

## Tracey Redd

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**From:** Kristi Beckham <KBeckham@Cairncross.com>  
**Sent:** Monday, December 29, 2014 4:57 PM  
**To:** Nancy Rogers; MDRT User; Andy Williamson; 'olbrechtslaw@gmail.com'  
**Subject:** RE: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 3b2 of 3)  
**Attachments:** Pages from Pages from Pages from scan\_20141229154717 Reduced File Size Part 3b2.pdf

**Follow Up Flag:** Follow up  
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Attached is email 3b2.

### CH& Kristi Beckham

Legal Assistant

**Cairncross & Hempelmann**

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Attached is email 3b1.

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Attached is email 3a2.

**CH& Kristi Beckham**  
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Attached is email 3a1.

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**To:** Nancy Rogers; 'MDRT User'; 'Andy Williamson'; 'olbrechtslaw@gmail.com'  
**Subject:** RE: Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 3 of 3)

I am resending the attachment to Email 3 of 3 in two parts, 3a and 3b. We received bounce backs because of the file size. Attached is Part 3b.

Thank you.

**CH& Kristi Beckham**

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**From:** Nancy Rogers  
**Sent:** Monday, December 29, 2014 4:22 PM  
**To:** 'MDRT User'; 'Andy Williamson'; 'olbrechtslaw@gmail.com'  
**Cc:** Kristi Beckham  
**Subject:** Yarrow Bay Reply materials, Plat 2C PLN 13-0027 (Email 3 of 3)

Dear Mr. Examiner and MDRT Team and Mr. Williamson:

Yarrow Bay's reply materials are in three parts: (1) a 22 page memo, (2) the full PP1A decision (December 2012), and (3) the attached PDF containing the Hearing Examiner's Recommendation of Approval for The Villages Development Agreement (September 2011), together with a Department of Ecology Guidance Document (April 2005), and a memo from Transpo (December 2014). Please let me know if you do not receive all parts or have any trouble opening.

We will also be filing the separate reply materials on January 9 after we review the City's response, due Jan 7.

Thank you,

**CH& Nancy Bainbridge Rogers**

Attorney

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1           15.0    General Provisions

2                   15.1    Binding Effect and Vesting

3           1. Discretion Regarding Development Agreements. D. Bricklin (Ex. 202) stated the  
4 City has discretion as to whether to adopt a development agreement and discretion to decide its  
content. Mr. Bricklin also identified deficiencies in the City's MPD regulatory framework.

5 **Examiner Response:** *The COAs require the DA to include those controls and the validity of*  
6 *those COAs cannot be contested at this level of review. However, the issue does raise the*  
7 *tangential issue of how the DA land use controls are to be enforced. The City's project review*  
8 *criteria, such as for conditional use permits and subdivisions, require that applications comply*  
9 *with the City's zoning ordinances. They do not require compliance with the land use controls*  
10 *adopted into the DAs. One could argue with a straight face that a permit applicant would have*  
11 *no obligation to comply with land use controls newly created in the DAs to acquire permit*  
12 *approvals. Compliance with what are traditionally basic zoning requirements such as the*  
*setbacks and building heights created for the DAs arguably could not be required for the*  
*issuance of implementation project approvals. Conceivably, the City would have to enforce the*  
*DA land use controls through a breach of contract action or possibly a code enforcement action*  
*(construing a DA as an MPD permit condition).*

13 *If the enforceability of the DA newly created land use controls is truly an issue, ideally the DA*  
14 *would enable the Council to adopt regulations outside of the vested development standards that*  
15 *would provide that the DA land use controls apply to implementing project applications.*  
16 *Ironically, such an adoption would undermine the City's position that the DAs do not constitute*  
17 *development regulations. Hence the "box" argued by Mr. Bricklin. More creative ways around*  
18 *the dilemma would be to provide that the City has no obligation to issue permits that are not in*  
19 *conformance with DA standards and YB waives the right to any legal recourse if the City*  
20 *legitimately refuses to process and/or approve an application for that reason. The Examiner*  
21 *makes no recommendations or conclusions on this issue, since it is related to some of the matters*  
22 *under litigation. The issue is just brought up to ensure that the matter isn't inadvertently*  
23 *overlooked in the approval of the DAs. It is recommended that the Council consult with the City*  
24 *Attorney on this issue.*

20                   15.2    Duties of Master Developer

21           1. Single Master Developer. In Ex. 94 Susan Harvey expressed concern that DA 15.2  
22 sentence one requires clarity because it fails to make it clear that though there may only be a  
23 single Master Developer at a given time, there may be a succession of different Master  
24 Developers Transferees over time. She also expressed concern that the clause could be  
interpreted to mean each MPD could have its own, separate Master Developer.

