington

Name of wetland (or ID #): Par 14073.0253 & 14182.0902 Date of site visit: 5/17/23
 Rated by Dr. Hugh Lefcort Trained by Ecology? Yes No March 2009
Trained by Richard Chan ENW LLC course
 HGM Class used for rating Depressional Wetland has multiple HGM classes? Y N

NOTE: Form is not complete without the figures requested (figures can be combined).
 Source of base aerial photo/map National Wetland Inventory (Figure 1)

OVERALL WETLAND CATEGORY II (based on functions X or special characteristics)

1. Category of wetland based on FUNCTIONS

- Category I – Total score = 22-27
- X Category II – Total score = 19-21
- Category III – Total score = 16-18
- Category IV – Total score = 9-15

Score for each function based on three ratings (order of ratings is not important)

9 = H,H,H
 8 = H,H,M
 7 = H,H,L
 7 = H,M,M
 6 = H,M,L
 6 = M,M,M
 5 = H,L,L
 5 = M,M,L
 4 = M,L,L
 3 = L,L,L

FUNCTION	Improving Water Quality	Hydrologic	Habitat	
<i>Circle the appropriate ratings</i>				
Site Potential	H (M) L	(H) M L	(H) M L	
Landscape Potential	H (M) L	(H) M L	H (M) L	
Value	(H) M L	H M (L)	H M (L)	TOTAL
Score Based on Ratings	7	7	6	20

2. Category based on SPECIAL CHARACTERISTICS of wetland

CHARACTERISTIC	CATEGORY
	<i>Circle the appropriate category</i>
Vernal Pools	II III
Alkali	I
Wetland of High Conservation Value	I
Bog and Calcareous Fens	I
Old Growth or Mature Forest – slow growing	I
Aspen Forest	(I)
Old Growth or Mature Forest – fast growing	II
Floodplain forest	II
None of the above	

[Signature]
5/25/23

Wetland name or number _____

DEPRESSIONAL WETLANDS		Points (only 1 score per box)
Water Quality Functions - Indicators that the site functions to improve water quality		
D 1.0. Does the site have the potential to improve water quality?		
D 1.1. Characteristics of surface water outflows from the wetland:		
Wetland has no surface water outlet	points = 5	5
Wetland has an intermittently flowing outlet	points = 3	
Wetland has a highly constricted permanently flowing outlet	points = 3	
Wetland has a permanently flowing, unconstricted, surface outlet	points = 1	
D 1.2. The soil 2 in below the surface (or duff layer) is true clay or true organic (use NRCS definitions of soils)	YES = 3 NO = 0	0
D 1.3. Characteristics of persistent vegetation (Emergent, Scrub-shrub, and/or Forested Cowardin classes)		
Wetland has persistent, ungrazed, vegetation for > 2/3 of area	points = 5	5
Wetland has persistent, ungrazed, vegetation from 1/3 to 2/3 of area	points = 3	
Wetland has persistent, ungrazed vegetation from 1/10 to < 1/3 of area	points = 1	
Wetland has persistent, ungrazed vegetation < 1/10 of area	points = 0	
D 1.4. Characteristics of seasonal ponding or inundation:		
<i>This is the area of ponding that fluctuates every year. Do not count the area that is permanently ponded.</i>		
Area seasonally ponded is > 1/2 total area of wetland	points = 3	1
Area seasonally ponded is 1/4 - 1/2 total area of wetland	points = 1	
Area seasonally ponded is < 1/4 total area of wetland	points = 0	
Total for D 1		

Rating of Site Potential If score is: 12-16 = H X 6-11 = M 0-5 = L Record the rating on the first page

D 2.0. Does the landscape have the potential to support the water quality function of the site?		
D 2.1. Does the wetland receive stormwater discharges?	Yes = 1 No = 0	1
D 2.2. Is > 10% of the area within 150 ft of the wetland in land uses that generate pollutants?	Yes = 1 No = 0	1
D 2.3. Are there septic systems within 250 ft of the wetland?	Yes = 1 No = 0	0
D 2.4. Are there other sources of pollutants coming into the wetland that are not listed in questions D 2.1- D 2.3? Source _____	Yes = 1 No = 0	1
Total for D 2		3

Rating of Landscape Potential If score is: X 3 or 4 = H 1 or 2 = M 0 = L Record the rating on the first page

D 3.0. Is the water quality improvement provided by the site valuable to society?		
D 3.1. Does the wetland discharge directly (i.e., within 1 mi) to a stream, river, or lake that is on the 303(d) list?	Yes = 1 No = 0	0
D 3.2. Is the wetland in a basin or sub-basin where water quality is an issue in some aquatic resource (303(d) list, eutrophic lakes, problems with nuisance and toxic algae)? <i>Lake Spokane</i>	Yes = 1 No = 0	1
D 3.3. Has the site been identified in a watershed or local plan as important for maintaining water quality (answer YES if there is a TMDL for the drainage or basin in which the wetland is found)?	Yes = 2 No = 0	2
Total for D 3		3

Rating of Value If score is: X 2-4 = H 1 = M 0 = L Record the rating on the first page

Wetland name or number TR

DEPRESSIONAL WETLANDS		Points (Only 1 score per box)
Hydrologic Functions Indicators that the site functions to reduce flooding and erosion		
D 4.0. Does the site have the potential to reduce flooding and erosion?		
D 4.1. Characteristics of surface water outflows from the wetland:		
Wetland has no surface water outlet	points = 8	8
Wetland has an intermittently flowing outlet	points = 4	
Wetland has a highly constricted permanently flowing outlet	points = 4	
Wetland has a permanently flowing unconfined surface outlet	points = 0	
<i>(If outlet is a ditch and not permanently flowing treat wetland as "Intermittently flowing")</i>		
D 4.2. Depth of storage during wet periods: Estimate the height of ponding above the bottom of the outlet. For wetlands with no outlet, measure from the surface of permanent water or deepest part (if dry).		
Seasonal ponding: > 3 ft above the lowest point in wetland or the surface of permanent ponding	points = 8	8
Seasonal ponding: 2 ft - < 3 ft above the lowest point in wetland or the surface of permanent ponding	points = 6	
The wetland is a headwater wetland	points = 4	
Seasonal ponding: 1 ft - < 2 ft	points = 4	
Seasonal ponding: 6 in - < 1 ft	points = 2	
Seasonal ponding: < 6 in or wetland has only saturated soils	points = 0	
Total for D 4	Add the points in the boxes above	16
Rating of Site Potential If score is: <u>X 12-16 = H</u> 6-11 = M 0-5 = L <i>Record the rating on the first page</i>		

D 5.0. Does the landscape have the potential to support the hydrologic functions of the site?		
D 5.1. Does the wetland receive stormwater discharges?	Yes = 1 No = 0	1
D 5.2. Is > 10% of the area within 150 ft of the wetland in a land use that generates runoff?	Yes = 1 No = 0	1
D 5.3. Is more than 25% of the contributing basin of the wetland covered with intensive human land uses?	Yes = 1 No = 0	1
Total for D 5	Add the points in the boxes above	3
Rating of Landscape Potential If score is: <u>X 3 = H</u> 1 or 2 = M 0 = L <i>Record the rating on the first page</i>		

