

## Chapter 19.200

### WETLANDS

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#### **19.200.205 Purpose and objectives.**

This chapter applies to all uses within or adjacent to areas designated as wetlands, as defined in Section 19.150.660, except those identified as exempt in Section 19.100.125. The intent of this chapter is to:

- A. Achieve no net loss and increase the quality, function and values of wetland acreage within Kitsap County by maintaining and enhancing, when required, the biological and physical functions and values of wetlands with respect to water quality maintenance, storm water and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, and education;
- B. Protect the public's health, safety and welfare, while preventing public expenditures that could arise from improper wetland uses and activities;
- C. Plan wetland uses and activities in a manner that allows property owners to benefit from wetland property ownership wherever allowable under the conditions of this title;
- D. Prevent turbidity and pollution of wetlands and fish or shellfish bearing waters; and
- E. Maintain the wildlife habitat.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 351 (2005) § 18, 2005: Ord. 217 (1998) § 3 (part), 1998)

#### **19.200.210 Wetland identification and functional rating.**

##### A. General.

- 1. All wetland delineations shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement. All areas within the county meeting the wetland designation criteria are hereby designated critical areas and are subject to the provisions of this title.
- 2. Kitsap County uses the Washington Department of Ecology Washington State Wetland Rating System for Western Washington, revised 2014 or as hereafter amended, to categorize wetlands for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. Wetlands shall be generally designated as follows. (See Chapter 19.800, Appendix A, for more detailed description.)

##### B. Wetlands.

- 1. Category I Wetlands. Category I wetlands include, but are not limited to, wetlands that represent rare or unique wetland types, those that are more sensitive to disturbance than most wetlands, those that are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or those that provide a high level of function. Category I wetlands score twenty-three points or more out of twenty-seven on the wetlands ratings system.

2. Category II Wetlands. Category II wetlands are those wetlands that are more difficult to replace and provide high levels of some functions. Category II wetlands score between twenty and twenty-two points out of twenty-seven on the wetlands ratings system.
3. Category III Wetlands. Category III wetlands are those wetlands with a moderate level of function and can often be adequately replaced with mitigation. Category III wetlands score between sixteen and nineteen points on the wetlands ratings system.
4. Category IV Wetlands. Category IV wetlands have the lowest level of function and are often heavily disturbed. Category IV wetlands score less than sixteen points out of twenty-seven on the wetlands ratings system.

C. Exemptions for Small Wetlands. Category III wetlands that are less than ~~one thousand two thousand five hundred~~ square feet and Category IV wetlands that are less than ~~four thousand seven thousand five hundred~~ square feet ~~that do not contain federally listed species or their critical habitat~~ are exempt from the buffer provisions in this chapter when the following are met:

1. ~~They are isolated wetlands and not part of a wetland mosaic;~~
2. ~~They are not associated with riparian areas or their buffers;~~
- ~~3.~~ They are not associated with shorelines of the state or their associated buffers;
- ~~3~~4. They do not contain a Class I fish and wildlife habitat conservation area, identified by the Washington Department of Fish and Wildlife; and
5. ~~They do not contain federally listed species or their critical habitat;~~ and
46. ~~The A~~ wetland report ~~is prepared that~~ identifies the specific wetland function affected or at risk, and the proposed mitigation to replace the ~~affected or lost~~ wetland function, on a per function basis;

(Ord. 545 (2017) § 5 (Appx. (part)), 2017: Ord. 376 (2007) § 4, 2007: Ord. 351 (2005) § 19, 2005)

#### 19.200.215 Wetland review procedures.

A. Application Requirements. Except as otherwise provided herein, all applications for development within a wetland or its largest potential buffer width shall include the following special reports at the time of application. This shall not prohibit the department from requesting reports or other information.

1. Wetland delineation report (Section 19.700.710).
2. Wetland mitigation report (Section 19.700.715).

#### B. Delineation of Wetland Boundaries.

1. The applicant shall be responsible for hiring a qualified wetlands specialist to determine the wetland boundaries by means of a wetland delineation. This specialist shall stake or flag the wetland boundary. When required by the department, the applicant shall hire a professional land surveyor licensed by the state of Washington to survey the wetland boundary line. The wetland boundary and wetland buffer established by this chapter shall be identified on all grading, landscaping, site, on-site septic system designs, utility or other development plans submitted in support of the project.
2. The department may perform a delineation of a wetland boundary on parcels where no more than one single-family dwelling unit is allowed.
3. Where the applicant has provided a delineation of a wetland boundary, the department may verify the wetland boundary at the cost of the applicant and may require that a wetland specialist make adjustments to the boundary.

