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## COMMUNITY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT

*Creating Solutions for Our Future*

Joshua Cummings, Director

Thurston County Hearings Examiner

4/24/24

RE: Response from Confluence Environmental Company dated April 22, 2024 (project 2023100649)

Dear Examiner Rice,

I have reviewed the response from the applicant's consultant, as cited above, and can confirm that the County accepts the wetland delineation and rating for the offsite wetland. The area of dispute is solely over the interpretation of buffer application.

The consultant lists a number of alternative jurisdictions for code examples where a small wetland would require a smaller buffer in certain instances, as a basis for acceptance of the smaller 50 foot water quality buffer as listed within Table 24.30-1. However, in many of these jurisdictions, the exemption as cited is not for a lesser buffer but for no buffer whatsoever when those specific habitat and size criteria are met. I do not disagree that in concept it makes sense to consider a smaller buffer when a wetland evaluation demonstrates that habitat quality is of a low level, but my review must be based in the current Thurston County code. As previously cited, the Wetland buffer standards section, TCC 24.30.045 states the following: "Table 24.30-1 identifies the standard buffer widths. Buffer widths are specified for both water quality and habitat protection. The widest of the applicable buffers under habitat and water quality applies." To take this one step further, TCC 24.30.050, TCC 24.30.055, and TCC 24.30.060 all cite provisions specific to the water quality buffer, and in which instances this would apply. These code sections are attached to this letter for reference.

Sincerely,

*Heather Tschaekofske*

Heather Tschaekofske, MES  
 Associate Planner/Biologist

Enclosures: Thurston County Municode sections TCC 24.30.050, 24.30.055, and 24.30.060

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### 24.30.050 Wetland buffers—Reduced width.

The approval authority may reduce the buffer width specified in Table 24.30-1, except when prohibited by TCC 24.30.055, as provided for below. The applicant shall submit information demonstrating that the proposed project qualifies for a reduction under this section. The approval authority may require technical review by a qualified wetland scientist in consultation with Ecology, at the applicant's expense, to verify and evaluate the information submitted by the applicant. The buffer reduction shall not adversely affect the functions of the adjacent wetlands. For a reduced buffer width, the applicant shall demonstrate compliance with all of the criteria below:

- A. Reduced Impacts. If a wetland or buffer mitigation plan is submitted that meets the criteria in Table 24.30-2, the approval authority may reduce the standard buffer width required by Habitat Scores, not including estuarine or coastal lagoons, by twenty-five percent, or to the extent that it equals the buffer width required in Table 24.30-1 to maintain water quality, whichever produces the wider buffer, if:
1. The approval authority determines that the proposed reduction in buffer width, coupled with the proposed mitigation plan, would result in better protection of the wetland or better wetland or buffer functions than the standard buffer without such enhancement. The approval authority shall make this determination based on the applicant's proposed mitigation plan and a comparative analysis of all wetland and buffer functions under existing and enhanced conditions (e.g., filtration of sediments, excess nutrients, and pollutants; flood storage; erosion control; moderation of stormwater impacts; and shading for water temperature moderation) prepared by the applicant's qualified wetland scientist.

Factors to be considered include, but are not limited to, meeting the criteria of Table 24.30-2, the surface roughness of the buffer (e.g., the presence of fallen trees and other material that slow the flow of water and increase the buffer's ability to retain sediment and infiltrate stormwater); the composition and density of vegetation; the wetland's position in the landscape; slope; and soils. The approval authority may consult with Ecology or others with expertise as necessary to evaluate the applicant's proposal.

2. The degradation of the wetland and buffer was not caused while the property was in the applicant's ownership or within the previous seven years, whichever is greater. This does not apply to damage from lawful land uses prior to July 24, 2012; and
3. The applicant submits maintenance and monitoring plan and performance surety consistent with Chapter 24.70 TCC.
4. The buffer reduction is consistent with all other applicable requirements of this chapter.

**Table 24.30-2. Required Measures to Mitigate Impacts to Wetlands**

Measures are required, where applicable to a specific proposal.

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland and buffers.
Noise	• Locate activity that generates noise away from wetland.
	• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.
	• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10 feet heavily vegetated buffer strip immediately adjacent to the outer wetland buffer.
Toxic runoff	• Treat and contain any toxic runoff.