D 6.0. Are the hydrologic functions provided by the site valuable to society?		
D 6.1. The wetland is in a landscape that has flooding problems.		
Choose the description that best matches conditions around the wetland being rated. Do not add points. Choose the highest score if more than one condition is met.		
The wetland captures surface water that would otherwise flow down-gradient into areas where flooding has damaged human or natural resources (e.g., houses or salmon redds), AND		
Flooding occurs in sub-basin that is immediately down-gradient of wetland	points = 2	0
Surface flooding problems are in a sub-basin farther down-gradient	points = 1	
The existing or potential outflow from the wetland is so constrained by human or natural conditions that the water stored by the wetland cannot reach areas that flood.		
Explain why <u>Does not have an outlet</u>	points = 0	
There are no problems with flooding downstream of the wetland	points = 0	
D 6.2. Has the site has been identified as important for flood storage or flood conveyance in a regional flood control plan?	Yes = 2 No = 0	0
Total for D 6	Add the points in the boxes above	0
Rating of Value If score is: 2-4 = H 1 = M <u>X 0 = L</u> <i>Record the rating on the first page</i>		

These questions apply to wetlands of all HGM classes.		(only 1 score per box)
HABITAT FUNCTIONS - Indicators that site functions to provide important habitat		
H 1.0. Does the wetland have the potential to provide habitat for many species?		
<p>H 1.1. Structure of the plant community: Check the Cowardin vegetation classes present and categories of emergent plants. Size threshold for each category is $\geq \frac{1}{4}$ ac or $\geq 10\%$ of the wetland if wetland is < 2.5 ac.</p> <p><input type="checkbox"/> Aquatic bed</p> <p><input type="checkbox"/> Emergent plants 0-12 in (0-30 cm) high are the highest layer and have $> 30\%$ cover</p> <p><input type="checkbox"/> Emergent plants $> 12-40$ in ($> 30-100$ cm) high are the highest layer with $> 30\%$ cover</p> <p><input checked="" type="checkbox"/> Emergent plants > 40 in (> 100 cm) high are the highest layer with $> 30\%$ cover</p> <p><input checked="" type="checkbox"/> Scrub-shrub (areas where shrubs have $> 30\%$ cover)</p> <p><input checked="" type="checkbox"/> Forested (areas where trees have $> 30\%$ cover)</p>		<p>4 or more checks: points = 3</p> <p>3 checks: points = 2</p> <p>2 checks: points = 1</p> <p>1 check: points = 0</p> <p>2</p>
H 1.2. Is one of the vegetation types Aquatic Bed?		<p>Yes = 1 No = 0</p> <p>0</p>
H 1.3. Surface water		
<p>Yes ✓ H 1.3.1. Does the wetland have areas of open water (without emergent or shrub plants) over at least $\frac{1}{4}$ ac OR 10% of its area during the March to early June OR in August to the end of September? Answer YES for Lake Fringe wetlands. Yes = 3 points & go to H 1.4 No = go to H 1.3.2</p> <p>No ✗ H 1.3.2. Does the wetland have an intermittent or permanent, and unvegetated stream within its boundaries, or along one side, over at least $\frac{1}{4}$ ac or 10% of its area? Answer yes only if H 1.3.1 is No. Yes = 3 No = 0</p>		<p>3</p>
H 1.4. Richness of plant species		
<p>Count the number of plant species in the wetland that cover at least 10 ft^2. Different patches of the same species can be combined to meet the size threshold. You do not have to name the species. Do not include Eurasian milfoil, reed canarygrass, purple loosestrife, Russian olive, Phragmites, Canadian thistle, yellow-flag iris, and saltcedar (Tamarisk)</p> <p># of species <u>10</u></p> <p>Willow, aspen, ^{sober} maple, Black Walnut, honeysuckle, chokecherry, Service berry, Snow berry, cattails, boxelder</p>		<p>Scoring: > 9 species: points = 2</p> <p>4-9 species: points = 1</p> <p>< 4 species: points = 0</p> <p>2</p>
H 1.5. Interspersion of habitats		
<p>Decide from the diagrams below whether interspersions among types of plant structures (described in H 1.1), and unvegetated areas (open water or mudflats) is high, moderate, low, or none.</p> <p>Use map of Cowardin and emergent plant classes prepared for questions H 1.1 and map of open water from H 1.3. If you have four or more plant classes or three classes and open water, the rating is always high.</p>		Figure 1
<p>None = 0 points</p> <p>Low = 1 point</p> <p>Moderate = 2 points</p> <p>All three diagrams in this row are High = 3 points</p>		<p>3</p>
		<p>Riparian braided channels with 2 classes</p>

Wetland name or number TR

H 1.6. Special habitat features <i>Check the habitat features that are present in the wetland. The number of checks is the number of points.</i> <input checked="" type="checkbox"/> Loose rocks larger than 4 in OR large, downed, woody debris (> 4 in diameter) within the area of surface ponding or in stream. <input checked="" type="checkbox"/> Cattails or bulrushes are present within the wetland. <input checked="" type="checkbox"/> Standing snags (diameter at the bottom > 4 in) in the wetland or within 30 m (100 ft) of the edge. <input checked="" type="checkbox"/> Emergent or shrub vegetation in areas that are permanently inundated/ponded. <input checked="" type="checkbox"/> Stable steep banks of fine material that might be used by beaver or muskrat for denning (> 45 degree slope) OR signs of recent beaver activity. <input type="checkbox"/> Invasive species cover less than 20% in each stratum of vegetation (canopy, sub-canopy, shrubs, herbaceous, moss/ground cover)		5
Total for H 1	Add the points in the boxes above	15

Rating of Site Potential If score is: 15-18 = H 7-14 = M 0-6 = L Record the rating on the first page

H 2.0. Does the landscape have the potential to support habitat functions of the site?		
H 2.1. Accessible habitat (only area of habitat abutting wetland). If total accessible habitat is: <i>Calculate: % undisturbed habitat</i> <u>0</u> + [(% moderate and low intensity land uses)/2] $30/2 = 15\%$ > 1/3 (33.3%) of 1 km Polygon points = 3 20-33% of 1km Polygon points = 2 10-19% of 1km Polygon points = 1 <10% of 1km Polygon points = 0		1
H 2.2. Undisturbed habitat in 1 km Polygon around wetland. <i>Calculate: % undisturbed habitat</i> <u>25</u> + [(% moderate and low intensity land uses)/2] $30/2 = 40\%$ Undisturbed habitat > 50% of Polygon points = 3 Undisturbed habitat 10 - 50% and in 1-3 patches points = 2 Undisturbed habitat 10 - 50% and > 3 patches points = 1 Undisturbed habitat < 10% of Polygon points = 0		2
H 2.3. Land use Intensity in 1 km Polygon: > 50% of Polygon is high intensity land use points = (-2) Does not meet criterion above points = 0		-2
H 2.4. The wetland is in an area where annual rainfall is less than 12 in, and its water regime is not influenced by irrigation practices, dams, or water control structures. Generally, this means outside boundaries of reclamation areas, irrigation districts, or reservoirs Yes = 3 (No = 0)		0
Total for H 2	Add the points in the boxes above	1