Commented [LW01]: Public comment matrix Part 3, Item# 16.c

C. Wetland Review Process for Single-family Dwellings.

1. Expedited Approval. Applicants proposing a single-family dwelling may receive expedited approval by the department if they choose to adopt the largest buffer width from the appropriate wetland category. Expedited approval removes the requirements of the wetland certification process for single-family dwellings (subsection (C)(2) of this section); provided, that the wetland delineation and/or wetland rating is not disputed. Administrative buffer reductions or variances will not apply. Expedited approval is not the same as expedited review, which is sometimes available for additional fees.

2. Wetland Certification Process for Single-Family Dwellings (No Encroachment into a Wetland or Its Standard Buffer).

- a. Prior to issuance of a building permit, site development permit, or on-site sewage system permit, the applicant may submit a single-family wetland certification form completed by a wetland specialist that certifies either:
  - i. No wetlands are present within two hundred fifty feet of the project area; or
  - ii. Wetlands are present within two hundred fifty feet of the project area, but all regulated activities associated with the dwelling (e.g., landscaped areas, septic facilities, outbuildings, etc.) will occur outside of the standard buffer of the identified wetland.
- b. If wetland buffers extend onto the site, the wetland specialist shall place permanent, clearly visible, wetland buffer signs at the edge of the buffer. A wetland buffer sign affidavit, signed by the wetland specialist, shall be submitted to the department as verification that the wetland buffer signs have been placed on the subject site.
- c. A survey will not be required with a single-family wetland certification form.
- d. The single-family certification form may be used only to authorize single-family dwellings and associated home-site features such as driveways, gardens, fences, wells, lawns, and on-site septic systems. It may not be used for new agricultural activities, expansion of existing agricultural activities, forest practice activities, commercial projects, land divisions, buffer width modifications, or violations.
- e. The single-family certification process will be monitored by the department for accuracy, and enforcement actions will be initiated should encroachment into a wetland or buffer occur.
- f. The applicant/property owner assumes responsibility for any and all errors of the single-family certification form, as well as responsibility for all associated mitigation required by the department.
- g. Single-family certification forms shall be filed with the Kitsap County auditor's office.

**19.200.220 Wetland buffer requirements.**

A. Determining Buffer Widths. The following buffer widths are based on three factors: the wetland category, the intensity of the impacts, and the functions or special characteristics of the wetland that need to be protected as established through the rating system. These factors must be determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by the Washington State Department of Ecology). If a wetland meets more than one of the characteristics listed in Tables 19.200.220(B) through (E), the greater of the buffers recommended to protect the wetland is applied. Buffers shall be measured horizontally from a perpendicular line established at the wetland edge based on the buffer width identified using the tables below.

**Table 19.200.220(A)**  
**Land Use Impact “Intensity” Based on Development Types**

Rating of Impact From Proposed Changes in Land Use	Examples of Land Uses That Cause the Impact Based on Common Zoning Categories
High	Commercial, urban, industrial, institutional, retail sales, residential subdivisions with more than 1 unit/acre, new agriculture (high-intensity processing such as dairies, nurseries and greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), new transportation corridors, high-intensity recreation (golf courses, ball fields), hobby farms
Moderate	Single-family residential lots, residential subdivisions with 1 unit/acre or less, moderate-intensity open space (parks), new agriculture (moderate-intensity such as orchards and hay fields), transportation enhancement projects
Low	Forestry, open space (low-intensity such as passive recreation and natural resources preservation, minor transportation improvements)

**Table 19.200.220(B)**  
**Width of Buffers for Category IV Wetlands**

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Score for all 3 basic functions is less than 16 points	Low – 25 feet Moderate – 40 feet High – 50 feet	None

**Table 19.200.220(C)**  
**Width of Buffers for Category III Wetlands**

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Moderate level of function for habitat (6.5) - 7 points)*	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Score for habitat 3 – (4.5) points	Low – 40 feet Moderate – 60 feet High – 80 feet	None

**Commented [A2]:** Consistency Analysis, Table 3-1, Item #2 & 3

**Commented [A3]:** Consistency Analysis, Table 3-1, Item #2 & 3

\*If wetland scores 8 – 9 habitat points, use Table 19.200.220(D) for Category II buffers.

