



INFORMATIONAL MEMORANDUM

TO: Planning Commission

FROM: Minnie Dhaliwal, Planning Supervisor and Andrea Cummins, Urban Environmentalist

DATE: February 19, 2019

SUBJECT: Update of TMC 18.45, Environmentally Sensitive Areas

ISSUE

Periodic update of the critical area regulations to reflect current best available science (BAS) as required by the Growth Management Act.

BACKGROUND

Staff had a work session with the Planning Commission on this item on November 8, 2019. The staff report for the November 8, 2018 meeting is available online. Here is the [link](#).

At the Nov 8, 2018 meeting, the Planning Commission asked for some additional information on the following topics:

1. Mitigation plans and monitoring costs:

At the last work session, the Planning Commission did not make a final decision on wetland buffers; and asked staff to provide examples of mitigation plans and associated monitoring costs. See Attachment A for a mitigation plan for buffer reduction of a stream. See Attachment B for a mitigation plan for filling some wetlands and doing offsite mitigation. Also, included in these attachments is the cost estimate for the mitigation and monitoring.

The Department of Ecology recommends the buffers listed in table below. It should be noted that the buffer widths shown in the table below assume that the buffer is vegetated with native plants and minimization measures listed in the second table are implemented. If the buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer would need to be re-planted or the buffer width increased to provide adequate buffer functions.

| Category | Wetland buffer width (ft), current TMC | Wetland buffer width (ft), Ecology 2014, high-intensity land use impact | | | | | |
|----------|--|---|--|-------------------|--|-------------------|--|
| | | Habitat score <6 | Habitat score <6 | Habitat score 6-7 | Habitat score 6-7 | Habitat score 8-9 | Habitat score 8-9 |
| | | Standard Buffer | Alternate Buffer if impact minimization measures taken | Standard Buffer | Alternate Buffer if impact minimization measures taken, plus 100 feet vegetated corridor between wetland and priority habitats | Standard Buffer | Alternate Buffer if impact minimization measures taken, plus 100 feet vegetated corridor between wetland and priority habitats |
| I | 100 | 100 | 75 | 150 | 110 | 300 | 225 |
| II | 100 | 100 | 75 | 150 | 110 | 300 | 225 |
| III | 80 | 80 | 60 | 150 | 110 | 300 | 225 |
| IV | 60 | 50 | 40 | 50 | 40 | 50 | 40 |

Listed below are the impact minimization measures that may allow 25 percent reduction from the upper range of recommended buffers:

| Disturbance | Required Measures to Minimize Impacts |
|--------------|--|
| Lights | <ul style="list-style-type: none"> • Direct lights away from wetland |
| Noise | <ul style="list-style-type: none"> • 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' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer |
| Toxic runoff | <ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management |

| Disturbance | Required Measures to Minimize Impacts |
|----------------------------|--|
| Stormwater runoff | <ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development (LID) techniques where appropriate (for more information refer to the drainage ordinance and manual) |
| Change in water regime | <ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns |
| Pets and human disturbance | <ul style="list-style-type: none"> • Use privacy fencing OR 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 or protect with a conservation easement |
| Dust | <ul style="list-style-type: none"> • Use best management practices to control dust |

Based on the field work done to categorize the wetlands north of I-405, majority of the wetlands are Category III wetlands, with a low habitat score of 3-5. Buffer quality at the vast majority of wetlands is unhealthy (too narrow, dominated by invasive species, or sparsely vegetated.) Initial comparison of buffers required under the existing code and buffers recommended by the Department of Ecology indicates that buffers will increase for some wetlands while a few wetlands may see reduction in the required buffer width.

Policy Options for buffer widths:

| | | Pros | Cons |
|----------|--|---|--|
| Option 1 | Adopt the standard buffer widths recommended by the Department of Ecology | The larger buffers will provide better buffer function given majority of the buffers are sparsely vegetated; easier for the developer as no replanting or monitoring required | Buffer widths will significantly increase which could limit development potential; quality of buffers will not improve as no replanting required. |
| Option 2 | Adopt the standard buffer widths recommended by the Department of Ecology; but allow alternate buffer if impact minimization measures are taken. This option assumes that the existing buffer is vegetated with native plants. It should be noted that most existing buffers are not vegetated with native plants, therefore standard buffer widths would apply under this option. | Provides options for the developer | Quality of buffers will not improve as no replanting required. Also, since the state of existing buffers is degraded, it is likely that under this option standard buffers will apply so this option will likely be similar to Option 1 during implementation. |

| | | | |
|----------|---|---|---|
| Option 3 | Adopt the standard buffer widths recommended by the Department of Ecology; but allow alternate buffer if impact minimization measures are taken AND buffer is replanted | Provides options for the developer with incentives for buffer enhancement | Requires monitoring of the replanted buffer for at least five years |
|----------|---|---|---|

At the November 8, 2018 meeting the Planning Commission did not make a final decision on this item. Staff recommends Option 3.

2. Exempt wetlands:

The existing code provides an exemption for certain wetlands that are under 1,000 square feet. The exemption is from sequencing (showing that the impact cannot be avoided or minimized). Mitigation of the impacts is still required per Ecology. Exempt wetlands have to meet the following criteria:

- a) habitat score under five;
- b) are not associated with a riparian habitat or Shorelines of the State;
- c) are not part of a wetland mosaic, and
- d) do not contain priority habitat.