	<ul style="list-style-type: none"> <li>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.</li> </ul>
	<ul style="list-style-type: none"> <li>Establish covenants limiting use of pesticides within 150 feet of wetland.</li> </ul>
	<ul style="list-style-type: none"> <li>Apply integrated pest management standards.</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>To improve existing water quality runoff that may be impacting wetland functions. Retrofit existing stormwater detention and treatment for roads and existing adjacent development.</li> </ul>
	<ul style="list-style-type: none"> <li>Prevent channelized flow from lawns that directly enters the buffer.</li> </ul>
	<ul style="list-style-type: none"> <li>Use Low Intensity Development techniques (per PSAT publication on LID techniques).</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>In order to maintain wetland hydrology and discharge only clean stormwater toward the wetland. Stormwater should be treated; then infiltrated, detained, and/or dispersed outside the wetland buffer for any new runoff from impervious surfaces and new lawns. Permanent improvements to the site hydrology that would improve wetland functions and not create off-site flooding. This may include, but is not limited to, removal of a lawfully established agricultural ditch draining a wetland or delivering sediment, pollutants or excess nutrients to a wetland.</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>Use privacy fencing at buffer edge OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion.</li> </ul>
	<ul style="list-style-type: none"> <li>Place wetland and its buffer in a separate tract or protect with a conservation easement.</li> </ul>
Dust	<ul style="list-style-type: none"> <li>During construction or for commercial or industrial activities, use best management practices to control dust.</li> </ul>
Disruption of corridors or connections/habitat enhancement	<ul style="list-style-type: none"> <li>In order to improve habitat quality and connectivity, a vegetation enhancement plan that improves areas with minimal trees and vegetation and proposes removal of invasive vegetation and replacing it with ground cover and shrubs that will provide dense vegetative cover at maturity. Planting noninvasive plants that provide improved filtration of sediment, excess nutrients, and pollutants that may be present.</li> </ul>
	<ul style="list-style-type: none"> <li>Maintain habitat connections to off-site areas that are undisturbed.</li> </ul>
	<ul style="list-style-type: none"> <li>Restore corridors or connections to off-site habitats by replanting.</li> </ul>

B. Isolated Buffers.

1. If topographic breaks (e.g., bluffs) or a legally established road (not including logging roads), railroad or other lineal facility or barrier physically separates and functionally isolates a portion of the wetland buffer, the approval authority may allow the buffer width to be reduced to the minimum extent needed to exclude the isolated area if:
  - a. The facility or barrier was established prior to July 24, 2012; and
  - b. The area to be segregated from the buffer does not perform any biological or hydrological functions related to the wetland or the unsegregated portions of buffer.
2. The applicant shall provide the approval authority with sufficient information to enable him/her to determine whether or not the subject area qualifies under TCC 24.30.050(B)(1) above. The approval authority may require technical review by a qualified professional, at the applicant's expense, to verify and evaluate the information submitted by the applicant.

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(Ord. No. 14773, § 3(Att. B), 7-24-2012)

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(Supp. No. 72)

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#### 24.30.055 Wetland buffers—Increased width.

The approval authority shall require an increase in the buffer width specified in Table 24.30-1 when a wider buffer is necessary to protect wetland and buffer functions, specified in subsections (A) and (B) below. Buffer widths expanded pursuant to this section shall not be decreased through other provisions of this chapter.

- A. Steep Slopes. If the wetland buffer contains a slope greater than thirty percent that is at least fifteen feet high, the buffer shall be sized per Table 24.30-1 or the approval authority, in consultation with a qualified professional, may increase the buffer width up to twenty-five percent to protect water quality and prevent impacts from erosion. Slopes defined as geologic hazard areas shall meet the standards of Chapter 24.15 TCC.
- B. Inadequate Vegetative Cover to Maintain Water Quality. If the standard buffer specified in Table 24.30-1 has inadequate vegetative cover to protect the wetland from sedimentation, excess nutrients, pollutants or damaging changes in pH, the approval authority, in consultation with a qualified professional, may increase the buffer width twenty-five percent to protect water quality. (For purposes of this section, inadequate buffers lack dense, continuous vegetation spanning a distance specified Table 24.30-1 for maintenance of water quality, or as modified by subsection (A) above.)