**Table 19.200.220(D)**  
**Width of Buffers for Category II Wetlands**

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
High level of function for habitat (score 8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas
Moderate level of function for habitat (6.5) - 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6.5) points)	Low – 50 feet Moderate – 75 feet High – 100 feet	No additional surface discharges of untreated runoff

**Commented [A4]:** Consistency Analysis, Table 3-1, Item #2 & 3

**Commented [A5]:** Consistency Analysis, Table 3-1, Item #2 & 3

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
Estuarine	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Interdunal	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Not meeting above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

TABLE 19.200.220(E)  
Width of Buffers for Category 1 Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
Wetlands of high conservation value	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries No septic systems within 300 feet of wetland Restore degraded parts of buffer
Bogs	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries Restore degraded parts of buffer
Forested	Buffer width to be based on score for habitat functions or water quality functions	If forested wetland scores high for habitat (8 – 9 points), need to maintain connections to other habitat areas Restore degraded parts of buffer
Estuarine	Low – 100 feet Moderate – 150 feet High – 200 feet	None
Wetlands in coastal lagoons	Low – 100 feet Moderate – 150 feet High – 200 feet	None
High level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Interdunal wetland with high level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Moderate level of function for habitat (6.5 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 6.5 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	None
Not meeting any of the above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

Commented [A6]: Consistency Analysis, Table 3-1, Item #2 & 3

Commented [A7]: Consistency Analysis, Table 3-1, Item #2 & 3

B. Modification of Buffer Widths. The following modifications to buffer widths may be considered provided the applicant first demonstrates that reductions or iterations to the required wetland buffer cannot be avoided, minimized or mitigated (in that order):

1. Buffer Averaging. Standard buffer widths may be modified by the department for a development proposal first by averaging buffer widths, but only where the applicant can demonstrate that such averaging can clearly provide as great or greater functions and values as would be provided under the standard buffer. The following standards shall apply to buffer averaging:

- a. The decrease in buffer width is minimized by limiting the degree or magnitude of the regulated activity.
- b. For wetlands and/or required buffers associated with documented habitat for endangered, threatened, or sensitive fish or wildlife species, a habitat assessment report has been submitted that demonstrates that the buffer modification will not result in an adverse impact to the species of study.
- c. Width averaging will not adversely impact the wetland.
- d. The total buffer area after averaging is no less than the total buffer area prior to averaging.
- e. For Category III and IV wetlands with habitat scores less than five points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 update, as amended, the minimum buffer width at any point will not be less than fifty percent of the widths established after the categorization is done and any buffer adjustments applied in accordance with this chapter.
- f. For all other wetlands, the minimum buffer width at any point will not be less than seventy-five percent of the widths established after the categorization is done and any buffer adjustments applied in accordance with this chapter.
- g. If significant trees are identified, such that their drip line extends beyond the reduced buffer edge, the following tree protection requirements must be followed:
  - i. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the dripline of the tree(s), unless otherwise approved by the department.
  - ii. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
  - iii. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
  - iv. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
  - v. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
  - vi. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention in the tree protection area.
  - vii. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

2. Administrative Buffer Reductions. Standard buffer widths may be modified by the department for a development proposal by reducing buffers, but only where buffer averaging is not feasible and the applicant can demonstrate that such is the minimum necessary to accommodate the permitted use and that the reduction can clearly provide as great or greater functions and values as would be provided under the standard buffer

requirement. This may be accomplished through enhancement of a degraded buffer. The following standards shall apply to buffer reductions:

