

City of Mukilteo, Washington  
**MUKILTEO, WASHINGTON**

**ORDINANCE NO. 1147**

**AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, AMENDING THE CITY'S WETLAND REGULATIONS IN RESPONSE TO THE CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD REMAND OF THE WETLAND ORDINANCE (ORDINANCE 1112) BACK TO THE CITY OF MUKILTEO TO BRING ITS WETLAND REGULATIONS INTO COMPLIANCE WITH RCW 36.70A.172(1); ADOPTING WETLAND BUFFER, BUFFER AVERAGING AND BUFFER REDUCTION REGULATIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council adopted Ordinance 724, Interim Wetland Regulations on March 23, 1992; and

**WHEREAS**, the Growth Management Act ("GMA") of the State of Washington requires cities to update their critical areas ordinances by December 2004; and

**WHEREAS**, after twelve (12) years of enforcing the City's current regulations, the wetland ordinance needed revising to be consistent with the State rating system, and to incorporate updated or new environmental protection methodologies based on the best available science; and

**WHEREAS**, on January 24, 2005, after an extensive public process, the Mukilteo City Council adopted Ordinance 1112 implementing new wetland regulations; and

**WHEREAS**, Pilchuck Audubon Society appealed the City's Ordinance to the Central Puget Sound Growth Management Hearings Board arguing that the City failed to apply Best Available Science in the wetland buffer reduction section of the Ordinance; and

**WHEREAS**, the Central Puget Sound Growth Management Hearings Board agreed with Pilchuck Audubon Society and remanded the Ordinance back to the City of Mukilteo;

**WHEREAS**, the City Council held a public hearing on the revised wetland buffers and determined that the City should apply DOE buffer widths.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, HEREBY DO ORDAIN AS FOLLOWS:**

**Section 1. Wetland Buffer Regulations.** Section 17.52.B.100 (E) (F) (G) (H) & (M), Buffer Areas, Averaging, and Reduction, is hereby amended to as set forth below.

**17.52B.100 Buffer areas. (Subsections E, F, G, H & M Only)**

E. Buffer Widths: Buffers shall be established using the “Buffer Alternative 3A” methodology contained in the Department of Ecology’s document titled “*Freshwater Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands, Appendix 8-C*”. All buffer widths shall be measured from the wetland boundary as surveyed in the field. If according to the buffer mitigation plan, the buffer is not sufficient to protect the wetland; the City may require larger buffers where it is necessary to protect wetland functions based on site-specific characteristics. Buffer Alternative 3A establishes buffer widths based on graduated scale based on habitat point value for wetlands.

Wetland Types or Points for Habitat	Cat I			Cat I-III						
	NHW	Bogs	E & L	20	21	22	23	24	25	26
High Intensity	250	250	200	100	100	120	140	160	180	200
Moderate Intensity	190	190	150	75	75	90	105	120	135	150

Wetland Types or Points for Habitat	Cat I-III					Cat I & II	Cat III	Cat III	Cat IV
	27	28	29	30	≥31	WC 24-32 & Hab.<20	Inter-dunal	≤20	≤30
High Intensity	220	240	260	280	300	100	150	80	50
Moderate Intensity	165	180	195	210	225	75	110	60	40

WC = Water Quality Score  
 NHW = Natural Heritage Wetland  
 E & L = Estuarine and Lagoons  
 Forested Wetlands = Buffer is based on Habitat Score  
 None = Wetlands which do not meet any of the other listed types

Where:

Impact Level	Adjacent Land Uses
High	Commercial, Urban, Industrial, Institutional, Retail sales, Residential greater than 1 unit/acre, High-intensity agriculture (dairies, nurseries, greenhouses, etc.), High-intensity recreation (golf courses, ball field, etc.), and Hobby farms
Moderate	Residential less than 1 unit/acre, open space (parks with biking or jogging trails), Moderate-intensity agriculture (orchards, hay field, etc), paved trails, logging roads, utility corridor or right-of-way shared by several utilities including access roads

F. Buffer Measurement: Buffers shall be established using the “Buffer Alternative 3A” methodology contained in the Department of Ecology’s document titled “*Freshwater Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands, Appendix 8-C*”. All buffer widths shall be measured from the wetland boundary as surveyed in the field. If according to the buffer mitigation plan, the buffer is not sufficient to protect the wetland; the City may require larger buffers where it is necessary to protect wetland functions based on site-specific characteristics. Buffer Alternative 3A

establishes buffer widths based on wetland category, intensity of impacts, and wetland functions or special characteristics.