Rating of Landscape Potential If score is: 4-9 = H 1-3 = M <1 = L Record the rating on the first page

H 3.0. Is the habitat provided by the site valuable to society?		
H 3.1. Does the site provide habitat for species valued in laws, regulations, or policies? Choose the highest score that applies to the wetland being rated Site meets ANY of the following criteria: points = 2 — It has 3 or more priority habitats within 100 m (see Appendix B) — It provides habitat for Threatened or Endangered species (any plant or animal on state or federal lists) — It is mapped as a location for an individual WDFW species — It is a Wetland of High Conservation Value as determined by the Department of Natural Resources — It has been categorized as an important habitat site in a local or regional comprehensive plan, in a Shoreline Master Plan, or in a watershed plan Site has 1 or 2 priority habitats within 100 m (see Appendix B) points = 1 Site does not meet any of the criteria above points = 0		0

Rating of Value If score is: 2 = H 1 = M 0 = L Record the rating on the first page

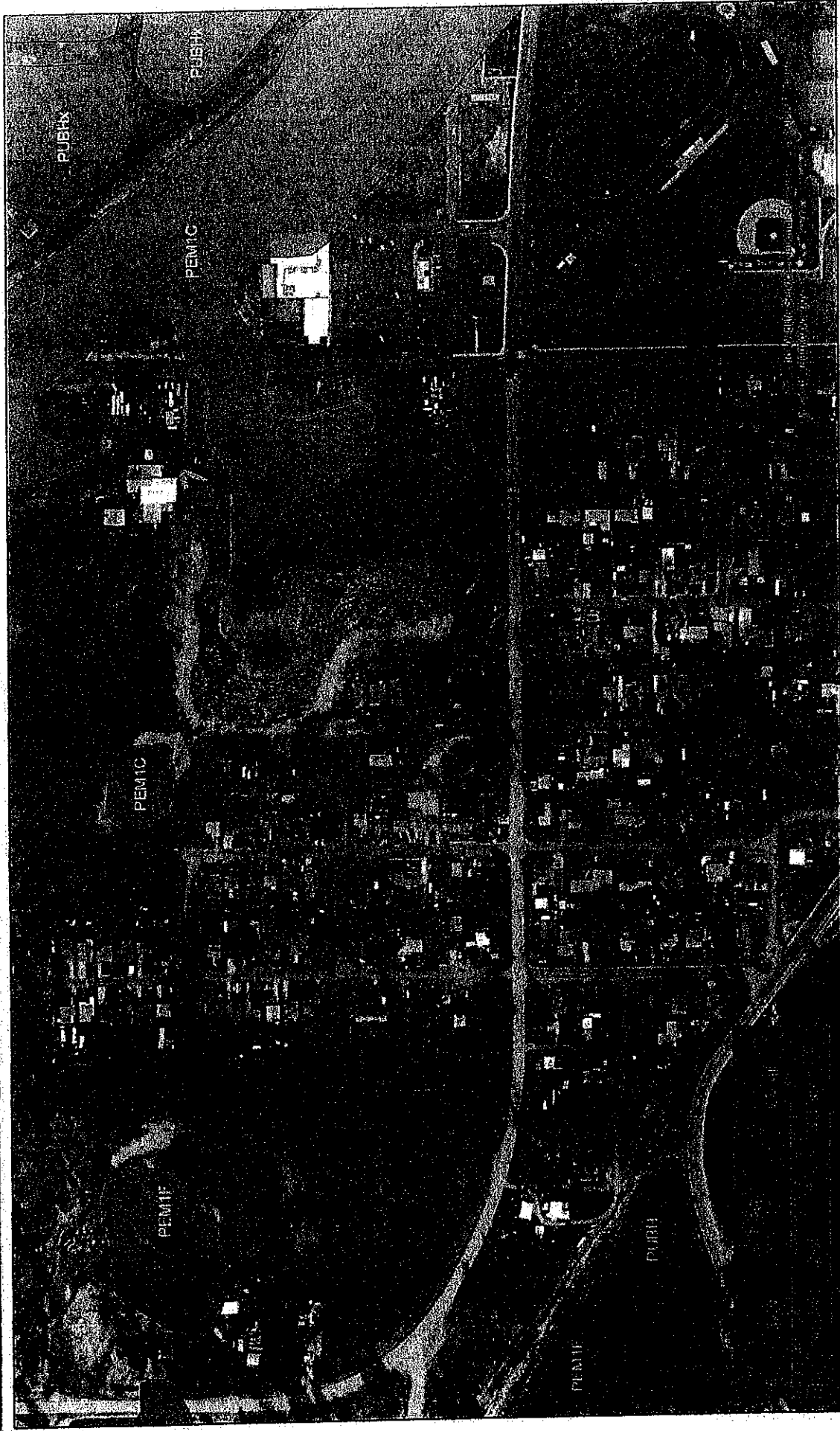


U.S. Fish and Wildlife Service

National Wetlands Inventory

Wetlands

Fs 1



May 17, 2023

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

May 23, 2023

Dear Medical Lake Planning Commission and City Council,

I represent Ms. Tammy Roberson and I wish to comment on *Notice of Application (LU 2023-005 CA)* on her behalf. I am a certified Professional Wetland Scientist with a Ph.D. and 34 years of experience working in wetlands. I am also a full professor of biology at Gonzaga University where I have worked for 27 years. Additionally, I have published 31 refereed publications; 22 of them concerning wetlands.

The subject property contains a large portion of a wetland. A neighboring parcel, which belongs to Ms. Roberson, contains another large portion of the wetland. On May 17, 2023 I closely examined the section of the wetland owned by Ms. Roberson. From the property line I also observed the proposed building site. I have identified problems with the proposed mitigation plan contained within the Notice of Application.

1. Mr. Barthels rated the wetland as a Category III Wetland in 2020. It may have been Category III three years ago. This week, I performed a new rating. Partially based on high plant diversity of the site, I rated it as a Category II—which means the wetland is entitled to a higher level of protection today than it was in 2020. My rating for the subject wetland is attached.

2. The site contains wooden stakes that may have been placed when Mr. Vince Barthels of T-O Engineering performed a Wetland Rating (7/5/20). If those are indeed the assessed wetland delineation markers, which would be consistent with the Notice of Application, then their placement may be in error given hydrological changes over the last three years. Since the site is private I was unable to look for hydric soils, but judging from the vegetation I believe that the wetland extends further to the east than is marked in the mitigation plan. In my opinion, there is a serious risk that the proposed building site is partially within the wetland. I suggest that the council ask the property owner to hire a third expert (not myself or T-O Engineering) to conduct a new, up-to-date Wetland Delineation.

3. The plan calls for the planting of willow and cottonwood trees. This is an odd design choice, since willows and cottonwoods both transpire a great deal of water so they will alter the delicate hydrological balance of the wetland. In any case, this does not "mitigate" any ecological function of the wetland that is lost due to development. True mitigation would require reducing street runoff to the wetland and attempting to create a wetland where one does not currently exist. I do not believe this plan conforms with the best available science.