- a. The department may administratively reduce the buffer pursuant to the variance criteria listed in Section 19.100.135. [\(Applicants may propose to utilize provisions contained in KCC 19.200.230.\)](#)
- b. For proposed single-family dwellings, the department may administratively reduce a buffer by up to twenty-five percent of the area required under the standard buffer requirement, but not less than thirty feet.
- c. For all other proposed uses, the department may administratively reduce the buffer by up to twenty-five percent of the area required under the standard buffer requirement, but not less than forty feet.
- d. To minimize impacts and provide equivalent functions and values as required by this section, applicants may propose:
  - i. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;
  - ii. The use of alternative on-site wastewater systems in order to minimize site clearing;
  - iii. Infiltration of storm water where soils permit; and
  - iv. Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.
- e. [\(Applicants may propose to utilize provisions contained in KCC 19.200.230.\)](#)
- e. The buffer widths recommended for proposed land uses with high-intensity impacts to wetlands can be reduced to those recommended for moderate-intensity impacts under the following conditions:
  - i. For wetlands that score moderate or high for habitat (five points or more for habitat functions), the width of the buffer can be reduced if both of the following criteria are met:
    - (A) A relatively undisturbed, vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats as defined by the Washington Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.
    - (B) Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 19.200.220(F).
  - ii. For wetlands that score less than five points for habitat, the buffer width can be reduced to that required for moderate land use impacts by applying measures to minimize the impacts of the proposed land uses, such as the examples summarized in Table 19.200.220(F).

**Commented [KM 8]:** Comment Matrix Part 3 issue 16d.

**Commented [KM 9]:** Comment Matrix Part 3 issue 16d.

**Table 19.200.220(F)**  
**Examples of Measures to Minimize Impacts to Wetlands**

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Warehouses</li> <li>• Manufacturing</li> <li>• Residential</li> </ul>	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Manufacturing</li> <li>• Residential</li> </ul>	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> </ul>
Storm water runoff	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Manufacturing</li> <li>• Residential areas</li> </ul>	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 feet of wetland</li> </ul>

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
	<ul style="list-style-type: none"> <li>Application of agricultural pesticides</li> <li>Landscaping</li> <li>Commercial</li> </ul>	<ul style="list-style-type: none"> <li>Apply integrated pest management</li> <li>Retrofit storm water detention and treatment for roads and existing adjacent development</li> <li>Prevent channelized flow from lawns that directly enters the buffer</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>Impermeable surfaces</li> <li>Lawns</li> <li>Tilling</li> </ul>	<ul style="list-style-type: none"> <li>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>Residential areas</li> </ul>	<ul style="list-style-type: none"> <li>Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract</li> </ul>
Dust	<ul style="list-style-type: none"> <li>Tilled fields</li> </ul>	<ul style="list-style-type: none"> <li>Use best management practices to control dust</li> </ul>

3. Variance. In cases where proposed development cannot meet the administrative buffer reduction criteria described in this section, a variance shall be required as described in Section 19.100.135. [Applicants may propose to utilize provisions contained in KCC 19.200.230.](#)

**Commented [KM 10]:** Comment Matrix Part 3 issue 16d.

C. Fencing and Signs.

1. Wetland buffers shall be temporarily fenced or otherwise suitably marked, as required by the department, between the area where the construction activity occurs and the buffer. Fences shall be made of a durable protective barrier and shall be highly visible. Silt fences and plastic construction fences may be used to prevent encroachment on wetlands or their buffers by construction. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized per county approval.
2. The department may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land of the project site. Such signs will identify the wetland buffer. The department may approve an alternate method of wetland and buffer identification, if it provides a adequate protection to the wetland and buffer.

D. Protection of Buffers. The buffer shall be identified on a site plan and on site as required by the department and this chapter. Refuse shall not be placed in buffers.

E. Building or Impervious Surface Setback Lines. A building or impervious surface setback line of fifteen feet is required from the edge of any wetland buffer. Minor structural or impervious surface intrusions into the areas of the setback may be permitted if the department determines that such intrusions will not adversely impact the wetland. The setback shall be identified on a site plan.

**19.200.225 Additional development standards for certain uses.**

In addition to meeting the development standards of this chapter, those uses identified below shall also comply with the standards of this section and other applicable state, federal and local laws.

A. Forest Practice, Class IV General, and Conversion Option Harvest Plans (COHPs). All timber harvesting and associated development activity, such as construction of roads, shall comply with the provisions of this title, including the maintenance of buffers around wetlands.

B. Agricultural Restrictions. In all development proposals that would introduce or expand agricultural activities, a net loss of functions and values to wetlands shall be avoided. Wetlands shall be avoided by at least one of the following methods:

1. Locate fencing no closer than the outer buffer edge; or

2. Implement a farm resource conservation and management plan agreed upon by the conservation district and the applicant to protect and enhance the functions and values of the wetland.