25 **Applicant Response:** The Applicant responded by noting V MPD COA 6 and LH MPD COA 5  
26 do require a single Master Developer throughout the term of the DA but that each separate MPD  
may have its own Master Developer who may or may not be the same entity.

1 **Examiner Response:** *DA 15.2 already provides that a Master Developer Transferee may take*  
2 *the place of the Master Developer, but it does not expressly limit the transferee to one. It is*  
3 *unlikely that a court would interpret DA15.2 to allow multiple transferees to operate at the same*  
4 *time, but the language can be easily clarified by modifying the parenthetical from "... (or Master*  
5 *Developer Transferee)..." to "... (or single Master Developer Transferee)..."*

6 *As to Ms. Harvey's concern that 15.2 could be interpreted as authorizing a different Master*  
7 *Developer for each of the MPDs; that is probably the way it would be interpreted. Nothing in*  
8 *the DAs require that the Master Developers for each MPD be the same. If the intent of the*  
9 *Council is to require one Master Developer run both MPDs, the DAs should be clarified*  
10 *accordingly.*

11 **B. Findings of Fact – General Comments**

12 1. Moratoriums. C. Proctor (Ex. 191) spoke to the moratorium status of the MPD. She  
13 also expressed concern regarding potential transparency issues. Ms. Proctor noted that the public  
14 felt deceived when the Council let the moratorium on the MPDs expire by simply not extending  
15 it without any public notice. She wrote that this action in addition to the YB funding agreement  
16 will be reviewed by the State Auditor's Office.

17 **Examiner Response:** *Ms. Proctor's comment is outside the scope of the DA hearings.*

18 2. DA Committees. In Ex. 126, Cindy Wheeler expressed concern over the membership  
19 of the citizen committees formed by the DAs and the fact that they had not been formed prior to  
20 the DA hearings.

21 **Applicant Response:** In its response to this issue (Ex. 139), the Applicant stated the MPD COA  
22 did require them to form the committee before approval of the DA and that, with the exception of  
23 the noise committee, it intended to form the committees within 30 days of the approval of the  
24 DAs. The noise committee will be convened two weeks following the beginning of on-site  
25 construction for each MPD.

26 **Examiner Response:** *None of the COAs require the citizen committees to be formed prior to the*  
*DA hearings or have input in that process. The COAs all arguably anticipated that the*  
*committees would assist in the implementation of the DAs as opposed to their approval.*

*The Green River Valley Road Review Committee, created by V COA 30 and LH COA 33, has a*  
*mandate limited to reviewing a traffic calming study and identifying those calming measures that*  
*YB should construct. The condition arguably anticipates that the Green River committee will*  
*meet after the DA review is completed by providing that the implementation of traffic calming*  
*measures adopted by the City in its DAs shall be subject to the subsequent approval of the Green*  
*River Committee.*

1 *V COA 45 provides that the mandate of the noise review committee is to review and evaluate*  
2 *compliance with the noise conditions imposed upon the MPDs. The DA is the source of some of*  
3 *those controls. The COAs limit committee review and evaluation to conditions already adopted.*

4 *Similar to the noise review committee, LH COA 86 provides that the mandate of the water*  
5 *quality control committee is to review compliance with stormwater requirements that the City*  
6 *has already adopted into the DA or elsewhere.*

7 *The make-up of the committees is set by the COAs and could not be modified without amendment*  
8 *of the MPD approvals. If the Council wishes to provide for committee input on the DAs, it could*  
9 *provide the committees that opportunity by remanding the DAs back to the Examiner for*  
10 *consideration of committee concerns. Since DAs are not considered project permit applications,*  
11 *they are not subject to the one hearing rule of the Regulatory Reform Act, Chapter 36.70B RCW.*  
12 *However, the City Attorney would have to determine if a remand would be consistent with the*  
13 *City's regulations.*

14 3. **Impartiality.** Two individuals submitted testimony related to claims or perceptions of  
15 impartiality. G. Evans (Ex. 14) supported and commended the efforts of City officials and staff.  
16 J. McElroy (Ex. 15) expressed strong dissatisfaction with the City's decision making process.  
17 Dennis and Diana Boxx (Ex. 129) do not feel the City has the best interests of the residents in  
18 mind, and is favoring the developer through these hearings.