4. The site is not suitable for other mitigation strategies. Medical Lake's code identifies three types of mitigation: Creation or reestablishment, rehabilitation, and enhancement.

- **Creation:** No location for the creation of a replacement wetland has been identified. In my opinion this is the only suitable form of mitigation for a site like this.
- **Rehabilitation:** The buffer that the applicant proposes to build on is healthy and well-vegetated. It is not in need of new planting. Existing local species are already present and flourishing at the site.
- **Enhancement:** as I mentioned above, the proposed enhancement strategies are likely to be deleterious, or have no effect.

Medical Lake's critical areas ordinance sets steep requirements for mitigation strategies. In a Category II wetland, the code requires a ratio of 3:1 for creation or reestablishment mitigation, 6:1 for rehabilitation and 12:1 for enhancement. The development proposal does not even attempt to address these requirements, let alone meet them. Nor does the proposal mitigate for the loss of critical areas functions to the greatest extent feasible, as required by the municipal code.

In truth, this proposal suggests that the developer can disturb 2700 square feet of a functioning, healthy wetland buffer without replacing or otherwise compensating for the loss. The result will be a reduction in wetland functions.

In conclusion, I would like to focus on the City of Medical Lake's Critical Area Ordinance #1108, which states:

"Category II wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and oldgrowth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 19-21 points). These wetlands are difficult, though not impossible, to replace and provide high levels of some functions" (bolding added).

I agree with the City's ordinance concerning the difficulty of replacing wetlands. The science is in its infancy and even today we have a poor understanding of how wetlands function,¹ let alone how to replace them. In my professional opinion The City would be wise to require a new delineation report before allowing construction to proceed. Thereafter, the City should require the applicant to propose new mitigation based on the best available science and the requirements of the municipal code.

In addition to the project proposal, I also wish to address the Staff Report to the Planning Committee submitted by the applicant on 5/17/23. Under the heading Zoning Code Approval Criteria B, it states:

"The proposal minimizes the impact of the development by keeping the disturbed area furthest from the wetland and mitigates its impact by planting appropriate vegetation to increase the value of the wetland and its habitat. For these reasons, this criterion is met."

It is my professional opinion that plantings do not increase the value of the wetland and its habitat. The site already has high diversity of plants. Adding more plants will not add to the value of the wetland. Ecological theory would suggest that in a stable ecosystem, adding new species will simply result in the extirpation (local extinction) of other species. Adding fill negatively impacts the wetland and additional plant species will increase competition and alter the current hydrologic status.

Furthermore, Zoning Code Approval Criteria D, states: *"No Net Loss. The proposal protects the critical area functions and values and results in no net loss of critical area functions and values."*

In my professional opinion reducing the footprint of the wetland - by definition - results in a net loss of critical area functions and values. The wetland is very small. A larger wetland may be able to absorb such an insult, but not a small wetland.

¹(1) LK, Swartz, BR, Hossack, E, Muths, RL, Newell, WH, Lowe. 2019. Aquatic macroinvertebrate community responses to wetland mitigation in the Greater Yellowstone Ecosystem. *Freshwater Biology* 64: 942- 953. <https://doi.org/10.1111/fwb.13276>

Zoning Code Approval Criteria D. continues: "The applicant proposes to develop within the wetland buffer, however, the plantings proposed "will substantially increase the stratification, species richness, and habitat value of the wetland, according to the applicant, a qualified wetland professional."

In my professional opinion this is incorrect. As stated above the plantings do not add ecological value. This discrepancy of opinion may be explained by the observation that the author of the statement, Mr. Barthels, is not listed as certified by the Society of Wetland Scientists <https://www.wetlandcert.org/> (on the left of the home page) which is the gold standard of approval for wetland scientists. I am certified by the society as a *Professional Wetland Scientist*. I am hesitant to make an argument for credentialism, but I believe that in this instance it is justified.

Respectfully,



Hugh Lefcort, Ph.D.

Elisa Rodriguez

From: Tammy Roberson <tmroberson61@gmail.com>
Sent: Thursday, May 25, 2023 1:47 PM
To: Elisa Rodriguez; Roxanne Wright; Marye Jorgenson; Sonny Weathers; Mark Hudson; Judy Mayulianos; Carl Munson
Cc: Trevor Matthews
Subject: Please include Attached to the Commissioners
Attachments: IMG_6393 (1).JPG

This is a continuation of previous email due to email size limitations... Thank you.

Good afternoon, Ms Rodriguez,

Please acknowledge receipt.

Per the instructions in the Meeting Agenda written public comments, here is the requested information:

1. Meeting Date is 25 May 2023
2. Tammy Roberson
3. City Resident (lives at 424 W Brooks Rd)
4. Notice of Application LU 2023-005 CA. FYI - will be speaking during the Public Hearing portion and also will be speaking during the 2nd interested citizens portion.

Thank you and take care,
Tammy Roberson



Elisa Rodriguez

From: Tammy Roberson <tmroberson61@gmail.com>
Sent: Thursday, May 25, 2023 2:01 PM
To: Elisa Rodriguez; Roxanne Wright; Sonny Weathers; Andie Mark; Mark Hudson; Judy Mayulianos; marye.jorgenson@gmail.com; carljonmunson@gmail.com
Subject: More Info for Planning Commission Meeting tonight 25 May 2023
Attachments: Ecology WQA How to Use (1).pdf; HUC Rating D3 (1).pdf; Position of Wetland Zoom.pdf

Please also include these documents for tonight's meeting.

Good afternoon, Ms Rodriguez,

Please acknowledge receipt.

Per the instructions in the Meeting Agenda written public comments, here is the requested information:

1. Meeting Date is 25 May 2023
2. Tammy Roberson
3. City Resident (lives at 424 W Brooks Rd)
4. Notice of Application LU 2023-005 CA. FYI - will be speaking during the Public Hearing portion and also will be speaking during the 2nd interested citizens portion.

Thank you and take care,
Tammy Roberson

Ecology Guidance: How to Use the Wetland Atlas

To answer YES for a TMDL in the basin, the wetland you are rating should be within the contributing basin to the TMDL study area. That means that the wetland occurs within or upgradient of the TMDL study area.

To find the TMDL study area:

Go to the Water Quality Atlas[1] map and use the Add/Remove Map Data feature to select WQ Improvement Projects for display. If the wetland being rated is located in a basin highlighted as "Approved" or "In Development," click on the highlighted polygon and go to the report link for the TMDL. Look in the report for the TMDL study area to determine if the wetland being rated is within the contributing area to the TMDL study area. Note that multiple TMDLs may apply to a given area.

If the basin in which the wetland is found has a Total Maximum Daily Loads (TMDL) plan (also called a Water Cleanup Plan or Water Quality Improvement Project) developed for it, then you should answer YES for this question. It is assumed that all wetlands are valuable in a basin where water quality is poor enough to require a TMDL. The Department of Ecology's Water Quality improvement projects[2] website lists all the bodies of water that have TMDLs.

