

1 **Proposed EFSEC Wetland Standards**

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4 **Designation, rating and mapping wetlands**

5 A. **Designating wetlands.** Wetlands are those areas, designated in accordance with the
6 *Washington State Wetland Identification and Delineation Manual*, that are inundated or saturated
7 by surface or ground water at a frequency and duration sufficient to support, and that under
8 normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil
9 conditions. All areas meeting the wetland designation criteria in the *Identification and*
10 *Delineation Manual*, regardless of any formal identification, are hereby designated critical areas
11 and are subject to the provisions of this Title, except those artificial wetlands intentionally
12 created from non-wetland sites, including, but not limited to, irrigation and drainage ditches,
13 grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and
14 landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally
15 created as a result of the construction of a road, street, or highway. Wetlands include those
16 artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of
17 wetlands. Wetland delineations conducted by a qualified professional are considered valid for five
18 years.

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20 B. **Wetland ratings.** Wetlands shall be rated according to the Department of Ecology
21 wetland rating system found in the Washington State Wetland Rating System documents
22 (Western Washington, *Ecology Publication #93-74*, Eastern Washington, *Ecology Publication*
23 *#91-58*) or as revised by Ecology.

24
25 C. **Function Assessment.** When an assessment of wetland functions is determined to be
26 necessary the applicant must provide an assessment conducted by a qualified professional. For
27 certain wetland types where it is available, the Washington State Function Assessment Method is
28 the preferred method. For other wetland types, a description of type and degree of wetland
29 functions shall be provided by a qualified professional along with the rationale for all conclusions.

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34 **Wetland buffers**

- 35 1. **Standard buffer widths.** The standard buffer widths presume the existence of a
36 relatively intact native vegetation community in the buffer zone adequate to protect the
37 wetland functions and values at the time of the proposed activity. If the vegetation is
38 inadequate, then the buffer width shall be increased or the buffer shall be planted to
39 maintain the standard width. Required standard wetland buffers, based on wetland
40 category and land use intensity, are as follows:

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¹ See WAC 365-190-080(1)(a).

² See Appendix D.

³ Critical area reports should consider wetlands and other critical areas within three hundred (300) feet due to the maximum potential buffer size for wetlands.

- 1 a. Category I
- 2 High intensity 300 feet
- 3 Moderate intensity 250 feet
- 4 Low intensity 200 feet
- 5
- 6 b. Category II
- 7 High intensity 200 feet
- 8 Moderate intensity 150 feet
- 9 Low intensity 100 feet
- 10
- 11 c. Category III
- 12 High intensity 100 feet
- 13 Moderate intensity 75 feet
- 14 Low intensity 50 feet
- 15
- 16 d. Category IV
- 17 High intensity 50 feet
- 18 Moderate intensity 35 feet
- 19 Low intensity 25 feet
- 20

21 2. **Measurement of wetland buffers.** All buffers shall be measured from the wetland
 22 boundary as surveyed in the field. The width of the wetland buffer shall be determined
 23 according to the wetland category and the proposed land use. The buffer for a wetland
 24 created, restored, or enhanced as compensation for approved wetland alterations shall be
 25 the same as the buffer required for the category of the created, restored, or enhanced
 26 wetland.

27

28 3. **Increased wetland buffer widths.** EFSEC may require increased buffer widths in
 29 accordance with the recommendations of a qualified professional biologist and the
 30 best available science on a case-by-case basis when a larger buffer is necessary to
 31 protect wetland functions and values based on site-specific characteristics. This
 32 determination shall be based on one or more of the following criteria:

- 33
- 34 a. A larger buffer is needed to protect other critical areas;
- 35
- 36 b. The buffer or adjacent uplands has a slope greater than fifteen percent (15%) or is
 37 susceptible to erosion and standard erosion-control measures will not prevent
 38 adverse impacts to the wetland; or
- 39
- 40 c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width
 41 where existing buffer vegetation is inadequate to project the wetland functions and
 42 values, implementation of a buffer planting plan may substitute. Where a buffer

⁴ Wetland buffer widths from “Vegetated Buffers in the Coastal Zone: A Summary Review and Bibliography”
 University of Rhode Island Graduate School of Oceanography, 1994, Technical Report No. 2064; “The Science of
 Wetland Buffers and its Implications for the Management of Wetlands” Evergreen College, Andy McMillan, 2000;
 and “Wetland Buffers: Use and Effectiveness,” Department of Ecology, 1992, Publication #92-10.