19 **Examiner Response:** *The citizen concerns above are presented for consideration by the*  
20 *Council. Related to the partiality issue too is a series of objections and responses between the*  
21 *City Attorney and David Bricklin regarding the make-up of project opposition groups and their*  
22 *motivations. The Examiner found none of the multiple objections between the attorneys to be*  
23 *relevant to his consideration of the DAs, but is allowing the exhibits to remain in the record on*  
24 *the premise that the Council may find it relevant in its exercise of discretionary matters to know*  
25 *what part of its constituency is requesting changes to the DAs and why. See, e.g., Ex. 218, 232,*  
26 *237, 238, 243, 247, 263, 265, 273.*

19 4. **Natural Setting and the Comprehensive Plan.** Gil Bortleson made the assertion the  
20 scale of development expected of the MPDs is inconsistent with the Comprehensive Plan goal of  
21 ". . . preservation of the quality of [the City's] natural setting, its scenery and views . . .," (Comp  
22 Plan, p. 4-1). See exhibits 113, 209, and 269. In response, Mr. Bortleson requested an additional  
23 condition requiring the formation of a Visual, Aesthetic, and Buffer Plan which would address  
24 visual and aesthetic values, retain natural landforms and vegetation, and provide buffers,  
25 setbacks, and conservation easements transitioning to adjacent properties. Mr. Bortleson cited  
26 BDMC 18.98.140.B and 18.72.030.E as supporting this requirement.

24 **Applicant Response:** The Applicant responded to this assertion in Ex. 209, stating that  
25 imposing additional requirements was inappropriate as the adequacy of the MPD approvals and  
26 the EIS is a closed matter. Furthermore, in regards to the BDMC sections cited by Mr.

1 Bortleson, YB states that the MPDs have been found consistent with BDMC 18.98.140.B in  
2 MPD COL 53 and the requirements of BDMC 18.72.030.E are addressed by DA 5.5.

3 **Examiner Response:** *The visual and aesthetic impacts of the MPDs were addressed by the*  
4 *EISs, which found that no mitigation was required as no significant impacts would occur (V EIS*  
5 *pp. 3-65 through 3-67; LH EIS pp. 3-61 through 3-64). Mr. Bortleson has provided no new*  
6 *information beyond that considered by the EISs and the City during the consideration of the*  
7 *MPDs. Of additional consideration is the fact that the MPDs and DAs incorporate many of the*  
8 *features called for by Mr. Bortleson, including buffers and setbacks. The City's tree*  
9 *preservation ordinance requires the retention of trees. BDMC requirements for buffers between*  
10 *non-compatible land uses (BDMC 18.72.030) would apply to the MPDs. Despite all this, as an*  
11 *aesthetic standard, the Council could reasonably require additional setback/vegetative retention*  
12 *standards through its authority to add land use restriction to the DA under V COA 128.*

13  
14 *Mr. Bortleson's made an assertion the MPD violate the intent of the Comprehensive Plan to*  
15 *preserve the quality of the City's natural setting (BDMC 18.98.140.B and 18.72.030.E). Similar*  
16 *to the Examiner responses addressing compatibility with rural character, any requirements for a*  
17 *natural setting must be construed along with the City's obligation to grow at urban densities.*  
18 *The extensive amount of open space and other design features of the MPDs preserve the natural*  
19 *setting as much as can reasonably be expected within the context the urban densities of the*  
20 *project.*

21  
22 5. Violations of State Law. In reference to Mr. Derdowski's testimony (Ex. 40 and  
23 verbal testimony), H. Russell (Ex. 72) stated that several sections of the BD DA violate WA state  
24 law; citing specifically Sections 3.0, 7.2.1, 7.3.1, 8.2, 10.5, 11.1, 12.9.1, and 15.7 of the DA.

25 **Examiner Response:** *Mr. Russell does not identify what laws the DA sections violate, so it is not*  
26 *possible to respond to his concerns.*

1 6. Loss of Rural Character and Historical Resources. Seven parties commented on  
2 matters pertaining to Black Diamond's rural character. J. Paulsen (Ex. 3-13a) requested that the  
3 DA ensure urban services are provided on the urban side of the urban growth boundary. P.  
4 Rimbo (3-13e) stated DA 5.2.3 (C, D, and E) should not allow structural protuberances into  
5 sensitive areas setbacks, asserting that this will detract from the rural character of the community.  
6 Matthew and Tiffanie McGibney (Ex. 12) stated, "everything we value in our small town and  
7 moved here for is in jeopardy of being destroyed." M. Stewart (Ex. 48) expressed rural means a  
8 different thing to her than as conceived by Mr. Arendt. The Greater Maple Valley  
9 Unincorporated Area Council (Ex. 63) expressed concern about adverse impacts on the rural  
10 areas due to the placement of the proposed Stormwater Detention Facility outside the UGA. S.  
11 Davis (Ex. 107) testified she hoped to preserve the small town feel and history in Black  
12 Diamond. Two parties commented on potential loss of Black Diamond's historical resources (Ex.  
13 36 and 99).