In lieu of increasing the buffer width, the approval authority may allow implementation of a buffer planting plan as described in a revegetation/enhancement plan. This buffer planting plan shall provide for planting of all bare and sparsely vegetated areas within the portion of the buffer needed to maintain water quality (per Table 24.30-1 or as modified by subsection (A) above) with grasses and native shrubs, at densities that will effectively filter/absorb sediment, nutrients and pollutants, as determined by the approval authority. The applicant shall submit a surety consistent with Chapter 24.70 TCC and provide for monitoring and maintenance to ensure survival or replacement of the planted vegetation.

(Ord. No. 14773, § 3(Att. B), 7-24-2012)

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## 24.30.060 Wetland buffers—Reconfiguration.

The approval authority may authorize or require reconfiguration of wetland buffers as follows:

A. Preservation of High Quality Habitat.

1. If the wetland or buffer contains variations in sensitivity or habitat quality the approval authority, in consultation with WDFW or Ecology, may require reconfiguration of the buffer to preserve the higher quality/sensitive habitat.
2. If necessary to maintain connectivity to areas that provide important associated wildlife habitat, or if the area abutting the standard buffer contains habitat sustaining species listed under the federal Endangered Species Act (64 FR 14307), state priority wildlife species, or species of local importance (see TCC 24.25.065(C), the approval authority may, in consultation with WDFW, require reconfiguration of buffers to provide connection to the adjacent habitat.
3. Reconfigured buffers authorized by this section shall be no less than the width specified in Table 24.30-1 to maintain water quality, or no less than seventy-five percent of the standard buffer, whichever is greater, and shall contain the same square footage as the standard buffer. The reconfigured buffer shall not exceed one hundred percent of the square footage of the standard buffer, as modified pursuant to TCC 24.30.050(B) or 24.30.055, without the landowner's consent.

B. Development Consistent with Preservation of Wetland and Buffer Functions. The approval authority may reconfigure the buffer width, except for buffers associated with bogs and wetlands of high conservation value, to accommodate proposed development. If necessary, the approval authority may have a qualified professional review and evaluate the submitted information at the applicant's expense. The applicant shall demonstrate compliance with all of the criteria below.

1. The proposed use cannot be accommodated on the site without reconfiguration of the buffer (see Section 24.30.050).
2. The scale, design, or orientation of the proposed land use has been adjusted to the extent practical to minimize buffer alteration.
3. Demonstration that the wetland and/or buffer contains variations in sensitivity due to existing physical characteristics (e.g., variations in topography, soils, vegetation, or wildlife usage), and that the wetland functions would benefit from a wider buffer in places, and would not be adversely impacted by a narrower buffer in other places.
4. If the wetland has a wildlife habitat score of five or more points under Ecology's Washington State Wetland Rating System for Western Washington, the applicant shall submit a habitat assessment demonstrating that wildlife habitat will not be significantly diminished and that documented habitat-sustaining priority or locally important wildlife species (see Section 24.25.065) will not be affected.
5. The reduction in buffer width will occur where it will have the least potential impact on the wetland and buffer functions. Area will be added to portions of the buffer where it would most benefit wetland and buffer functions. The reconfigured buffer shall maintain all wetland functions.
6. Any landscaped area shall extend no more than fifteen feet from the edge of the structure's footprint (outside wall at the foundation) toward the wetland if the buffer width reduction allows the landscaped area to intrude into the area that was formerly buffer.
7. The reconfigured buffer shall be no less than one hundred feet wide at any point, or no less than seventy-five percent of the standard buffer, whichever is more. The reconfigured buffer shall

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contain the same square footage as the standard buffer. It shall not exceed one hundred percent of square footage of the standard buffer, as modified pursuant to TCC 24.30.050(B) or 24.30.055, without the landowner's consent.

8. The reconfiguration is accomplished within the project site boundaries or in an abutting conservation easement or tract approved by the county that protects the buffer from alteration, except as provided for in this section.
- C. Other buffer reconfigurations that do not meet the above criteria require a reasonable use exception (Chapter 24.45 TCC).

(Ord. No. 14773, § 3(Att. B), 7-24-2012; Ord. No. 15291, § 1(Att. A), 5-10-2016)