For wetlands in the contributing basin to areas with a TMDL "in development," you would also answer YES.

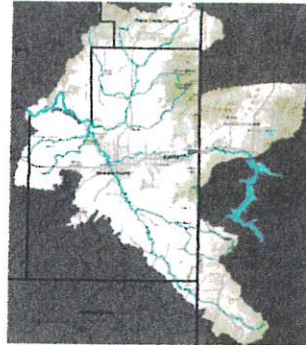


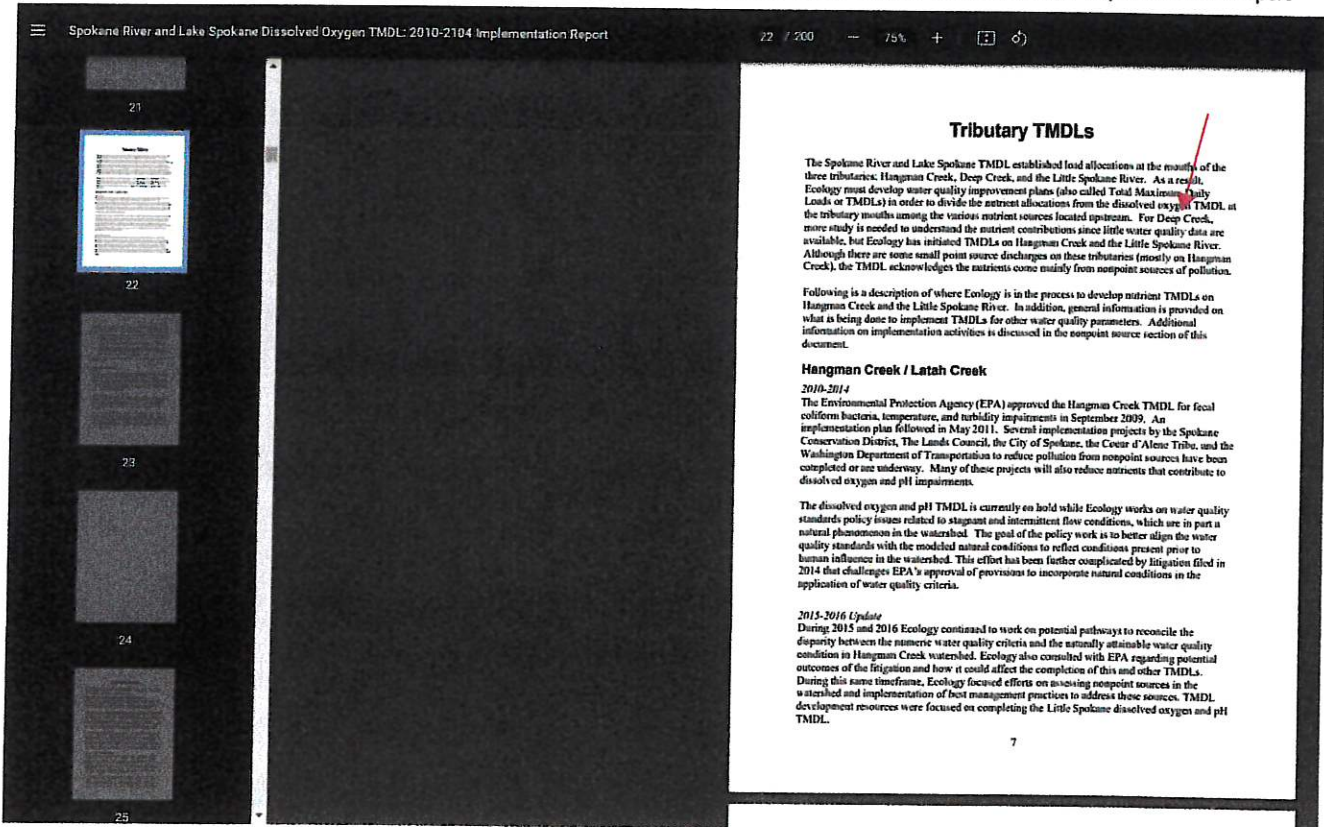
Figure 1. The Spokane River watershed covered by the dissolved oxygen TMDL.

Figure 2 shows an improving trend in minimum volume-weighted dissolved oxygen levels in the hypolimnion, or the deepest parts of the lake from 1972 through 2016, despite significant population growth in the study area. Several actions described in the following pages likely contributed to the recent improvement shown in the graph, such as banning phosphorus in detergents and fertilizer, applying chemical enhanced primary treatment, optimizing manufacturing processes, and operation of a new wastewater treatment plant. The graph shows we are on the correct path toward improving dissolved oxygen in the Spokane River and Lake Spokane, but we need to ensure activities continue in order to achieve water quality standards.

Within the next five years, entities discharging to the river in Washington will complete the installation of additional equipment to significantly lower nutrients in their discharges. Ecology also expects practices that reduce nutrients from nonpoint sources will be more widespread by 2020. In addition, dischargers in Idaho are expected to complete upgrades to lower nutrients

TMDL Area Map from "Spokane River and Lake Spokane Dissolved Oxygen TMDL 2010-2104 Implementation Report"

Below: Deep Creek is a named tributary in the "Spokane River and Lake Spokane Dissolved Oxygen TMDL 2010-2104 Implementation Report"



The screenshot shows a PDF viewer interface. The left sidebar displays a table of contents with page numbers 21 through 25. The main content area shows page 22, titled "Tributary TMDLs". The text on the page discusses the Spokane River and Lake Spokane TMDL, mentioning tributaries like Hangman Creek, Deep Creek, and the Little Spokane River. It details the development of water quality improvement plans and the implementation of TMDLs for these tributaries. The page also mentions the 2010-2014 period and the 2015-2016 update.

The watershed location of a wetland is one measure of its value to society

Two of the D3 questions on the 2014 Update Rating Form use watershed boundaries to answer the question: "Is the water quality improvement provided by the site valuable to society?"

D 3.1 asks if the wetland discharges directly to a water body that is on the 303d list. The answer to this question is "NO," it's a visible reality. But this does not mean it is hydrologically isolated because groundwater connections are as valuable, or more so, than surface water connections. NO- 0 Points

D 3.2 asks if the wetland is in a basin or sub-basin where water quality is an issue, i.e. 303d list. The answer to this question is "YES," as the map at left shows. The Spokane River is 303d listed for Dissolved Oxygen, a consequence of excessive nutrients. Ecology defines a sub-basin as HUC Level 8. YES- 1 Point

