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Habitat Restoration Demystified Workshop Presenter Contacts



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1. When upland property is cleared of forest for development that then causes heavy water flow, what protections does Island County provide to landowners downhill?

Island County’s Public Works Department reviews Clearing and Grading proposals and addresses stormwater runoff and drainage issues. I recommend contacting Island County Public Works with these questions. You can visit <https://www.islandcountywa.gov/PublicWorks/SurfaceWater/Pages/Home.aspx> or contact by phone (360) 679-7331.

-Greg Goforth, Island County

2. A neighbor collects, concentrates, and conveys stormwater onto your land, in time creating wetlands. What are the requirements for the neighbor to correct this, if at all? What are the requirements for the owner of the “new” wetlands?

Island County’s Public Works Department reviews drainage issues and I recommend contacting them with questions regarding stormwater runoff – (360) 679-7331 or you can visit the link I provided above to access their Surface Water Homepage with additional information and resources. Per Island County’s Critical Areas Ordinance (CAO):

“Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway” (ICC 17.02B.060).

If the “new” wetlands do not meet the definition of artificial wetlands created from non-wetland sites, or if they were not unintentionally created as a result of construction of a road, street, or highway, then they may still be regulated by the CAO and the owner must comply with the CAO. Uses not exempt from the CAO must avoid impacting wetlands and their buffers.

-Greg Goforth, Island County

3. Is there a minimum area required to qualify as a regulatory wetland, within Island County jurisdiction?

Island County's Critical Areas Ordinance (CAO) regulates Category A, B, C, and D wetlands that are 1,000 square feet (sf) or larger in surface area. Category E wetlands are regulated by the CAO if they are 5,000 sf or larger. Category A – D and Category E wetlands that are less than the aforementioned regulatory size thresholds may still be regulated if they meet the specific criteria in ICC 17.02B.240.A.2:

- a. The wetland is considered a mosaic wetland; or
- b. The wetland is known to contain either a protected species or a species of local importance; or
- c. The wetland receives a rating score of fifty (50) or greater per the wetland buffer worksheet as published in the Island County wetland identification guide 2008.

-Greg Goforth, Island County

4. Can you define the difference between "Frequently Flooded Areas" and "Wetlands" from Island County's perspective?

Frequently Flood Areas (FFAs) and Wetlands are both types of critical areas regulated by Island County's CAO. FFAs are areas subject to flooding or that could be threatened by flooding. FFAs include wetlands but are not limited to wetlands. The CAO defines FFAs as:

"All areas of special flood hazard as mapped within the County, and other areas that could be threatened by flooding or areas subject to flooding due to high groundwater. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface. Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program." (ICC 17.02B.060)

Wetlands may or may not be within an FFA, and often provide hydrologic functions such as water storage and flood attenuation that can reduce flooding.

-Greg Goforth, Island County

5. In the past, Island County has allowed wetlands to have the soils (peat) removed and replaced with fill and developed, all while Washington State used the adjoining property for a wetland habitat restoration project. Does the U.S. Army Corps of Engineers still have the final say whether the three definitions of a wetland apply (i.e. soil types, plant types, and standing water)?

Wetlands are identified and delineated following the U.S. Army Corps of Engineers (USACE) Wetlands Delineation Manual (1987) and appropriate regional supplements to the Wetlands Delineation Manual.

To view the manual: <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4530>

To view the regional supplements: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/

Per the Corps Delineation Manual, wetlands must have hydrophytic (wetland-associated) vegetation, hydric (wetland) soils, and wetland hydrology. Island County's CAO requires avoidance of wetlands. Where reasonable use of property cannot avoid impacting a wetland, a wetland alteration may be approved locally by Island County when in compliance with the County's CAO. County staff reviews wetland delineations and data sheets completed by qualified wetland professionals following the Corps' Delineation Manual. Where locally-approved development proposes to impact a wetland, State and Federal permits are generally also required.

-Greg Goforth, Island County

6. Can a man-made drainage ditch be regulated by shoreline jurisdiction if the drainage flows alongside a roadway leading to a swamp by a shoreline but does not actually touch Puget Sound?

It depends on the location of the wetland. If it's a freshwater associated wetland, only the Island County CAO may apply to the ditch if the ditch is in the wetland buffer. A tidally-influenced wetland may bring the ditch into shoreline jurisdiction especially if the ditch has tidal fluctuation.