C. Road/Street Repair and Construction. Any private or public road or street repair, maintenance, expansion or construction may be allowed within a critical area or its buffer only when all of the following are met:

1. No other reasonable or practicable alternative exists and the road or street serves multiple properties whenever possible;
2. For publicly owned or maintained roads or streets, other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc., shall be allowed whenever possible;
3. The road or street repair and construction are the minimum necessary to provide safe roads and streets; and
4. Mitigation shall be performed in accordance with specific project mitigation plan requirements. [Applicants may propose to utilize provisions contained in KCC 19.200.230.](#)

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D. Land Divisions and Land Use Permits. All proposed divisions of land and land uses (including but not limited to the following: short plats, large lot subdivisions, performance-based developments, conditional use permits, site plan reviews, binding site plans) which include regulated wetlands, shall comply with the following procedures and development standards:

1. The area of a wetland and its buffers may be included in the calculation of minimum lot area for proposed lots, except for the area with permanent open water.
2. Land division approvals shall be conditioned to require that wetlands and wetland buffers be dedicated as open space tracts, or an easement or covenant encumbering the wetland and wetland buffer. Such dedication, easement or covenant shall be recorded together with the land division and represented on the final plat, short plat or binding site plan, and title.
3. In order to implement the goals and policies of this title, to accommodate innovation, creativity, and design flexibility, and to achieve a level of environmental protection that would not be possible by typical lot-by-lot development, the use of the clustered development or similar innovative site planning is strongly encouraged for projects with regulated wetlands on the site.
4. After preliminary approval and prior to final land division approval, the department may require the common boundary between a regulated wetland or a associated buffer and the adjacent land be identified using permanent signs and/or fencing. In lieu of signs and/or fencing, alternative methods of wetland and buffer identification may be approved when such methods are determined by the department to provide a adequate protection to the wetland and buffer.

E. Surface Water Management. Surface water discharges from storm water facilities or structures may be allowed in wetlands and their buffers when they are in accordance with Title 12 (Storm Water Drainage) subject to the provisions of Section 19.100.145, Special use review, and this subsection. The discharge shall neither significantly increase nor decrease the rate of flow or hydroperiod, nor decrease the water quality of the wetland. Pretreatment of surface water discharge through biofiltration or other best management practices (BMPs) shall be required.

F. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland buffers pursuant to the following standards:

1. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas.
2. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance and existing hydrological characteristics, shrubs, snags and important wildlife habitat.
3. Viewing platforms, interpretive centers, benches, picnic areas, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected wetland.

Platforms shall be limited to one hundred square feet in size, unless demonstrated through a wetland mitigation plan that a larger structure will not result in a net loss of wetland functions.

4. Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer twenty-five percent of the buffer, except where wetland crossings or for direct access to viewing areas have been approved by the department.

5. Trails shall generally be limited to pedestrian use unless other more intensive uses, such as bike or horse trails, have been specifically allowed and mitigation has been provided. Trail width shall not exceed five feet unless there is a demonstrated need, subject to review and approval by the department. Trails shall be constructed with pervious materials except where determined infeasible.

6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap County Non-Motorized Facility Plan (and associated recognized community trails), and as amended, and provided design considerations are made to minimize impacts to critical areas and buffers, shall not be subject to the platform, trail width, or trail material limitations above. Such trails and facilities shall be approved through special use review (Section 19.100.145), unless any underlying permit requires a public hearing.

G. Utilities. Placement of utilities within wetlands or their buffers may be allowed pursuant to the following standards and any other required state and federal approvals:

1. The utility maintenance or repair, as identified in Section 19.100.125(E), shall be allowed in wetlands and wetland buffers so long as best management practices are used.

2. Construction of new utilities outside the road right-of-way or existing utility corridors may be permitted in wetlands or wetland buffers only when: (a) no reasonable alternative location is available, (b) the new utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and (c) as required in the filing and approval of applicable permits and special reports (Chapter 19.700) required by this title.

3. Construction of sewer lines or on-site sewage systems may be permitted in wetland buffers only when: (a) the applicant demonstrates that the location is necessary to meet state or local health code minimum design standards (not requiring a variance for either horizontal setback or vertical separation), and (b) there are no other practicable or reasonable alternatives available and (c) construction meets the requirements of this section. Joint use of the sewer utility corridor by other utilities may be allowed.

4. New utility corridors shall not be allowed when the wetland or buffer has known locations of federal- or state-listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidate or state monitor, except in those circumstances where an approved habitat management plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer.