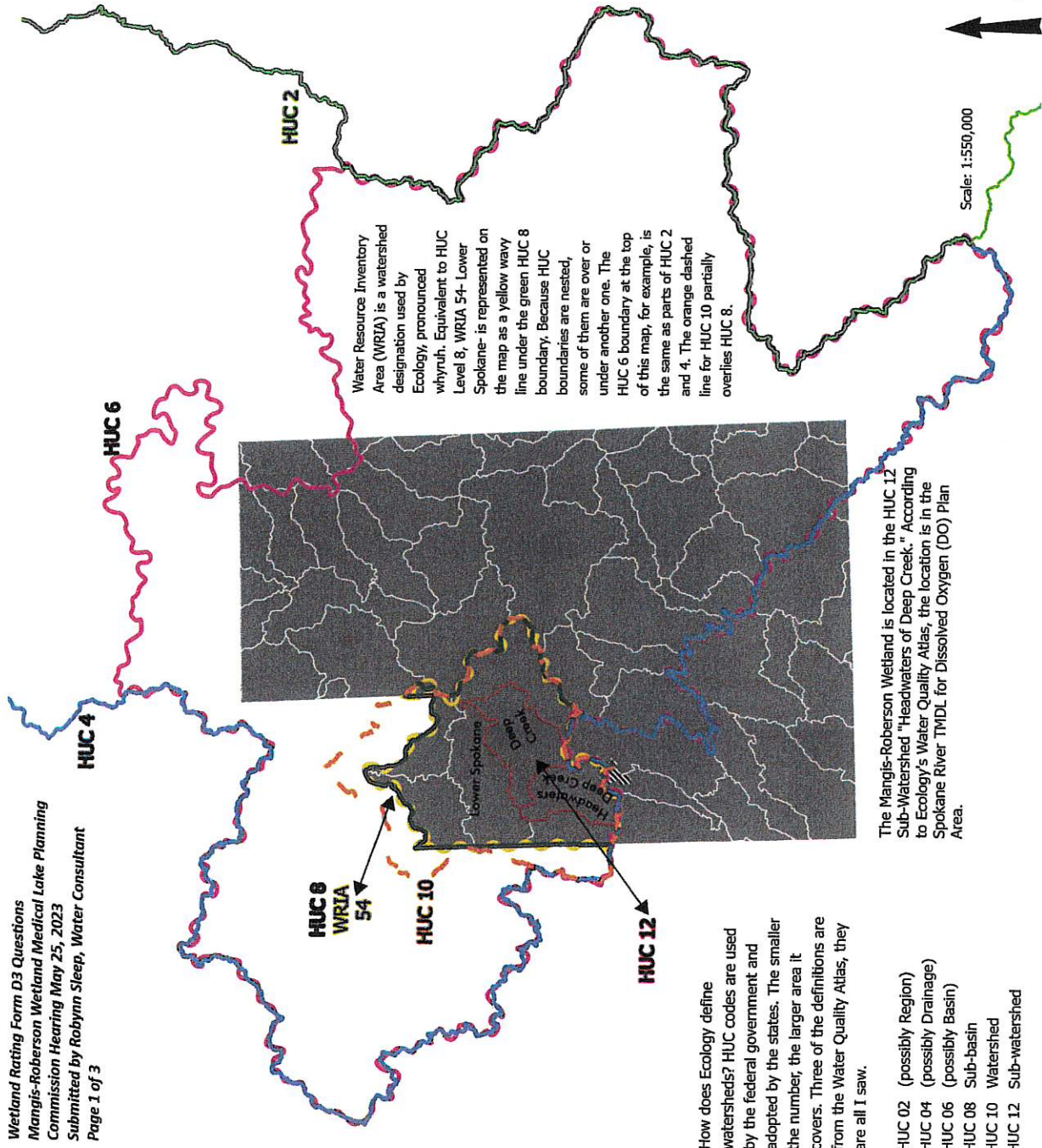
D 3.3 asks if the wetland has been identified as important for maintaining water quality ("answer YES if there is a TMDL for the drainage or basin in which the wetland is found"). The answer to this question is "YES," as shown on Ecology's Water Quality Atlas, and in the Atlas screen capture images on Page 2. YES- 2 Points

TOTAL possible points for D3: 3

Twelve Hydrologic Unit Code (HUC) Watershed Levels in Spokane County

- █ HUC 2 Pacific Northwest Region (CA, CN, ID, NV, OR, UT, WA, WY)
- █ HUC 4 Kootenai-Pend Oreille-Spokane (CN, ID, MT, WA)
- █ HUC 6 Spokane (ID, MT, WA)
- █ HUC 12 Headwaters Deep Creek and Deep Creek
- █ HUC 10 Deep Creek-Spokane River
- █ HUC 8 Lower Spokane (same as WRIA 54)
- █ WRIA 54 Lower Spokane
- █ Medical Lake Municipal Boundary
- █ All HUC 12 in Spokane County

Prepared by Robynn Sleep May 24, 2023. Data WA DOE, Spokane County, WA DNR. Coordinate system NAD 83 HARN State Plane WA 5 FIPS 4602 (US Feet)



Water Resource Inventory Area (WRIA) is a watershed designation used by Ecology, pronounced whyruh. Equivalent to HUC Level 8, WRIA 54- Lower Spokane- is represented on the map as a yellow wavy line under the green HUC 8 boundary. Because HUC boundaries are nested, some of them are over or under another one. The HUC 6 boundary at the top of this map, for example, is the same as parts of HUC 2 and 4. The orange dashed line for HUC 10 partially overlies HUC 8.

The Mangis-Roberson Wetland is located in the HUC 12 Sub-Watershed "Headwaters of Deep Creek." According to Ecology's Water Quality Atlas, the location is in the Spokane River TMDL for Dissolved Oxygen (DO) Plan Area.

How does Ecology define watersheds? HUC codes are used by the federal government and adopted by the states. The smaller the number, the larger area it covers. Three of the definitions are from the Water Quality Atlas, they are all I saw.

- HUC 02 (possibly Region)
- HUC 04 (possibly Drainage)
- HUC 06 (possibly Basin)
- HUC 08 Sub-basin
- HUC 10 Watershed
- HUC 12 Sub-watershed

Screen Capture Images From Ecology Water Quality Atlas

Weband D3 Questions Map Supplement
Submitted by Robynn Sleep, Water Consultant
Page 2 of 3

Clockwise from top left: 1. Boundary of Medical Lake showing the Headwaters of Deep Creek HUC 12 boundary extending down from the North edge of town to include the wetland. 2. Location of Mangis-Roberson Wetland with TMDL overlay in light purple showing it is in the TMDL area for Spokane River DO. 3. Page from TMDL DO Report showing Medical Lake is in the study area for the TMDL. 4. TMDL DO dark purple with popup stating the name of the TMDL that applies.

