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April 30, 2024

Sent via email

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Thurston County Hearings Examiner
c/o Sonja Cady
3000 Pacific Avenue Southeast, Suite 100
Olympia, Washington 98501

***RE: West Olympia 24th Ave. Plat – Planned Residential Development
Proj. No. 2023100649
Applicant's Post-Hearing Response – Wetland Buffer***

Dear Hearing Examiner:

This firm represents RJ Development, the Applicant for the above-referenced project ("Project"). This letter responds to the April 24, 2024 post-hearing submittal from Heather Tschaekofske, Associate Planner/Biologist addressing the required buffer width for the offsite wetland under Thurston County Code ("TCC") 24.30.345.

The Applicant's consultant, Confluence Environmental, determined that the off-site wetland is a Category IV wetland, with a water quality score of 7, hydrology score of 4, and a habitat score of 3.¹ Based upon this rating, Confluence applied TCC 24.30.045, Table 24.30-1 and determined that a 50-foot buffer applied. The County concurs with Confluence's wetland rating, but asserts that the required buffer is 100 feet, rather than 50 feet. However, because the County's reasoning is inconsistent with principles of statutory interpretation, the Hearing Examiner should find that a 50-foot buffer is all that is required.

When interpreting code provisions, the overarching goal is to give effect to legislative intent.² That intent is determined based on the text at issue as well as the relevant legislative enactment in its totality, which requires that provisions be harmonized by reading them in context with related provisions and the statute as a whole.³ The law also requires that an interpretation not lead to absurd results and not make another portion of the statutory scheme superfluous.⁴ Every effort should be taken to avoid an interpretation that would cause two provisions to conflict.⁵

¹ Letter from Confluence Environmental, April 22, 2024 ("Confluence Letter").

² *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005).

³ *Id.* at 238-39.

⁴ *Icicle/Bunk, LLC v. Chelan County*, 28 Wn. App. 2d 522, 528, 537 P.3d 321 (2023).

⁵ *Id.*

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The relevant section of code is TCC Table 24.30-1, “Standard Wetland Buffer Widths,” copied below (and attached to the Confluence Letter):

24.30.045 - Wetland buffers—Standard width.



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.

Table 24.30-1. Standard Wetland Buffer Widths

EXPAND

The Larger of the Buffers for Habitat and Water Quality Applies											
BUFFER TO PROTECT											
HABITAT											
Rating for habitat from the wetland rating form under the Washington State Wetland Rating System for Western Washington, 2014.	3	3*	4	5	5	6	6	7	7	8	9
	L.L.L	L.L.L	M.L.L	M.M.L	H.L.L	M.M.M	H.M.L	H.M.M	H.H.L	H.H.M	H.H.H
Buffer width for habitat for all wetlands except estuarine wetlands and coastal lagoons	100'	120'	140'	160'	180'	200'	220'	240'	260'	280'	300'
Buffer width with mitigation under 24.30.050 TCC	100'	100'	105'	120'	135'	150'	165'	180'	195'	210'	225'
Buffer width for estuarine wetlands and coastal lagoons	220'										
BUFFER TO MAINTAIN WATER QUALITY											
Wetlands of high conservation value, bogs, and wetlands containing sensitive plant species documented by the DNR Natural Heritage Program	250'										
Wetlands that rate 3 for habitat, score 7 or less for water quality, are less than 10,000 square feet in size and are not a functional part of a mosaic wetland, do not support priority wildlife species, and do not drain to a stream or a Category I or II wetland	50'										

* Wetlands with habitat rating of 3 and a high value water quality score of 8 or 9 using Ecology's 2014 Wetland Rating System for Western Washington.

Here, there is no dispute that the off-site wetland has a water quality score of 7, hydrology score of 4, and a habitat score of 3, which meets the very specific and limited 50-foot buffer width provided for water quality in the last row of the table. The County points to the provision that “the widest of the applicable buffers under habitat and water quality applies” in support of its assertion that that the buffer should instead be 100 feet. However, the County’s interpretation would render the very specific and limited 50-foot buffer provision in the table entirely superfluous, contrary to established principles of statutory interpretation, as there is no listed water quality buffer less than 100 feet. In other words, if the County’s interpretation were correct, then there would never be an instance where the 50-foot buffer could be applied, despite being specifically defined in the code.

Notably, the limited 50-foot buffer category, while listed under the water quality section of the table, specifically considers the habitat score, in that it can only apply to the limited class of defined wetlands rate 3 or less for habitat and lack other habitat characteristics (“do not support priority wildlife species, and do not drain to a stream or a Category I or II wetland”). While the organization of the table is certainly not the model of clarity, the Applicant’s interpretation gives effect to the 50-foot buffer provision, which includes consideration of the underlying habitat score consistent with the overall intent of the table and the code.

For these reasons, together with the technical reasons provided in the Confluence Letter, the Hearing Examiner should find that the off-site wetland has a 50-foot, rather than a 100-foot, minimum standard buffer width based on Table 24.30-1.

Respectfully submitted,

DICKSON FROHLICH PHILLIPS BURGESS PLLC

A handwritten signature in blue ink, appearing to read "Heather L. Burgess", is positioned above the printed name.

Heather L. Burgess