- G. **Buffering Averaging:** The widths of buffers may be averaged if this will improve the protection of wetland functions or if it is the only way to allow for reasonable use of a parcel. There is no scientific information available to determine if averaging the widths of buffers actually protects wetland functions, therefore averaging shall only be allowed in the below listed situations. Averaging may be used in conjunction with any of the other provisions for reduction in buffers.
1. Averaging to improve wetland protection may be permitted when all of the following conditions are met:
    - a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower rated area.
    - b. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion.
    - c. The total area of the buffer averaging is equal to the area required without averaging.
    - d. The buffer at its narrowest point is never less than  $\frac{3}{4}$  of the required width.
  2. Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:
    - a. There are no feasible alternative to the site design that could be accomplished without buffer averaging.
    - b. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a report from a qualified wetland professional.
    - c. The total buffer areas after being averages is equal to the area required without the averaging.
    - d. The buffer at its narrowest point is never less than  $\frac{3}{4}$  of the required buffer width.
- H. **Buffer Reduction:** The buffer width may be reduced from high-intensity levels to moderate intensity levels under the following conditions:
1. For wetland that score moderate or high for habitat (20 points or more for the habitat functions), the width of the buffer can be reduced if both the following are met:
    - a. A relatively undisturbed, vegetated corridor at least 100-feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. Priority Habitats in Western Washington include: Wetlands, Riparian zones, Aspen stands, Cliffs, Prairies,, Caves, Stands of Oregon White Oak, Old-growth forests, Estuary/estuary-like, Marine/estuarine shorelines, eelgrass meadows, Talus slopes, Urban natural open space.
    - b. 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.
    - c. Measures to minimize the impacts of different land uses on wetlands shall be applied.
  2. For wetlands that score less than 20 points for habitat, the buffer width can be reduced to that required for moderate land-use impacts by applying measure to minimize the impacts of the proposed land uses.

3. The following list of mitigation measures as referenced above shall be used to minimize impacts from proposed development on wetlands:

Disturbance	Activities that Cause Disturbance	Measures to Minimize Impacts
Lights	Parking lots, Warehouses, Manufacturing, Residential	Direct lights away from wetland
Noise	Manufacturing, Residential	Locate activity that generates noise away from wetland
Toxic Runoff*	Parking lots, Roads, Manufacturing, Residential areas, Application of agricultural pesticides, landscaping	Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered. Establish covenants limiting use of pesticides within 150 feet of a wetland. Apply integrated pest management.
Stormwater Runoff	Parking lots, Roads, Manufacturing, Residential areas, Commercial, Landscaping	Retrofit stormwater detention and treatment for roads and existing adjacent development.
Changes in Water Regime	Impermeable surfaces, Lawns, Tilling	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and Human Disturbance	Residential areas	Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for ecoregion; place wetland and its buffer in a separate tract.
Dust	Tilled fields	Use best management practices to control dust.
* These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.		

M. Non-Conforming Uses in Buffers: Where a legally established, non-conforming use of the buffer existing (e.g., a road or structure that lies within the width of a wetland buffer), proposed actions in the buffer may be permitted as long as they do not increase the degree of non-conformity. This means no increase in the impacts to the wetland from activities in the buffer. For example, if a land use with high impacts (e.g., building an urban road) in being proposed next to a Category II wetland with a moderate level of function for habitat, a 150 foot buffer would be needed to protect function. If, however an existing urban road is already present and only 50 feet from the edge of the Category II wetland the additional 100 feet of buffer may not be needed if the road is being widened. A vegetated buffer on the other side of the road would not help buffer the existing impacts to the wetland from the road. If the existing road is resurfaced or widened, (e.g., to add a sidewalk) along the upland edge, without any further roadside development that would increase the degree of non-conforming, the additional buffer is not necessary. The associated increase in impervious surface from widening a road however may necessitate mitigation for impacts from stormwater. If, however, the proposal is to build a new development (e.g., shopping center or residential development) along the upland side of

the road, the impacts to the wetland and its function may increase. This would increase the degree of non-conformity. The project proponent would need to provide the additional 100 feet of buffer extending beyond the road or apply for buffer averaging.

**Section 2. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 3. Effective Date.** This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED by a majority plus one of the City Council and APPROVED by the Mayor this 5th day of December 2005.

APPROVED

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MAYOR, DONALD L. DORAN, JR.

ATTEST/AUTHENTICATED:

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CITY CLERK, CHRISTINA J. BOUGHMAN

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By: \_\_\_\_\_  
JAMES E. HANEY

FILED WITH THE CITY CLERK: 11-28-05  
PASSED BY THE CITY COUNCIL: 12-05-05  
PUBLISHED: 12-09-05  
EFFECTIVE DATE: 12-04-05  
ORDINANCE NO. 1147

City of Mukilteo, Washington  
**SUMMARY OF ORDINANCE NO. 1147**

On December 5, 2005, the City Council of the City of Mukilteo, Washington, approved Ordinance No. 1147, the main point of which may be summarized by its title as follows:

**AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, AMENDING THE CITY'S WETLAND REGULATIONS IN RESPONSE TO THE CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD REMAND OF THE WETLAND ORDINANCE (ORDINANCE 1112) BACK TO THE CITY OF MUKILTEO TO BRING ITS WETLAND REGULATIONS INTO COMPLIANCE WITH RCW 36.70A.172(1); ADOPTING WETLAND BUFFER, BUFFER AVERAGING AND BUFFER REDUCTION REGULATIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of December 5, 2005.

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CHRISTINA J. BOUGHMAN, CITY CLERK