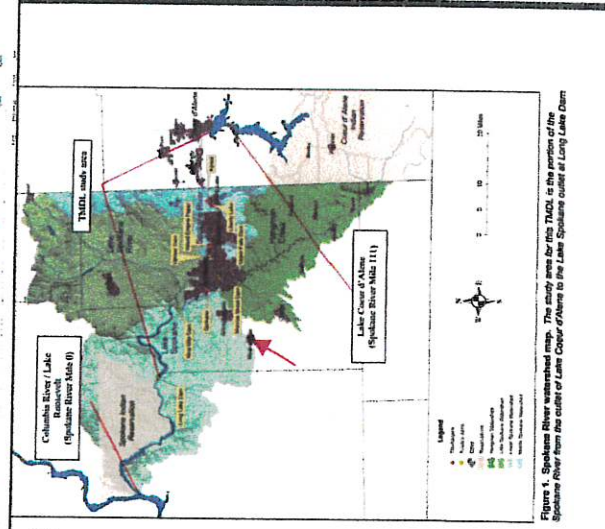
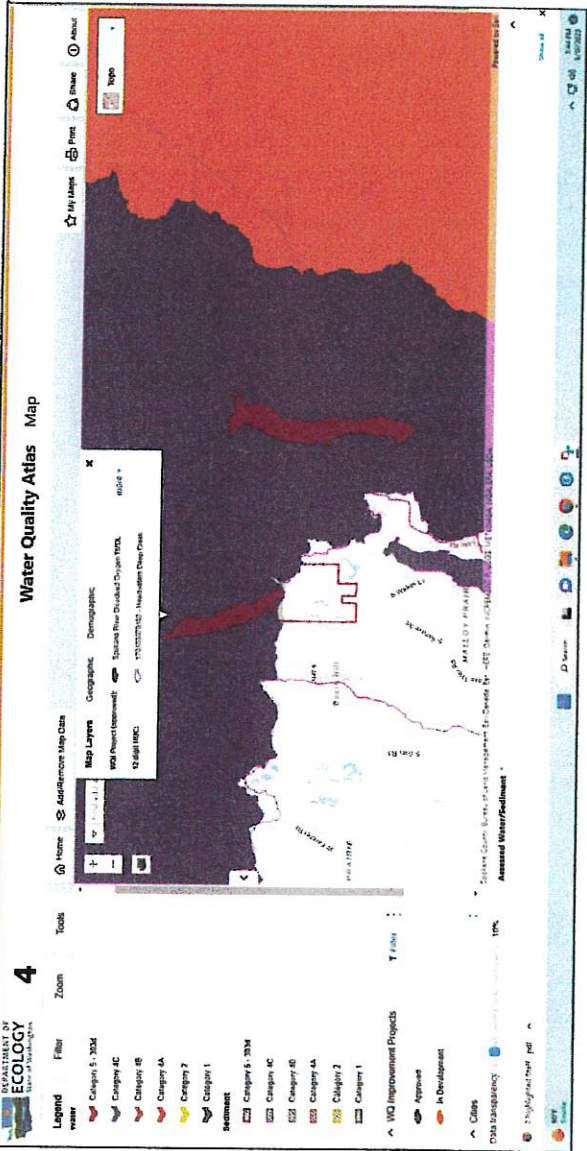
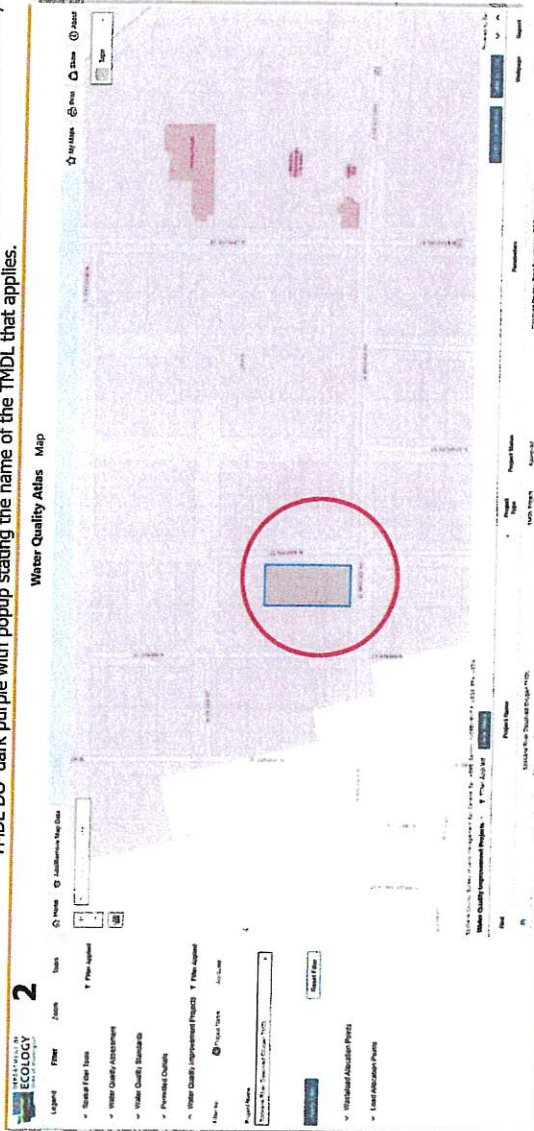
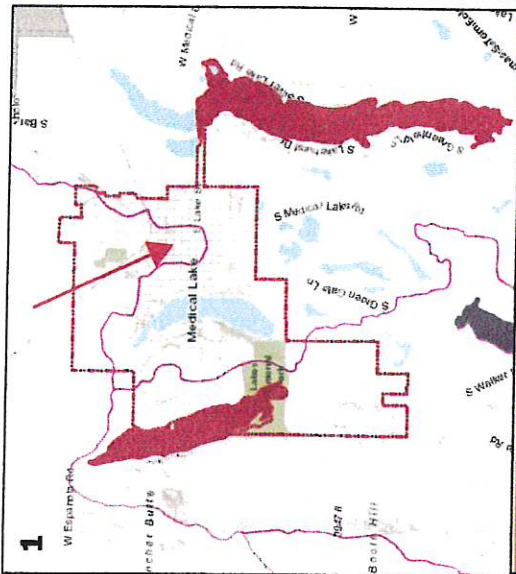


Figure 1. Spokane River watershed map. The study area for this TMDL is the portion of the Spokane River from the outlet of Lake Coeur d'Alene to the Lake Spokane outlet at Long Lake Dam



Spokane County Qualified Wetland Specialist Listing

BP-80

Department of Building and Planning

To Whom It May Concern:

Subject: Placement of your name or your company's name, mailing address and phone numbers on the SPOKANE COUNTY QUALIFIED WETLAND SPECIALISTS LIST.

The Department of Building and Planning has established and is maintaining a list of "Qualified Wetland Specialist" as defined in Section 11.20.020 of the Spokane County Critical Areas Ordinance, which states:

"Qualified Wetland Specialist" means the holder of SWS (Society of Wetland Scientists) certification or has the equivalent in academic qualifications and field experience for making competent wetlands delineation's, reports and recommendations necessary to implement the provisions of this ordinance.

To be placed on the Spokane County QUALIFIED WETLAND SPECIALIST LIST you will need to send a letter which includes the following documentation:

1. Copy of your Society of Wetland Scientists certification; or
2. Copy of academic qualification for making competent wetland delineation's, reports and recommendations; and
3. Indication of field experience for making competent wetland delineation's, reports and recommendations.

This might include, among others, a list of wetland reports and field studies you have completed, particularly if they have been reviewed and approved by the Department of Ecology.

If you meet the definition of a "Qualified Wetland Specialist", we will add you and/or your company to the Spokane County LIST.

Spokane County front counter personnel and other Spokane County employees hand out this list to property owners who need to hire a wetland specialist.