1 **City Response:** The City noted the minimum density of the MPDs was set by the Black  
2 Diamond MPD development regulations codified at BDMC 18.98.120(E) (Ex. 202). These  
3 regulations, in turn, cross-referenced the MPD base density standard set forth in the 2009 Black  
4 Diamond Comprehensive Plan, as well as the base density standard set in all development  
5 agreements or pre-annexation ordinances. The City's Comprehensive Plan's Land Use chapter  
6 (Section 5-13) calls for densities that are "urban in nature (minimum 4 units per gross acre) ...."  
Likewise, the BDUGAA (which applies to large portions of the MPDs) calls for a base density of  
4 units per acre. These base density standards are, in large portion, responsible for the total  
dwelling unit count.

7 **Examiner Response:** *This matter has already been considered in both MPDs, see MPD COL*  
8 *27, which concludes that the minimum densities of the MPDs are legally required. As discussed*  
9 *elsewhere, V COA 131 requires all implementing project applications to propose densities of at*  
10 *least four dwelling units per acre. Unless the Council can have YB voluntarily agree to not*  
11 *develop portions of its property, this means that the Council cannot consider changing the*  
12 *density of the project without an MPD amendment. As testified by YB at the DA hearings, the*  
13 *author of 'Rural by Design' has concluded that the MPD design meets the objectives of his book.*  
14 *No one other than Mr. Rimbo has made any other suggestions on how to maintain rural*  
15 *character within the densities required for the project. The suggestions made by Mr. Rimbo can*  
16 *be required to be included in the DAs if the Council chooses. Beyond this, the Council will have*  
17 *to work within the parameters of the densities required by the COAs for the MPDs to protect*  
18 *rural character.*

19 7. Effect of Construction Activity. Vicki Harp (Ex. 3-13i) and T. Hanson (126) both  
20 testified to the effects of construction activity. Ms. Harp is concerned about the safety effects of  
21 dump trucks in the regional traffic stream. Mr. Hanson is concerned the vibration from heavy  
22 equipment will be felt at his property because his land is all sand.

23 **Examiner Response:** *Regarding Harp's concerns, there is no evidence in the record that dump*  
24 *truck traffic will be a safety issue. Regarding Hanson's concerns, he already presented his*  
25 *vibration concerns during the MPD hearings, as shown at p. 19 of the Hearing Examiner*  
26 *Recommendation for The Villages MPD (signed on May 11, 2010). However, his concerns over*  
*ground vibration from construction vehicles were not otherwise addressed in the MPD decisions.*  
*There is no evidence in the record to show that vibration impacts could create any damage and*  
*the COAs do not require that they be addressed in the DA. If the Council would like to address*  
*this issue it would need the consent of YB.*

8. Dust. T. Hanson (Ex. 126) requested the inclusion of dust control measures in the  
DA.

**Examiner Response:** *Regarding Hanson's concerns, he already presented his dust concerns*  
*during the MPD hearings, as shown at p. 19 of the Hearing Examiner Recommendation for The*  
*Villages MPD (signed on May 11, 2010). However, his concerns were not otherwise addressed*  
*in the MPD decisions. The MPD FEIS notes at 4-88 through 89 that YB will be required to*

1 *comply with the Puget Sound Clean Air Agency's (PSCAA) Regulation I, Section 9.15 requiring*  
2 *reasonable precautions to avoid dust emissions. This environmental protection may include*  
3 *application of water or other dust suppressants during dry weather. The COAs do not require*  
4 *the DAs to address dust impacts. Any further mitigation would require the voluntary consent of*  
5 *YB.*

#### VIII. Recommended Implementing Conditions

6 As a conclusion of law it is determined that the following DA revisions are necessary to  
7 implement the MPDs as required by the MPD COAs. It is further determined that with the  
8 revisions below the DAs satisfy all of the DA requirements of the COAs. The reasons why each  
9 revision recommended below are found necessary are discussed in Section VII of this decision.

10 A. Open Space Boundary Amendments. V DA 4.4.6 should be amended to require  
11 that minor amendments for changes to open space boundaries may only be used if all the  
12 prerequisites for qualifying as a minor amendment in BDMC 18.198.100(D) are met.

13 B. Land Use Plan. DA 4.4.8 should be revised to require that any changes in the  
14 approximate acreages identified in the legend of the Land Use Plan, V DA Ex. L, may not be  
15 changed by more than 5% without an MPD amendment.

16 C. Accessory Dwelling Units. VDA 4.7.3 should be clarified to provide that  
17 accessory dwelling units count towards the total number of dwelling units authorized for the  
18 MPDs.

19 D. City Enforcement of Privately Adopted Sign Standards. V DA 5.4.3 should be  
20 revised to remove the obligation for the City to enforce privately adopted sign standards.

21 E. Covington Water District. V DA 7.2 should be clarified to provide that  
22 Covington water system standards and the like shall apply within areas of the MPDs subject to  
23 the Covington Water District, to the extent required by law.