-David Pater, Washington Department of Ecology

7. Is there a minimum area required to qualify as a regulatory wetland, within Washington State Department of Ecology (DOE) shoreline jurisdiction?

No, there is no minimum size of wetland for those regulated under the State RCW 90.48 or under the federal Clean Water Act.

To see the RCW 90.48, visit: <https://app.leg.wa.gov/rcw/default.aspx?cite=90.48>

To view an overview of the Clean Water Act, visit: <https://www.epa.gov/laws-regulations/summary-clean-water-act>

-David Pater, Washington Department of Ecology

8. To what extent can groups of landowners get together to address permit requirements across properties (v. on an individual property basis)? (e.g. larger buffers on larger parcels, smaller buffers on smaller parcels, some lands put entirely into conservation to benefit the whole group?).

This is not uncommon that multiple landowners would apply for a shoreline permit or permit exemption for a project. Usually one property owner would be the main contact though.

-David Pater, Washington Department of Ecology

This does not come up often under critical area permit review. However, if there was a coordinated proposal among adjacent/contiguous landowners to do restoration work within a critical area shared in common across their properties, the group of landowners could submit one permit application addressing work on multiple lots. Technical report requirements such as a wetland report or Biological Site Assessment (BSA) could address impacts to the affected critical area across multiple lots. As David Pater pointed out above, it is not uncommon for multiple landowners along the same contiguous stretch of shoreline to apply for one shoreline permit. For example, a soft-shore stabilization or restoration project could span multiple contiguous lots along the same shoreline and be reviewed under one permit.

-Greg Goforth, Island County

9. How can we encourage communities to “think like a watershed” in a system geared to work “property-by-property”?

Yes, mainly via education and outreach.

-David Pater, Washington Department of Ecology

Become familiar with the watersheds in your community or your area and strive to protect areas along aquatic resources that are connected to other habitats as a collaborative goal. For example, when assessing plans to impact your property, ask the local jurisdiction or the CD about opportunities that will restore or maintain habitat connectivity. For example, if you have a shoreline or wetland impact, complete restoration/mitigation in areas for those impacts in areas that have been prioritized within your watershed. Also, if you are thinking collaboratively.

-Diane Hennessey, Washington Department of Ecology

We can encourage communities to “think like a watershed” through education and outreach efforts that focus on how individual land uses within a watershed can have positive or negative cumulative impacts on habitat, water quality, and water quantity. Island County’s Rural Stewardship Plan provisions and *Guide to Preparing a Rural Stewardship Plan* highlight several water quality improvement and habitat conservation practices that can help landowners think about individual practices on their properties that can collectively help improve water quality and habitat at a watershed scale. To see the *Guide to Preparing a Rural Stewardship Plan*, visit: <https://www.islandcountywa.gov/Planning/Documents/RSP-Guide.pdf>

Island County’s Critical Areas Ordinance (CAO) allows for off-site mitigation when greater critical area function and value can be achieved off-site. When off-site mitigation for wetlands is permitted, the area of off-site mitigation is prioritized first by locations within the same contributing area (the land and/or water immediately uphill of a wetland) and second by locations within the same watershed.

-Greg Goforth, Island County

10. A small portion of a 6-acre parcel is clearly becoming “wetland-like.” None of the property is currently designated critical area. Most of the property has been (and still is) pasture for a long time. The owner wishes to protect and enhance this conversion process. How does the regulatory (permitting) process apply to this work? Is this considered “restoration”?

If you just let it become wetland and allow plants to grow into the area without digging in the soil or planting plants, then you would not need a permit. If you plan to restore the wetland through planting native plants, then you may need a no-fee permit from Island County.

-Diane Hennessey, Washington Department of Ecology

Passively protecting this conversion process would not require a permit. Active voluntary improvement projects, such as re-establishment, rehabilitation, or enhancement would require a permit and a site-specific plan to be approved by the Planning Department. There is no fee for voluntary enhancement projects approved as Type I administrative land use decisions. Voluntary improvement projects in wetlands (“lands covered by water”) requiring State Environmental Policy Act (SEPA) review and a Type II decision may have associated permit review fees.

-Greg Goforth, Island County

11. Is getting rid of blackberries that are choking out native plants considered “restoration”?

Yes, hopefully with some native plantings too, small scale restoration.

