

Kim Weil

Commons at Cordata: HOA Questions & Answers

May 2022

1) What are the differences in regulations for a designated wetland versus the trail easement buffer as it pertains to what is allowed?

- The regulations for wetlands and wetland buffers come from Bellingham Municipal Code and the Critical Areas Ordinance (CAO).
- The trail easement is just that, an easement over private property.
- Part of that private property has a wetland and buffer in it regulated by BMC 16.55.
- Similarly but separately, there is a conservation easement over the wetlands and wetland buffers surrounding the Commons.

2) What City or State permissions, reviews, studies etc. would be needed if our association wanted to make changes in a designated wetland?

- Work in wetlands requires a Critical Area Permit (CAP) from the city and approval by the Dept. of Ecology or the Army Corps of Engineers, depending on the wetland.
- Work in wetlands may be allowed depending on what it is and how permanent the work is (ex. maintenance vs. new construction).
- Before work is done, a wetland delineation and rating is required. These are based on standard methodologies established by state and federal agencies.
- If the “changes” to the wetland are related to maintenance or improve the wetland, then usually it’s just the city that has jurisdiction.

3) According to the 2013 Amendment to Conservation/Wetland Mitigation Easement (only) agreement was valid for five years (actually it was the delineation). Are we required to re-certify the agreement every five years? What are the repercussions of not doing that?

- The wetland delineation is valid for five years; the easement agreement is valid in perpetuity.
- The terms of the easement allowed for wetland mitigation that was needed when development was occurring.
- The wetland boundaries could and probably have changed since the original wetland delineation, but that doesn’t change the easement boundaries or the terms of the easement.
- Put simply, the easement prescribes the protected area, and the protected area (in the easement?) includes wetlands and wetland buffers.

4) According to the Amendment to Conservation/Wetland Mitigation Easement, the

Restrictions On Grantors Use include (4.d) "Excavate, dredge, fill, dike or otherwise alter the landscape or topography". In your email of March 11, you indicated that only a licensing agreement and a Minor Critical Area Permit are needed. Does the permit and licensing agreement supersede the 2013 agreement?

- No, the permit and licensing agreement do not supersede the terms of the easement.
- You're correct in that the easement has restrictions, but it also has grantors' obligations. One of those obligations 2(d) is to maintain the conservation easement area including tasks that contribute to a healthy, sustainable wetland and wetland buffer.
- For example, removing the log bridge and landscape fabric to restore natural flow and restore the native plant community is consistent with the approved mitigation plan and the city's Critical Area Ordinance (CAO).
- To ensure consistency with the CAO, work to remove the bridge entirely requires a Minor Critical Area Permit (MCAP). That permit would also prescribe mitigation.

5) This may be a question for Laine Potter (in Parks Dept). Previously a licensing agreement was issued to one of our residents for work in the trail easement area without the MCAP permit. Is the MCAP required to obtain a licensing agreement or is it the other way around?

- The two are separate, but both are needed if work is going to occur in the trail easement AND the wetland or wetland buffer.
- The licensing agreement has to be in place before a CAP or Minor Critical Areas Permit (MCAP) issued.

6) Assuming the Owners Association grants permission, can an individual homeowner get approval for log removal, trenching, redirecting of water, or other modifications in a designated wetland? Under what would be the city approval process for the wetland?

(Wasn't this what Meri and Dennis did?)

- A homeowner/member of the HOA could apply for a permit to remove the log bridge.

- They could also apply for other projects that are consistent with the conservation easement and the CAO, such as removal of invasive plants and planting native plants.

7) Would a properly licensed and permitted homeowner that makes changes in the trail easement or designated wetland be required to sign a "Hold Harmless" document with the City of Bellingham, to take personal responsibility for the repercussions of those modifications?

- No, a hold harmless agreement is not necessary because it is not city property. The property belongs to the HOA.
- The city's only "interest" in the property is for a future trail within the prescribed trail easement.

8) What does a "delineation" mean in reference to our trail easement?

- Delineation in the context of wetlands is a method by which a wetland is mapped and rated in accordance with a multi-agency manual used nationwide, with regional supplements.
- The only relationship it has to this trail easement is that there is a delineated wetland within the easement.
- Wetland delineations are valid for five years. If a delineation is more than five years old, there is no need to get a new one unless there's a new development proposal.

9) What purpose does the delineation serve? What are the consequences to the association of the redelineation?

- The delineation identifies the location of the wetland, and together with the rating, determines the category of wetland and wetland buffer.
- A new delineation and rating would show the wetland boundary and the current wetland buffer width.
- Wetland buffer widths in the CAO are 50', 80', and 150' generally.
- These widths are related to the wetland rating (how well it is performing and other characteristics).
- The current buffer widths are much larger than those in place when this development was approved.

10) There is some confusion over the 80-foot buffer versus the 50-foot buffer. If the buffer and wetland re-delineation shows the wetland closer to Commons homes, how will that affect homeowner usage of their individual lots as all homes in the trail easement are inside the 80-foot line.

- The buffer is determined by a current (less than five years old) delineation and rating.
- I have guessed that the wetland in the trail easement has a 50-foot buffer or 80-foot buffer (again, two of the standard buffer widths).
- The homes in the Commons at Cordata, and many, many other properties around the city are considered “existing non-conforming”. All that means is that they were lawfully established but no longer conform to the CAO rules, in this case.
- The effect on property owners is that new activities are subject to the CAO.
- For example, if someone wanted to add on to their house or wanted to replace their yard with a patio and those activities are in the buffer, it would require a permit.
- Most activities that would trigger a permit would be small because the lots are small and they’re already subject to restrictions related to stormwater.
- Therefore, they would likely qualify for an MCAP.

11) The trail easement and wetlands contained within the Commons are the common property of our Association. Therefore, in the future, instead of having any one homeowner be the responsible party to the city for any properly licensed & permitted improvements in those areas the Association itself could be the legally responsible party. Is this correct?

- By legally responsible party I understand that to be the applicant. Yes, the HOA could be the applicant, but we would need an individual to be the contact on behalf of the HOA.