24 F. Certificates of Water Availability. V DA 7.2.1 should be eliminated. It provides  
25 that the DA shall serve in the place of certificates of water availability for the MPDs.

26 G. Baseline for Water Conservation Plan. V DA 7.2.5 sets an inaccurate baseline  
for measuring water conservation. An accurate historical figure should be used as referenced in  
Section VII.

H. Sewer Availability. V DA 7.3.1, stating that the DA provides for sewer  
availability should be stricken.

I. Stormwater Enforcement. V DA 7.4.5 shall be revised to include timelines for  
phosphorous mitigation and mechanisms for enforcement. It should be noted that Section VII  
encourages the Council to negotiate timelines and enforcement for the "no net increase" standard

1 voluntarily assumed by YB, but recognizes that YB cannot be compelled to agree to such  
2 requirements.

3 J. Fish and Wildlife Buffer. It is recommended that staff provide the Council an  
4 explanation, based upon the record, of whether the wildlife corridors comply with the City's  
5 Sensitive Areas Ordinance and that the corridor boundaries be revised as necessary if they do not  
6 before any agreement is made to the boundaries as identified in V DA 8.2.2

7 K. Detail of Constraints Map. It is recommended that staff make the constraint  
8 maps that set the sensitive area boundaries in V DA 8.2 available for City Council review and  
9 explain to the Council, based on information contained in the record, the level of detail provided  
10 in the map so that Council may determine if they are detailed enough to be used for  
11 implementing projects.

12 L. Mine Hazard Areas. The City Council should not agree to any mine hazard area  
13 delineations in 8.2.3 until revised language is added to the DAs as specified in Section VII.

14 M. Open Space Assessment. V DA 9.1 should be revised to enable the City to  
15 require that MPD-wide open space requirements be satisfied at earlier stages of development  
16 within MPD phases as discussed in Section VII.

17 N. Park Dedication Plan. V DA 9.9.1 should be revised to provide for a more global  
18 park dedication plan that prevents park dedications to be conducted on a piecemeal basis at  
19 project implementation.

20 O. Parks Standards. V DA Chapter 9 should be clarified to provide that the City's  
21 Parks and Open Space Plan will govern park design standards when stricter standards are not  
22 imposed by the DA.

23 P. High School in Commercial Area. City staff should clarify, using information in  
24 the record, if the high school is proposed for a commercially designated area. If so, the Council  
25 should specify in the DA when an updated fiscal analysis will be necessary to ensure the fiscal  
26 neutrality of the MPDs.

Q. Police and Fire LOS. The DA should be revised to provide that the fiscal  
analysis shall maintain the City's police and fire level of service standards.

R. MPD Subject to COAs. V DA 15.1 should be revised to provide that all  
development within the properties subject to the MPD approval shall be developed in  
conformance with all COAs.

S. Conceptual Site Plan. The conceptual site plan, DA Ex. A, should be removed  
from the DA.

1 T. City Approval of Traffic Reports. The DA traffic monitoring plans, DA Ex. F,  
2 should be revised to require City approval of all traffic monitoring reports.

3 U. Project Level Concurrency. The DA monitoring plans, Ex. F, should be revised  
4 to provide that the City will not approve any implementing projects unless they comply with  
GMA concurrency requirements as adopted into the City's concurrency regulations.

5 V. Land Use Plan Legend. The legend on Land Use Plan, DA Ex. L, shall be  
6 clarified to differentiate between uses as required by LH COA 151 prior to DA approval.

7 W. Funding Agreement. It is recommended that the DA be revised to require that the  
8 proposed funding agreement attached as DA Ex. N, or a substantially similar agreement, be  
9 executed prior to the acceptance of any implementing project applications or prior to the  
10 execution of the DA and that no applications already received be processed further until the Ex.  
11 N agreement is executed.

12 X. Stormwater monitoring. V DA Ex. O should be clarified to provide that the  
13 Kendig stormwater monitoring plan shall be required to extend for five years beyond the  
14 completion of all development that discharges into the facility.

15 ORDERED this 14<sup>th</sup> day of September, 2011.

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18 Phil A. Olbrechts  
19 Hearing Examiner for Black Diamond  
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# ATTACHMENT

Department of Ecology Guidance Document, Appendix 8-C,  
Guidance on Widths of Buffers and Ratios for  
Compensatory Mitigation for Use with the  
Western Washington Wetland Rating System  
(April 2005)

## Appendix 8-C

# Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System

## 8C.1 Introduction

This appendix provides guidance on widths of buffers, ratios for compensatory mitigation, and other measures for protecting wetlands that are linked to the *Washington State Wetland Rating System for Western Washington-Revised* (Hruby 2004b). Refer to Appendix 8-D for guidance for eastern Washington. Appendices 8-C through 8-F have been formatted similar to the main text of this volume (i.e., with a numbering system) to help with organization.