5. New utility corridor construction and maintenance shall protect the wetland and buffer environment by utilizing the following methods:

a. New utility corridors shall be aligned to avoid cutting trees greater than twelve inches in diameter at breast height (four and one-half feet), measured on the uphill side, unless no reasonable alternative location is available.

b. New utility corridors shall be revegetated with appropriate native vegetation at not less than preconstruction densities or greater immediately upon completion of construction, or as soon thereafter as possible if due to seasonal growing constraints. The utility shall ensure that such vegetation survives.

c. Any additional utility corridor or access for maintenance shall be provided at specific points rather than by parallel roads, unless no reasonable alternative is available. If parallel roads are necessary, they shall be the minimum width necessary for access, but no greater than fifteen feet, and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.

d. Drilling for new utility corridors shall have entrance/exit portals located completely outside of the wetland buffer boundary, and drilling shall not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed.

**Commented [LW012]:** Public Comment Matrix Part 3, Item# 16.d; DOE Comment

~~d.e.~~ The department may require other additional mitigation measures.

6. Utility corridor maintenance shall include the following measures to protect the wetland and buffer environment:

- a. Painting of utility equipment, such as power towers, shall not be sprayed or sandblasted, unless appropriate containment measures are used. Lead-based paints shall not be used.
- b. No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology. Where approved, they must be applied by a licensed applicator in accordance with the safe application practices on the label.

H. Parks. Development of public park and recreation facilities may be permitted in wetlands or their buffer subject to the provisions of Section 19.100.145, Special use review, and other applicable chapters of the Kitsap County Code, and any state or federal approvals. For example, enhancement of wetlands and development of trails may be allowed in wetlands and wetland buffers subject to special use requirements and approval of a wetland mitigation plan.

#### **19.200.230 Wetland mitigation requirements.**

A. Mitigation Sequencing. All impacts to wetlands or buffers shall be mitigated according to this title in the following order:

1. Avoiding the impact altogether by not taking a certain action or parts of actions.
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to reduce impacts.
3. Using one of the following mitigation types, listed in order of preference:
  - a. Rectifying the impact by reestablishing, rehabilitating, or restoring the affected environment;
  - b. Compensating for the impact by replacing or providing substitute resources or environments; or
  - c. Compensating for the impact by improving the environmental processes that support wetland systems and functions.
4. Monitoring the impact and compensation and taking appropriate corrective measures.

B. Mitigation Report. Where mitigation is required under the sequencing in subsection (A) of this section, a mitigation report shall be provided in accordance with Section 19.700.715. Acceptance of the mitigation report shall be signified by a notarized memorandum of agreement signed by the applicant and department director or designee. The agreement shall refer to all requirements for the mitigation project.

C. Wetland Replacement Ratios.

1. The following ratios appearing below in Table 19.200.230 (Wetland Mitigation Replacement Ratios), as well as consideration of the factors listed in this section, shall be used to determine the appropriate amounts of restored, rehabilitated, created or enhanced wetland that will be required to replace impacted wetlands. The first number specifies the amount of wetland area to be restored, rehabilitated, created or enhanced, and the second number specifies the amount of wetland area lost.

**Table 19.200.230  
Wetland Mitigation Replacement Ratios**

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	1:1 Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
All Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 4:1 E	8:1
Category II estuarine	Case-by-case	4:1 rehabilitation of an estuarine wetland	Case-by-case	Case-by-case
All other Category II	3:1	8:1	1:1 R/C and 8:1 E	12:1
Category I forested	6:1	12:1	1:1 R/C and 20:1	24:1
Category I other (based on functions)	4:1	8:1	1:1 R/C and 12:1 E	16:1
Category I wetlands of high conservation value	Not considered possible	Case-by-case	Case-by-case	Case-by-case
Category I coastal lagoon	Case-by-case	6:1 rehabilitation of a coastal lagoon	Case-by-case	Case-by-case
Category I bog	Case-by-case	6:1 rehabilitation of a bog	Case-by-case	Case-by-case
Category I estuarine	Case-by-case	6:1 rehabilitation of an estuarine wetland	Case-by-case	Case-by-case

2. The above ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Accordingly, in the appropriate circumstances identified below, the department may increase or decrease the ratios based on one or more of the following:

