



Commons Wetlands - What We Know So Far

In November 2021, Whatcom County was hit with record rains described by weather experts as a "400 year event" triggering historic flooding throughout the county. The Commons wetlands also experienced higher than usual water levels. Given the historic nature of this event, our wetlands handled the amount of water well. The higher than usual water flow amounts affected almost all of our wetland and buffer areas, with some water overflowing from the wetlands onto Aldrich Rd. It really put our wetlands and buffer systems to the test. Working with our wetlands is a complicated issue with many governmental agencies and possible legal entanglements involved.



Over the past few months, board members have studied dozens of maps, regulations and codes. (The Critical Area Ordinance has 47 sections alone.) They've also consulted with officials from

- The State Department of Ecology
- Whatcom County Codes
- The City of Bellingham Planning Department
- The city's Public Works Department
- The Parks Department
- The city's Storm and Surface Water Manager and Floodplain Specialist

In the meantime, numerous specialists have been contacted in an effort to get an assessment of our wetland situation, most of the time, without a response. We are currently in negotiation with a certified and accredited local company to have an on site assessment.

A little history

From Kim Weil - Jan.26th, 2022

Environmental Planner

Planning Dept.--City of Bellingham

“The Commons at Cordata and the Cottages at June Rd. were once a large wetland complex. The developed areas were filled, and the undeveloped portions are the wetlands and buffers that remain. The buffer widths are small as compared to current code. The project was permitted under an old code with narrow (25’ and 50’) buffers. As a result, the homes are in close proximity to the wetlands and built on soils that likely don’t drain well. With a record rainfall there was flooding in many locations in the city and county. That said, the wetlands are doing their job of flood storage and attenuation.”

What Can Be Done

In response to concerns about rising water levels affecting some homes along the wetland buffers, the association board contacted the State, County and the City of Bellingham to determine what, if anything, our options are.

The answer is complicated. According to the Department of Ecology’s [“Homeowners’ Guide to Wetlands & Buffers”](#):



Homeowners’ Guide to Wetlands & Buffers

“Wetlands are protected by local, state, and federal laws. Certain activities are restricted in wetlands such as filling, grading, ditching, and draining. Homeowners generally need permits from local, state, and/or federal agencies to engage in these activities. The permitting process can be expensive and often involves some form of compensatory mitigation to offset the loss of wetland functions in the area affected by the activity.”

To learn more, the board has been working closely with Kim Weil, Environmental Planner with the City of Bellingham, who explained that there is a process, however the complexity of the permitting process is dependent on the scope and scale of the work to be done. In fact, one sump pump and curtain drain system was approved by the city, although the project was never initiated.

As an added element, there is a trail easement that has been granted to the Bellingham Parks Department for a possible future trail that would run along the east side of the Commons. This part of the wetland and buffer is identified as a Conservation Easement and adds another layer to the permitting process.

Legal Aspects



In addition to the regulatory side, there are also the legal ramifications of making changes to the wetland and buffers. Any alterations to the system will most likely change the flow of water elsewhere, which could cause unintended consequences. There are also the issues of responsibility for the maintenance, repair and possible removal of any equipment or restoration of drainage changes involved. The association's legal advisor, Ken Harer has made it clear that this element needs to be very carefully considered when making decisions to protect the association members from being financially responsible for any liability that might arise.

What We Know

- Wetlands are protected by local, state, and federal laws. Certain activities are restricted in wetlands such as filling, grading, ditching, and draining.
- Homeowners generally need permits from local, state, and/or federal agencies to engage in these activities.
- The permitting process can be expensive and often involves some form of compensatory mitigation.
- The City of Bellingham does have a comprehensive permitting process to allow approved work. The complexity of the permitting process is dependent on the scope and scale of the work to be done.
- There are serious legal ramifications involving making changes to the wetland and buffers that need to be very carefully considered in order to protect the association from potential financial liability.
- The board continues to explore the finer details involved in the best way to move forward regarding our wetlands and buffers.

What's Next?

The board and Son-Rise Community Association Management have been aggressively trying to get a certified wetlands specialist to take a look at our situation and offer an opinion on possible remedies that would fit existing regulations. This process would involve studying the original wetland maps and comparing them to the present wetlands to determine any possible change options.

A brief glossary of terms



“Wetlands” means areas that are inundated or saturated by surface water or ground water generally including swamps, marshes, bogs, and similar areas.

“Buffer” means a vegetated area that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

“Conservation easement” means a legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat.

“Critical areas” include any of the following areas or ecosystems: aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands

“Recharge” means the process involved in the absorption and addition of water to ground water.

“Alteration” means any human induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation, or any other activity that changes the character of the critical area.

“Mitigation” means avoiding, minimizing, or compensating for adverse critical areas impacts.

“Native vegetation” means plant species that are indigenous to the area.

“Restoration” means measures taken to restore an altered or damaged natural feature, including: active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration;

“Delineation” means the precise determination of wetland boundaries in the field and the mapping thereof.

“Open space” means public or privately owned land that is undeveloped and may not be developed due to designation, deed restriction or conservation easement.

“Storm Water System” means the series of gutters, drains, catch basins, control structures and detention pond that drain runoff from impervious surfaces such as streets and sidewalks.

* From Ch.16.55

Bellingham Critical Areas Municipal Code

Available in the Website Document Library

The Wetlands Explained Manual

Dept of Ecology - Homeowners Guide to Wetlands and Buffers

Dept of Ecology - Letter on Process

Commons Wetlands & Buffer Map

Disbursement Trench Guidelines

COB Stormwater Reports 2019 - 2021

Letter of Explanation - Association Attorney Ken Harer

COB - Kim Weil HOA Question and Answers

COB - Kim Weil Email Regarding Trail Easement Changes