The tables below list the recommended widths of buffers for various alternatives, examples of measures to minimize impacts, and ratios for compensatory mitigation.

- **Table 8C-1.** Width of buffers needed to protect wetlands in western Washington if impacts from land use and wetland functions are NOT incorporated (Buffer Alternative 1). [Page 4]
- **Table 8C-2.** Width of buffers based on wetland category and modified by the intensity of the impacts from changes in proposed land use (Buffer Alternative 2). [Page 5]
- **Table 8C-3.** Types of land uses that can result in high, moderate, and low levels of impacts to adjacent wetlands (used in Buffer Alternatives 2 and 3). [Page 5]
- **Table 8C-4.** Width of buffers needed to protect Category IV wetlands in western Washington (Buffer Alternative 3). [Page 6]
- **Table 8C-5.** Width of buffers needed to protect Category III wetlands in western Washington (Buffer Alternative 3). [Page 6]
- **Table 8C-6.** Width of buffers needed to protect Category II wetlands in western Washington (Buffer Alternative 3). [Page 7]
- **Table 8C-7.** Width of buffers needed to protect Category I wetlands in western Washington (Buffer Alternative 3). [Page 8]
- **Table 8C-8.** Examples of measures to minimize impacts to wetlands from different types of activities. [Page 10]

- **Table 8C-9.** Comparison of recommended buffer widths for high intensity land uses between Alternative 3 (step-wise scale) and Alternative 3A (graduated scale) based on score for habitat functions [Page 14].
- **Table 8C-10.** Comparison of recommended widths for buffers between Alternative 3 and Alternative 3A for proposed land uses with high impacts with mitigation for impacts. [Page 15]
- **Table 8C-11.** Mitigation ratios for projects in western Washington. [Page 21]

The guidance in this appendix can be used in developing regulations such as critical areas ordinances for protecting and managing the functions and values of wetlands. The recommendations are based on the analysis of the current scientific literature found in Volume 1. The detailed rationale for the recommendations is provided in Appendices 8-E and 8-F.

The recommendations on buffer widths and mitigation ratios are general, and there may be some wetlands for which these recommendations are either too restrictive or not protective enough. The recommendations are based on the assumption that a wetland will be protected only at the scale of the site itself. They do not reflect buffers and ratios that might result from regulations that are developed based on a larger landscape-scale approach.

## 8C.2 Widths of Buffers

Requiring buffers of a specific width has been one of the primary methods by which local jurisdictions in Washington have protected the functions and values of wetlands. Generally, buffers are the uplands adjacent to an aquatic resource that can, through various physical, chemical, and biological processes, reduce impacts to wetlands from adjacent land uses. The physical characteristics of buffers (e.g., slope, soils, vegetation, and width) determine how well buffers reduce the adverse impacts of human development. These characteristics are discussed in detail in Chapter 5, Volume 1.

In addition to reducing the impacts of adjacent land uses, buffers also protect and maintain a wide variety of functions and values provided by wetlands. For example, buffers can provide the terrestrial habitats needed by many species of wildlife that use wetlands to meet some of their needs.

The review of the scientific literature has shown, however, that buffers alone cannot adequately protect all functions that a wetland performs. Additional guidance is, therefore, provided on other ways in which wetlands can be managed and regulated to provide some of the necessary protection that buffers alone do not provide. The following guidance for protecting the functions and values of wetlands is based on their category as determined through the rating system for western Washington.

## Basic assumptions for using the guidance on widths for buffers

Recommendations for widths of buffers assume that:

- The wetland has been categorized using the *Washington State Wetland Rating System for Western Washington-Revised* (Hruby 2004b).
- The buffer is vegetated with native plant communities that are appropriate for the *ecoregion* or with a plant community that provides similar functions. Ecoregions denote areas of general similarity in ecosystems and in the type, quality, and quantity of environmental resources. The U.S. Environmental Protection Agency maintains updated maps of ecoregions that are available at <http://www.epa.gov/naau/ydh/pages/models/ecoregions.htm>. Ecoregions currently mapped for Washington are: Coast Range, Puget Lowland, Cascades, Eastern Cascades Slopes and Foothills, North Cascades, Columbia Plateau, Blue Mountains, and Northern Rockies.
- If the vegetation in the buffer is disturbed (grazed, mowed, etc.), proponents planning changes to land use that will increase impacts to wetlands need to rehabilitate the buffer with native plant communities that are appropriate for the ecoregion, or with a plant community that provides similar functions.
- The width of the buffer is measured along the horizontal plane (see drawing below):



- The buffer will remain relatively undisturbed in the future within the width specified.