To submit Wetland Reports to Spokane County you will either (1) need to be on the above LIST or (2) provide the same documentation to show that you are a "Qualified Wetland Specialist." Being on the Spokane County LIST will provide the fastest results and prevent project delays (while we are evaluating your wetland qualifications).

Please call me at (509) 477-7234 or write to: Spokane County Department of Building and Planning, 1026 W. Broadway, Spokane, WA. 99260.

Corey Smith, AICP
Principal Planner

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MLMC 17.10.130 - Definitions

Qualified Professional, Wetlands – A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as wetland professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing implementing mitigation plans.

Comments – May 25, 2023 Public Hearing (PC) Meeting
(As Of: 25 May 2023)

Good evening, Planning Commissioners and City Officials.

I have hired a certified Professional Wetland Scientist (which is the gold standard of approval for wetland scientists) with a Ph.D. and 34 years of experience working in wetlands. He is a full professor of biology at Gonzaga University where he has worked for 27 years. Dr. Lefcort has also published 31 scientific studies; 22 of which concern wetlands.

Please remember this is one wetland with two owners. Wetlands are active, living entities so changes are to be expected over time.

I would like to point out to the Commissioners at least four crucial issues with this Notice of Application which is clearly explained by my attorney and Dr. Lefcort in the documents you have received. I have summarized some of their comments into four problem areas of: 1) reasonable use exception, 2) wetland category rating, 3) boundary delineation, and 4) mitigation.

- 1) Applicant's request for a reasonable use exception does not excuse the scientific and technical failings of the submission nor has the applicant met the requirements for issuance of a reasonable use exception.
 - a) The Code's requirements are designed to set the minimum requirements for permit applications and mitigation plans. It is precisely the fact that the applicant is requesting special treatment – a relaxation of the rules – that means that the applicant must actually address and consider the specific requirements of the Code before seeking to be excused from them.
 - b) The use of the word “and” in the requirements, shows that the applicant must demonstrate that all seven requirements in the Code must have been met to be eligible for a reasonable use exception. At least three of these criteria are unmet.
 - ◇ (#2) Applicant has asserted, but not supported or explained why the regulation denies the property “all reasonable economic use” unless the applicant can build a house. This burden has not been met. The applicant has not analyzed any other means of producing income from the land. For example, the applicant could potentially operate an apiary (a collection of bee hives) on the property. Many commercial beekeepers migrate their colonies to provide pollination services to farmers while at the same time providing their bees with abundant nectar sources for honey production. The application makes no attempt to consider alternative land uses and thereby assumes without evidence that building a house is the only economic activity available.
 - ◇ (#3) Applicant does not seem to have considered means of moving the disturbance further away from the wetland. Applicant has not sought permission to move the building further away from the wetland by having the lot and front yard setbacks reduced.
 - ◇ (#6) Applicant has not complied with or even addressed the mitigation ratio requirements contained in MLMC. The applicant has failed to demonstrate that the proposal “mitigates for the loss of critical area functions to the greatest extent feasible.”
- 2) Dr Lefcort has showed that the wetland is now a Category II (scored 20 points) due to the hydrological conditions changing from a Category III when the wetland rating report was done in July 2020. This means the wetland is entitled to a higher level of protection today. Since the Code and state law requires “best

available science” to be used, the applicant’s documents do not represent this since the hydrological conditions have changed.

- 3) The 2020 boundary delineation is likely wrong due to these changing hydrologic conditions.
 - a) The site contains wooden stakes that may have been placed there in 2000. If those are indeed the assessed wetland delineation markers (which is consistent with the Notice of Application), then their placement may be in error again due to these hydrological changes.
 - b) According to the Professor, he believes that the wetland extends further to the east than is marked in the mitigation plan and that there is a serious risk that the proposed building site is partially within the wetland itself. This means there is significant risk that the project will inadvertently allow work, to occur within a wetland without SEPA requirements being met.

The Wetland Buffer Mitigation Plan does not meet the minimum requirements set for migration activities IAW MLMC 17.10.090 (H) (4). This is apparent from the fact that the applicant’s submission is based on a version of Chapter 17.10 which is no longer effective.

NOTE: The planting of any plants will use up water and water is self-leveling or it seeks its own level. So, any water reduced on the north side will also be reduced on the south side which is owned by someone else.

- a) The Staff Report (Zoning Code Approval Criteria D) states, “No Net Loss. The proposal protects the critical area functions and values and results in no net loss of critical area functions and values.” According to Dr Lefcort, reducing the footprint of the wetland – by definition – results in a net loss of critical area functions and values. This wetland is very small. A larger wetland may be able to absorb such an insult, but not a small wetland.
- b) Application proposes to permanently eliminate approximately 2700 square feet of Category II wetland buffer. To compensate for this, the applicant proposes to engage in compensatory mitigation but fails to state what kind of mitigation action (replacement, rehabilitation, etc) will be employed – therefore, application is not complete.
- c) Since the type of mitigation action is not explained, I believe that the applicant intends to engage in enhancement mitigation. This kind of mitigation imposes specific requirements, including informational requirements on the applicant which has not been met.
- d) Plan calls for coyote willows and cottonwoods which uses a great deal of water and will alter the hydrologic balance of this small wetland according to Dr. Lefcort.
 - ◇ These plantings do not “mitigate” any ecological function of the wetland that is lost due to development. True mitigation would require reducing street runoff to the wetland and attempting to create a wetland where one does not currently exist.
 - ◇ Per the Professor, adding more plants will not add to the value of the wetland, Ecological theory would suggest that in a stable ecosystem, adding new species will simply result in the local extinction of other species. Adding fill negatively impacts the wetland and additional plant species will increase competition and alter the current hydrologic status.
- e) Dr Lefcort has studied the plan and determined that it is likely to harm or provide no benefit to the wetland given its already high level of biological diversity and dense vegetation and it does not conform with the best available science requirement. Nor is the site suitable for other mitigation strategies – please refer to Dr Lefcort’s letter dated 23 May 2023.
- f) Please note that the buffer that the applicant proposes to build on is healthy and well-vegetated. It is not in need of new plantings. Existing local species are already present and flourishing at the site to include a long-toe salamander.

- g) Application package fails to engage with the requirements regarding mitigation ratios. The Code is specific about just how much compensation is required for mitigation to be legally acceptable. The development proposal does not even attempt to address these requirements, let alone meet them.
- h) In truth, this proposal suggests that the developer can disturb 2700 square feet of a functioning, healthy wetland buffer without replacing or otherwise compensating for the loss. The result will be a reduction in wetland functions. (Dr. Lefcort)
- i) According to the MLMC, critical areas applicants who request a mitigation plan must submit detailed construction plans which include grading and excavation details in the application package. Not complied with.

For these reasons to include also the ones I have stated in the documents provided, the Commission should recommend denial to the City Council. This Commission has a duty to protect the precious environmental resources of Medical Lake. The best way for this Commission to fulfill this duty is to require applicants to conform to the letter of the law. This is the standard that the applicant has not met.

We are a City of Wetlands. May God's grace and protection be with our wetlands and the future of Medical Lake.

Tammy M. Roberson
424 W Brooks