- a. Replacement ratios may be increased under the following circumstances:
  - i. Uncertainty exists as to the probable success of the proposed restoration or creation;
  - ii. A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site;
  - iii. Proposed compensation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
  - iv. The impact was an unauthorized impact.
- b. Replacement ratios may be decreased under the following circumstances:
  - i. Documentation by a qualified wetland specialist demonstrates certainty that the proposed compensation actions will be successful. For example, demonstrated prior success with similar compensation actions as those proposed, and/or extensive hydrologic data to support the proposed water regime;
  - ii. Documentation by a qualified wetland specialist demonstrates that the proposed compensation actions will provide functions and values that are significantly greater than the wetland being impacted; or
  - iii. The proposed mitigation actions are conducted in advance of the impact and are shown to be successful.

D. Alternative Mitigation Plans.

1. The department may approve alternative wetland mitigation plans identified in this section that are based on best available science, such as priority restoration plans that achieve restoration goals identified in Title 22, Appendix C, Shoreline Restoration Plan. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.

The department shall consider the following for approval of an alternative mitigation proposal:

- a. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology Publication No. 09-06-32, Olympia, WA, December 2009).
  - b. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
  - c. Other on-site mitigation, as described above, is not feasible due to site constraints, such as parcel size, stream type, wetland category, or geologic hazards.
  - d. There is clear potential for success of the proposed mitigation at the proposed mitigation site.
  - e. The plan contains clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions of the wetland mitigation plan (Chapter 19.700, Special Reports).
2. Off-Site Compensatory Mitigation.
- a. Considerations for determining whether off-site mitigation is preferable include, but are not limited to:
    - i. On-site conditions do not favor successful establishment of the required vegetation type, or lack the proper soil conditions, or hydrology, or may be severely impaired by the effects of the adjacent development;
    - ii. On-site compensation would result in isolation from other natural habitats;
    - iii. Off-site location is crucial to one or more species that is threatened, endangered, or otherwise of concern, and the on-site location is not;
    - iv. Off-site location is crucial to larger ecosystem functions, such as providing corridors between habitats, and the on-site location is not; and
    - v. Off-site compensation has a greater likelihood of success or will provide greater functional benefits.
  - b. When determining whether off-site mitigation is preferable, the value of the site-specific wetland functions at the project site, such as flood control, nutrient retention, sediment filtering, and rare or unique habitats or species, shall be fully considered.
  - c. When conditions do not favor on-site compensation, off-site compensatory mitigation should be located as close to the impact site as possible, but at least within the same watershed, while still replacing lost functions.
  - d. Off-site compensatory mitigation may include the use of a wetland mitigation bank or an in-lieu fee program.
    - i. Mitigation Banking. Kitsap County encourages the creation of a public or private mitigation banking system when feasible.

- (A) The approval authority determines that it would provide a appropriate compensation for the proposed impacts;
  - (B) The impact site is located in the service area of the bank;
  - (C) The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and
  - (D) Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.
- ii. In-Lieu-Fee Mitigation. Credits from an approved in-lieu-fee program may be used when all of the following apply:
- (A) The approval authority determines that it would provide environmentally appropriated compensation for the proposed impacts.
  - (B) The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
  - (C) Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument of the in-lieu-fee program.
  - (D) The impacts are located within the service area specified in the approved in-lieu-fee instrument.

3. Advance Mitigation. Mitigation for projects with preidentified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal, state and local laws and guidance on advance mitigation, and state water quality regulations consistent with Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation (Ecology Publication No. 12-06-15).

E. Monitoring Requirements. Kitsap County shall require monitoring reports on an annual basis for a minimum of five years and up to ten years, or until the department determines that the mitigation project has achieved success. The wetland mitigation plan shall provide specific criteria for monitoring the mitigation project. Criteria shall be project-specific and use best available science to aid the department in evaluating whether or not the project has achieved success (see Chapter 19.700 and Sections 19.700.710 and 19.700.715, Special Reports).

**19.200.235 Incentives for wetland mitigation.**

Kitsap County recognizes that property owners wish to gain economic benefits from their land. The county encourages such mechanisms as the open space tax program (Chapter 18.12), conservation easements and donations to land trusts, in order to provide taxation relief upon compliance with the regulations in this title. Buffers dedicated as permanent open space tracts may qualify for the open space taxation program and will be offered the opportunity to be entered into this program. Kitsap County may offer to purchase these lands through the conservation futures fund, as funding is available.