Per Ecology guidance, this exemption may be extended to isolated Category IV wetlands under 4,000 square feet. Here are policy options that the Planning Commission considered at the November 8, 2018 meeting:

| | | Pros | Cons |
|----------|---|---|--|
| Option 1 | Keep the existing code and exempt wetlands up to 1000 sq. ft with mitigation for wetland impacts | These are exempt under the existing code. Code language could be clarified that wetland impacts still need to be mitigated. | Some larger wetlands that could qualify for exemption would not qualify. |
| Option 2 | Exempt wetlands up to 4000 sq. ft. with mitigation for wetland impacts | Increase the exemption to the highest allowed under BAS. Wetland impacts are mitigated | Mitigation is off site or by fee in lieu. Loss of wetlands in Tukwila. Buffer impacts are not mitigated. |
| Option 3 | Exempt wetlands up to 1000 sq. ft. with mitigation for wetland impacts; exempt wetlands up to 4000 sq. ft. with mitigation for wetland and buffer impacts | Increase the exemption to the highest allowed under BAS. Two tiers of mitigation: wetland and buffer impacts are mitigated for wetlands larger than 1000; and only wetland impacts mitigated for wetlands smaller than 1000 sq. ft. | Mitigation is off site or by fee in lieu. Loss of wetlands in Tukwila. |

At the November 8 work session, the Planning Commission recommended Option 3, but asked staff to do some additional research and provide data on how many wetlands would be impacted under Option 3.

See Attachment C for the map of known wetlands in Tukwila that are less than 1000 square feet; and those that are between 1000 to 4000 sq. ft. Here is the data:

1,000 square feet or less: 5 wetlands

1,001-4,000 square feet: 17 wetlands; all are part of a mosaic except for 4 of them.

It should be noted that 13 out of 17 wetlands that are between 1,001 to 4,000 square feet in size would not qualify for the exemption as they are part of a wetland mosaic.

Based on this additional research staff recommends Option 1.

3. Non-conforming provisions:

At the last work session, the Planning Commission asked staff to do additional research to establish new non-conforming thresholds for development in the wetland and stream buffers; and tie the new thresholds to incentives for improving the buffer and/or water quality.

Tukwila Municipal Code 18.70.040 and .050 addresses code provisions for any non-conforming uses or structures in Tukwila. See Attachment D for Tukwila's code. See Attachment E for comparison of non-conforming provisions of other cities. Attachment F is an excerpt from Kirkland's code that has very specific guidelines for expansion of non-conforming structures in the critical area buffers.

The policy options for the Planning Commission to consider are:

| A. Vertical Expansion | | Pro | Con |
|-----------------------|---|--|--|
| Option 1 | Allow existing buildings to expand vertically to add upper stories in exchange for buffer enhancement | Allow improvements to existing buildings and achieve buffer enhancement | Reduces future potential of the non-conforming structure to come into compliance |
| Option 2 | Do not allow vertical expansion | Preserves potential for non-conforming structure to come into compliance with critical areas code in the future. | Restricts development potential. Missed opportunity for buffer enhancement |

| B. Lateral Expansion | | Pro | Con |
|--|--|---|--|
| i) Expansion to the building side that is opposite of critical area | | | |
| Option 1 | Allow expansion on side of the building opposite of critical area in exchange for buffer enhancement; but limit it to one time expansion | Allow improvements to existing buildings and achieve buffer enhancement | Reduces future potential of the non-conforming structure to come into compliance. Harder to administer |
| Option 2 | Do not allow expansion in the buffer | Preserves potential for non-conforming structure to come into compliance with critical areas code in the future. Easy to administer | Restricts development potential. Missed opportunity for buffer enhancement |
| Staff recommends Option 1 | | | |
| ii) Expansion along the sides provided that existing distance from the structure to the buffer's edge is not reduced. | | | |
| Option 1 | Allow expansion along the existing building lines in exchange for buffer enhancement; but limit it to one time expansion and limit the sq. ft. of new intrusion into the buffer to less than 50 percent of the current intrusion. Further this option could be limited to situation where the buffer width is at least 75 percent of the required buffer | Allow improvements to existing buildings and achieve buffer enhancement | Reduces future potential of the non-conforming structure to come into compliance. Harder to administer |

| | | | |
|---|--|---|--|
| Option 2 | Do not allow expansion in the buffer | Preserves potential for non-conforming structure to come into compliance with critical areas code in the future. Easy to administer | Restricts development potential. Missed opportunity for buffer enhancement |
| Staff recommends Option 1 | | | |
| iii) Enclosing within existing footprint (such as enclosing carport, adding roof over decks) | | | |
| Option 1 | Allow enclosing within existing footprint | Less restrictive. No additional impact to the buffer. | |
| Option 2 | Do not allow enclosing within existing footprint | | Restricts development potential without much gain to the critical areas. |
| Staff recommends Option 1 | | | |

4. Geologically Hazardous Areas

Planning Commission had asked if there could be a minimum setback established from a steep slope in lieu of preparing a geotechnical report for the property. This section of the code is administered by the City's Public Works Department and their opinion is not to establish one standard setback for all slopes. Instead the setback should be established by the geotechnical engineer after evaluating site conditions for each site.

RECOMMENDATION

Consider policy options identified above and identify any additional research needed. Staff will then prepare an underline strike out of the code that addresses the gaps identified by the review of best available science. The Planning Commission will then hold a public hearing and send a recommended draft to the City Council for review and adoption.

ATTACHMENTS

- A. Stream buffer monitoring report
- B. Wetland monitoring report

- C. Map of known wetlands in Tukwila that are less than 4000 sq ft.
- D. Tukwila's non-conforming code provisions
- E. Comparison of non-conforming provisions of other cities.
- F. Kirkland's non-conforming code provisions