Three alternatives for protecting the functions of wetlands using buffers are described in the following sections:

- **Buffer Alternative 1.** Width based only on wetland category.
- **Buffer Alternative 2.** Width based on wetland category and the intensity of impacts from proposed changes in land use.
- **Buffer Alternative 3.** Width based on wetland category, intensity of impacts, and wetland functions or special characteristics. This alternative has two options for determining the widths of buffers when they are based on the score for habitat. Alternative 3 provides three buffer widths based on habitat scores, while Alternative 3A provides a graduated scale of widths for buffers based on habitat scores.

The buffer widths recommended for each alternative were based on the review of scientific information in Volume 1. The guidance in this appendix synthesizes the information about the types and sizes of buffers needed to protect the functions and special characteristics of wetlands.

Appendices 8-C and 8-D do not provide the metric equivalents for buffer widths even though most of the research on buffers uses the metric scale. This decision was made because most local governments use the English Customary measures. For example, a buffer width is set at 50 feet rather than 15 meters.

### 8C.2.1 Buffer Alternative 1: Width Based Only on Wetland Category

This alternative, in which the width of buffers is based only on the category of the wetland, is the simplest (Table 8C-1). The width recommended for each category of wetland in Alternative 1 is the widest recommended for that category in both Alternatives 2 and 3 (discussed below). Alternative 1 provides the least flexibility because many different types of wetlands and types of human impacts are combined. For example, not all wetlands that fall into Category I or II need a 300-foot buffer. If no distinctions are made between the wetlands that fall into Category I or II, all wetlands that fall into these categories have to be protected with a 300-foot buffer so adequate protection is provided for those wetlands that do need a buffer this wide. Also, the widths recommended for this alternative are those needed to protect the wetland from proposed land uses that have the greatest impacts since no distinctions between impacts are made.

**Table 8C-1. Width of buffers needed to protect wetlands in western Washington if impacts from land use and wetland functions are NOT incorporated (Buffer Alternative 1).**

Category of Wetland	Widths of Buffers
IV	50 ft
III	150 ft
II	300 ft
I	300 ft

### 8C.2.2 Buffer Alternative 2: Width Based on Wetland Category and Modified by the Intensity of the Impacts from Proposed Land Use

The second alternative increases the regulatory flexibility by including the concept that not all proposed changes in land uses have the same level of impact (Table 8C-2). For example, one new residence being built on 5 acres of land near a wetland is expected to have a smaller impact than 20 houses built on the same 5 acres. Three categories of impacts from proposed land uses are outlined: land uses that can create high impacts, moderate impacts, and low impacts to wetlands. Different land uses that can cause these levels of impacts are listed in Table 8C-3.

**Table 8C-2. Width of buffers needed to protect wetlands in western Washington considering impacts of proposed land uses (Buffer Alternative 2).**

Category of Wetland	Land Use with Low Impact *	Land Use with Moderate Impact *	Land Use with High Impact*
IV	25 ft	40 ft	50 ft
III	75 ft	110 ft	150 ft
II	150 ft	225 ft	300 ft
I	150 ft	225 ft	300 ft

\* See Table 8C-3 below for types of land uses that can result in low, moderate, and high impacts to wetlands.

**Table 8C-3. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.**

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations *
High	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Urban</li> <li>• Industrial</li> <li>• Institutional</li> <li>• Retail sales</li> <li>• Residential (more than 1 unit/acre)</li> <li>• Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.)</li> <li>• High-intensity recreation (golf courses, ball fields, etc.)</li> <li>• Hobby farms</li> </ul>
Moderate	<ul style="list-style-type: none"> <li>• Residential (1 unit/acre or less)</li> <li>• Moderate-intensity open space (parks with biking, jogging, etc.)</li> <li>• Conversion to moderate-intensity agriculture (orchards, hay fields, etc.)</li> <li>• Paved trails</li> <li>• Building of logging roads</li> <li>• Utility corridor or right-of-way shared by several utilities and including access/maintenance road</li> </ul>
Low	<ul style="list-style-type: none"> <li>• Forestry (cutting of trees only)</li> <li>• Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.)</li> <li>• Unpaved trails</li> <li>• Utility corridor without a maintenance road and little or no vegetation management.</li> </ul>

\* Local governments are encouraged to create land-use designations for zoning that are consistent with these examples.

### 8C.2.3 Buffer Alternative 3: Width Based on Wetland Category, Intensity of Impacts, Wetland Functions, or Special Characteristics

The third alternative provides the most flexibility by basing the widths of buffers on three factors: the wetland category, the intensity of the impacts (as used in Alternative 2), and the functions or special characteristics of the wetland that need to be protected as determined through the rating system. The recommended widths for buffers are shown in Tables 8C-4 to 8C-7. Using this alternative, a wetland may fall into more than one category in the table. For example, an interdunal wetland may be rated a Category III wetland because it is an isolated interdunal wetland, but it may be rated a Category II wetland based on its score for functions.