-David Pater, Washington Department of Ecology

Invasive blackberry control and removal is considered a restoration activity. It is an activity that is exempt from permits under Island County’s Critical Areas Ordinance (CAO) provided Best Management Practices (BMPs) in ICC 17.02B.300.B.14 and ICC 17.02B.300.C are complied with. If the Blackberry control/removal project is within Shoreline Jurisdiction, a no-fee Shoreline Exemption permit and a replanting plan is required to ensure that the project complies with the Shoreline Vegetation Conservation Standards in ICC 17.05A.090.K.

-Greg Goforth, Island County

12. Can you cut down, trim, and/or top trees in a buffer area as long as it does not impact the function of the buffer? What would be required if this was a desired goal of the landowner?

Washington Department of Ecology does not require a permit for this. Island County would require a permit for cutting trees in the buffer.

-Diane Hennessey, Washington Department of Ecology

Within Shoreline Jurisdiction and critical areas, removing and topping trees is prohibited unless the tree is a Hazard Tree as determined by a certified arborist or removed as part of a permitted development project. The Shoreline Master Program allows for selective thinning and pruning of trees for safety and view maintenance when consistent with the Shoreline Vegetation Conservation Standards in ICC 17.05A.090.K.7.

-Greg Goforth, Island County

13. Similar to the above question, if non-native trees are in a wetland buffer of a privately-owned property, and are “choking out” native trees like Pacific Madrone, and are taller than an HOA’s CC&Rs “tree height limit” (12’) can these trees be removed? How does Island County and Washington Department of Ecology regulations interact with community CC&Rs?

Washington Department of Ecology does not regulate cutting of vegetation in the buffers. Island County would require a permit for cutting trees in the buffer.

-Diane Hennessey, Washington Department of Ecology

Removing non-native trees within a critical area buffer would require a permit and replanting with appropriate native species. Where HOA CC&Rs are inconsistent with Island County regulations, Island County regulations supersede HOA CC&Rs.

-Greg Goforth, Island County

14. How can a homeowner control noxious weeds in a wetland buffer? In the wetland itself? What steps should the homeowner take?

Contact the Whidbey Island Conservation District to make sure you have properly identified a noxious weed and to identify the best method of removal of that specific plant. If you plan to use an herbicide on the plant, then you will need to hire a licensed applicator who has been licensed by the State.

-Diane Hennessey, Washington State Department of Ecology

Contact the Conservation District or Island County Noxious Weed Control Board for noxious weed identification and appropriate control/removal methods. The control and removal of noxious weeds within wetlands and their buffers must follow the Best Management Practices (BMPs) in the exempt activities section of the CAO (ICC 17.02B.300.B.14 and ICC 17.02B.300.C).

-Greg Goforth, Island County

15. Where or who can define wetland “boundaries”?

A qualified wetland biologist. Check with Island County or Washington Department of Ecology about wetland professional qualifications. Start at: <https://ecology.wa.gov/Water-Shorelines/Wetlands/Tools-resources/Hiring-a-qualified-wetland-professional>

-David Pater & Diane Hennessey, Washington Department of Ecology

A qualified wetland professional can determine wetland boundaries. Island County’s CAO defines a “Wetland Professional” (ICC 17.02B.060) as:

“a person with both professional education typically a B.S. or higher degree in biology, environmental studies or related field, as well as training and experience in wetland technical issues such as experience performing wetland classification and delineations, assessing wetland functions, analyzing impacts to wetlands, and designing mitigation. A wetland professional should be a certified professional wetland scientist or have a minimum of two (2) years of experience in wetland technical issues.”

-Greg Goforth, Island County

16. Does mechanical removal of non-native and/or invasive plants (i.e. blackberries) for the purpose of planting native plants require a permit?

No, as long as there is clearing and grading involved this activity would not be considered development.

-David Pater, Washington Department of Ecology

No permit would be required because invasive/noxious weed removal is an exempt activity per Island County’s CAO (ICC 17.02B.300). If the removal is within Shoreline Jurisdiction, the activity is exempt from a shoreline development permit; however, Island County processes exemptions to shoreline development permits as no-fee Shoreline Exemption “permits” to ensure compliance with the Shoreline Vegetation Conservation Standards in the Shoreline Master Program (ICC 17.05A.090.K).

-Greg Goforth, Island County

To access the presentations from the *Habitat Restoration Demystified* Workshop:
https://www.whidbeycd.org/uploads/1/1/6/8/11683986/all_combined_hrd_1.24.19-min.pdf