1 planting plan is proposed, it shall include provisions for monitoring and maintenance
2 to ensure success.

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4 **4. Reduction of wetland buffer widths**

- 5 a. EFSEC may allow the standard wetland buffer width to be reduced in accordance
6 with an approved critical area report and the best available science on a case-by-
7 case basis when it is determined that a smaller area is adequate to protect the
8 wetland functions and values based on site-specific characteristics.
9
- 10 b. This determination shall be supported by documentation showing that a reduced
11 buffer is adequate based on all of the following criteria:
12
- 13 i. The critical area report provides a sound rationale for a reduced buffer based on
14 the best available science;
15
- 16 ii. The existing buffer area is well-vegetated with native species and has less than
17 ten percent (10%) slopes; and
18
- 19 iii. No direct or indirect, short-term or long-term, adverse impacts to wetlands will
20 result from the proposed activity.
21
- 22 c. Long-term monitoring of the buffer and wetland may be required for reduced
23 buffers. Subsequent corrective actions may be required if adverse impacts to
24 wetlands are discovered during the monitoring period.
25
- 26 d. In no case shall the standard buffer width be reduced by more than twenty-five
27 percent (25%), or the buffer width be less than fifty (50) feet except for buffers
28 between Category IV wetlands and low or moderate intensity land uses.
29

30 **5. Wetland buffer width averaging.** EFSEC may allow modification of the standard
31 wetland buffer width in accordance with an approved critical area report and the best
32 available science on a case-by-case basis by averaging buffer widths. Averaging of
33 buffer widths may only be allowed where a qualified wetlands professional
34 demonstrates that:

- 35
- 36 a. It will not reduce wetland functions or values;
37
- 38 b. The wetland contains variations in sensitivity due to existing physical
39 characteristics or the character of the buffer varies in slope, soils, or vegetation,
40 and the wetland would benefit from a wider buffer in places and would not be
41 adversely impacted by a narrower buffer in other places;
42
- 43 c. The total area contained in the buffer area after averaging is no less than that
44 which would be contained within the standard buffer; and
45

1 d. The buffer width is not reduced to less than fifty percent (50%) of the standard
2 width or fifty (50) feet, whichever is greater, except for buffers between Category
3 IV wetlands and low or moderate intensity land uses.
4

5 6. **Buffers for mitigation shall be consistent.** All mitigation sites shall have buffers
6 consistent with the buffer requirements of this section based on the planned or
7 predicted category of the mitigation site.
8

9 7. **Buffer conditions shall be maintained.** Wetland buffers shall be retained in an
10 undisturbed condition.
11

12 8. **Buffer impacts.** Where impacts to buffers cannot be avoided and where buffer
13 reduction and averaging are not sufficient or appropriate to offset buffer impacts,
14 compensatory mitigation shall be provided.
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19 **Compensatory mitigation requirements**

20 A. **Mitigation shall achieve equivalent or greater functions.** Compensatory mitigation for
21 alterations to wetlands shall be required for all unavoidable impacts that remain after mitigation
22 sequencing has been applied. Compensatory mitigation actions shall achieve equivalent or
23 greater functions. Mitigation plans shall be consistent with the Department of Ecology *Guidelines*
24 *for Developing Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised.
25

26 B. **Preference of compensatory mitigation actions.** Mitigation actions that require
27 compensation shall occur in the following order of preference:
28

- 29 1. Restoring wetlands on upland sites that were formerly wetlands.
- 30
- 31 2. Creating wetlands on disturbed upland sites such as those with vegetative cover
32 consisting primarily of exotic introduced species.
33
- 34 3. Enhancing significantly degraded wetlands.
35
- 36 4. Preserving high-quality wetlands that are under imminent threat.
37

38 C. **Compensation for wetland area.** Wetland mitigation actions shall not result in a net
39 loss of wetland area except when the following criteria are met:
40

- 41 1. The lost wetland area provides minimal functions and the mitigation action(s) will
42 clearly result in a net gain in wetland functions as determined by a site-specific
43 function assessment; or
44

- 1 2. The lost wetland area provides minimal functions as determined by a site-specific
2 function assessment and other replacement habitats provide greater benefits to the
3 functioning of the sub-basin, such as riparian habitat restoration.
4