If a wetland meets more than one of the characteristics listed in Tables 8C-4 to 8C-7, the buffer recommended to protect the wetland is the widest one. For example, if a Category I wetland (Table 8C-7) scores 32 points for habitat and 27 points for water quality functions, a 300-foot buffer is needed for land uses with high impacts because the widths needed to protect habitat are wider than those needed for the other functions.

**Table 8C-4. Width of buffers needed to protect Category IV wetlands in western Washington** (Buffer Alternative 3 for wetlands scoring less than 30 points for all functions).

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use	Other Measures Recommended for Protection
Score for all 3 basic functions is less than 30 points	Low - 25 ft Moderate - 40 ft High - 50 ft	No recommendations at this time <sup>1</sup>

**Table 8C-5. Width of buffers needed to protect Category III wetlands in western Washington** (Buffer Alternative 3 for wetlands scoring 30 - 50 points for all functions).

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use	Other Measures Recommended for Protection
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low - 75 ft Moderate - 110 ft High - 150 ft	No recommendations at this time <sup>1</sup>
Not meeting above characteristic	Low - 40 ft Moderate - 60 ft High - 80 ft	No recommendations at this time <sup>1</sup>

<sup>1</sup> No information on other measures for protection was available at the time this document was written. The Washington State Department of Ecology will continue to collect new information for future updates to this document.

**Table 8C-6. Width of buffers needed to protect Category II wetlands in western Washington** (Buffer Alternative 3 for wetlands scoring 51-69 points for all functions or having the “Special Characteristics” identified in the rating system).

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (Apply most protective if more than one criterion is met.)	Other Measures Recommended for Protection
High level of function for habitat (score for habitat 29 - 36 points)	Low - 150 ft Moderate - 225 ft High - 300 ft*	Maintain connections to other habitat areas
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low - 75 ft Moderate - 110 ft High - 150 ft	No recommendations at this time <sup>2</sup>
High level of function for water quality improvement and low for habitat (score for water quality 24 - 32 points; habitat less than 20 points)	Low - 50 ft Moderate - 75 ft High - 100 ft	No additional surface discharges of untreated runoff
Estuarine	Low - 75 ft Moderate - 110 ft High - 150 ft	No recommendations at this time <sup>2</sup>
Interdunal	Low - 75 ft Moderate - 110 ft High - 150 ft	No recommendations at this time <sup>2</sup>
Not meeting above characteristics	Low - 50 ft Moderate - 75 ft High - 100 ft	No recommendations at this time <sup>2</sup>
<p>* Fifty of the 122 wetlands used to calibrate the rating system for western Washington were Category II. Of these 50, only five (10%) would require 300-foot buffers to protect them from high-impact land uses. The maximum buffer width for the remaining 45 wetlands would be 150 feet.</p>		

<sup>2</sup> See footnote on the previous page.

**Table 8C-7. Width of buffers needed to protect Category I wetlands in western Washington (Buffer Alternative 3 for wetlands scoring 70 points or more for all functions or having the “Special Characteristics” identified in the rating system).**

Wetland Characteristics	Buffer Widths by Impact of Proposed Land Use (Apply most protective if more than one criterion is met)	Other Measures Recommended for Protection
Natural Heritage Wetlands	Low - 125 ft Moderate – 190 ft High – 250 ft	No additional surface discharges to wetland or its tributaries No septic systems within 300 ft of wetland Restore degraded parts of buffer
Bogs	Low - 125 ft Moderate – 190 ft High – 250 ft	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, need to maintain connections to other habitat areas Restore degraded parts of buffer
Estuarine	Low - 100 ft Moderate – 150 ft High – 200 ft	No recommendations at this time <sup>3</sup>
Wetlands in Coastal Lagoons	Low - 100 ft Moderate – 150 ft High – 200 ft	No recommendations at this time <sup>3</sup>
High level of function for habitat (score for habitat 29 - 36 points)	Low – 150 ft Moderate – 225 ft High – 300 ft	Maintain connections to other habitat areas Restore degraded parts of buffer
Moderate level of function for habitat (score for habitat 20 - 28 points)	Low – 75 ft Moderate – 110 ft High – 150 ft	No recommendations at this time <sup>3</sup>
High level of function for water quality improvement (24 – 32 points) and low for habitat (less than 20 points)	Low – 50 ft Moderate – 75 ft High – 100 ft	No additional surface discharges of untreated runoff
Not meeting any of the above characteristics	Low – 50 ft Moderate – 75 ft High – 100 ft	No recommendations at this time <sup>3</sup>

<sup>3</sup> See footnote on page 6.