5 **D. Compensation for wetland functions** Mitigation actions shall address functions
6 affected by the alteration to achieve equal or greater hydrologic and biological functions, and
7 shall provide similar wetland functions as those lost, except when:
8

- 9 1. The lost wetland provides minimal functions as determined by a site-specific function
10 assessment and the proposed mitigation action(s) will provide functions shown to be
11 limiting within a watershed through a formal watershed assessment plan or protocol;
12 or
13
14 2. Out-of-kind replacement will best meet formally identified regional goals, such as
15 replacement of historically diminished wetland types.
16
17

18 **E. Preference for Location of mitigation.** Mitigation actions shall be conducted in an
19 appropriate location to adequately replace lost functions as determined above. The following
20 sequence of steps should be undertaken to determine if a location will have a high likelihood of
21 success due to an adequate source of water, ability to control invasive species, appropriate
22 adjacent land uses and development pressures, adequate buffers, connectivity to other habitats
23 and other relevant factors:
24

- 25 1. An evaluation of on-site opportunities;
26 2. An evaluation of opportunities within the same sub-basin or Watershed Assessment Unit;
27 3. An evaluation of opportunities within the same Water Resource Inventory Area (WRIA)
28
29 4. Mitigation actions shall not be located outside of the same WRIA unless
30 a. Regional or watershed goals for water quality, flood or conveyance, habitat or other
31 wetland functions have been formally established and strongly justify location of
32 mitigation at another site; or
33
34 b. Credits from a state certified wetland mitigation bank are used as mitigation and the
35 use of credits is consistent with the terms of the bank's certification.
36

37 **F. Mitigation timing.** Where feasible, mitigation projects shall be initiated prior to
38 activities that will disturb wetlands. In all other cases, mitigation shall be initiated concurrently
39 with, or immediately following, disturbance and prior to use or occupancy of the activity or
40 development. Construction of mitigation projects shall be timed to reduce impacts to existing
41 wildlife and flora.
42

43 EFSEC may authorize a one-time temporary delay, up to one hundredeighty (180) days, in
44 completing minor construction and landscaping when environmental conditions could produce a
45 high probability of failure or significant construction difficulties. The delay shall not create or
46 perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not

1 be injurious to the health, safety and general welfare of the public. The request for the temporary
2 delay must include a written justification that documents the environmental constraints that
3 preclude implementation of the mitigation plan.
4

5 **G. Mitigation ratios**

6 1. **Acreage replacement ratios.** The following ratios shall apply to creation or
7 restoration that is in-kind, on-site, the same category, timed prior to or concurrent
8 with alteration, and has a high probability of success. These ratios do not apply to
9 remedial actions resulting from unauthorized alterations; greater ratios shall apply in
10 those cases. These ratios do not apply to the use of credits from an approved wetland
11 mitigation bank. When credits from an approved bank are used, replacement ratios
12 should be consistent with the requirements of the banking instrument. The first
13 number specifies the acreage of replacement wetlands and the second specifies the
14 acreage of wetlands altered.

15

16	Category I	6-to-1
17	Category II	3-to-1
18	Category III	2-to-1
19	Category IV	1.5-to-1

20

21 2. **Increased replacement ratio.** The ratios may be increased under the following
22 circumstances:

- 23
- 24 a. Uncertainty exists as to the probable success of the proposed restoration or
25 creation; or
 - 26
 - 27 b. A significant period of time will elapse between impact and establishment of
28 wetland functions at the mitigation site; or
 - 29
 - 30 c. Proposed mitigation will result in a lower category wetland or reduced functions
31 relative to the wetland being impacted; or
 - 32
 - 33 d. The impact was an unauthorized impact.
- 34

35 3. **Decreased replacement ratio.** The ratios may be decreased under the following
36 circumstances:

- 37
- 38 a. Documentation by a qualified wetlands specialist demonstrates that the proposed
39 mitigation actions have a very high likelihood of success;
 - 40
 - 41 b. Documentation by a qualified wetlands specialist demonstrates that the proposed
42 mitigation actions will provide functions and values that are significantly greater
43 than the wetland being impacted; or

⁵ Wetland mitigation ratios from “Wetland Mitigation Replacement Ratios: Defining Equivalency,” Department of Ecology, 1992, Publication #92-08.

- 1
2 c. The proposed mitigation actions are conducted in advance of the impact and have
3 been shown to be successful.
4

5 **H. Wetlands enhancement as mitigation**

- 6 1. Impacts to wetlands may be mitigated by enhancement of existing significantly
7 degraded wetlands. Applicants proposing to enhance wetlands must produce a
8 critical area report that identifies how enhancement will increase the functions of the
9 degraded wetland and how this increase will adequately mitigate for the loss of
10 wetland area and function at the impact site. An enhancement proposal must also
11 show whether existing wetland functions will be reduced by the enhancement actions.
12
- 13 2. At a minimum, enhancement acreage shall be double the acreage required for creation
14 or restoration under Subsection G. The ratios shall be greater than double the
15 required acreage where the enhancement proposal would result in minimal gain in the
16 performance of wetland functions and/or result in the reduction of other wetland
17 functions currently being provided in the wetland.
18

19 **I. Wetland preservation as mitigation.** Impacts to wetlands may be mitigated by
20 preservation of wetland areas, protected in a separate tract or easement, when used in
21 combination with other forms of mitigation such as creation, restoration, or enhancement at the
22 preservation site or at a separate location. Preservation may also be used by itself, but more
23 restrictions, as outlined below, will apply.
24

- 25 1. **Preservation in combination with other forms of compensation.** Preservation as
26 mitigation is acceptable when done in combination with restoration, creation, or
27 enhancement providing that a minimum of 1-to-1 acreage replacement is provided by
28 restoration or creation and the criteria below are met.
29
- 30 a. The impact area is small, and/or impacts are to a Category III or IV wetland;
31
- 32 b. Preservation of a high quality system occurs in the same Water Resource
33 Inventory Area (WRIA) or watershed basin as the wetland impact;
34
- 35 c. Preservation sites include buffer areas adequate to protect the habitat and its
36 functions from encroachment and degradation; and
37
- 38 d. Mitigation ratios for preservation in combination with other forms of mitigation
39 shall range from 10-to-1 to 20-to-1, as determined by the [director], depending on
40 the quality of the wetlands being mitigated and the quality of the wetlands being
41 preserved.
42
- 43 2. **Preservation as the sole means of mitigation for wetland impacts.** Preservation of
44 at-risk, high-quality habitat may be considered as the sole means of mitigation for
45 wetland impacts when all of the following criteria are met:
46

- 1 a. Preservation is used as a form of mitigation only after the standard sequencing of
2 mitigation (avoid, minimize, and then compensate) has been applied;
3
- 4 b. Creation, restoration, and enhancement opportunities have also been considered,
5 and preservation is the best mitigation option;
6
- 7 c. The impact area is small and/or impacts are to a Category III or IV wetland;
8
- 9 d. Preservation of a high quality system occurs in the same Water Resource
10 Inventory Area (WRIA) or a watershed where the wetland impact occurs;
11
- 12 e. Preservation sites include buffer areas adequate to protect the habitat and its
13 functions from encroachment and degradation;
14
- 15 f. The preservation site is determined to be under imminent threat, specifically, sites
16 with the potential to experience a high rate of undesirable ecological change due
17 to on- or off-site activities. (“Potential” includes permitted, planned, or likely
18 actions that are not adequately protected under existing regulations [for example,
19 logging of forested wetlands]); and
20
- 21 g. The area proposed for preservation is of high quality and critical for the health of
22 the watershed or basin. Some of the following features may be indicative of high
23 quality sites:
24
 - 25 i. Category I or II wetland rating;
 - 26
 - 27 ii. Rare wetland type (for example, bogs, mature forested wetlands, estuaries);
 - 28
 - 29 iii. Habitat for threatened or endangered species;
 - 30
 - 31 iv. Wetland type that is rare in the area;
 - 32
 - 33 v. Provides biological and/or hydrological connectivity;
 - 34
 - 35 vi. High regional or watershed importance (for example, listed as priority site in
36 watershed plan); and
 - 37
 - 38 vii. Large size with high species diversity (plants and/or animals) and/or high
39 abundance.
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- 41 3. **Mitigation ratios for preservation as the sole means of mitigation.** Mitigation
42 ratios for preservation as the sole means of mitigation shall be 20-to-1.
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44 **J. Wetland mitigation banks**

- 45 1. Credits from a wetland mitigation bank may be approved for use as compensation for
46 unavoidable impacts to wetlands when:

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- a. The bank is approved by the applicable local government;
 - b. It is determined that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one Water Resource Inventory Area (WRIA) for specific wetland functions.