

**Staff Report
Hjelseth Critical Areas Permit**

Applicant: Tyler Hjelseth
2109 Rainier Street
Steilacoom WA 98388

File No.: 22-013

Assessor Parcel Number:	0219056022
Owners:	Applicant
Zoning:	R-9.6
Comprehensive Plan Classification:	Housing
Access:	Shepard Street
Street Address:	2514 Shepard Street
Date of Application:	November 22, 2022
Date Application deemed Complete:	November 22, 2022

Proposal:

Applicant applied for a site development permit to clear the site to allow the construction of a single-family home on the property. There is a wetland close to the site in the Shannon Glen development. Applicant had a Wetland delineation prepared. The applicant is requesting a critical area permit to reduce the buffer area from 80 feet to 60 feet.

Background:

The lot is 10,300 square feet or about .24 acres. The property fronts on an unbuilt portion of Shepard Street, near the intersection with Shannon Street. The lot backs up to 820 Shannon Court, part of the Shannon Glen development.

Shepard Street is developed to approximately the eastern edge of the property. Building on this site will require Shepard Street to be improved from where the pavement currently ends along the full frontage of the lot along with extensions of all utilities. The Public Works Department has approved a proposal for the street extension, created by prior owners.

Analysis:

The Wetland Delineation Report prepared by LEON Environmental updated in October 2022, determined that a Class III wetland existed approximately 18 feet from the southern edge of the applicant's property. (Report, page 3-3).

Regulations.

The regulations for wetland buffers and reductions are in SMC 16.16.430, the relevant portions of which are reproduced below.

16.16.430 Performance standards – General requirements.

(A) Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.

(B) Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this Chapter.

...

(D) **Category II and III wetlands.** The following standards shall apply to activities in Category II and III wetlands:

(1) Where wetland fill is proposed, it is presumed that an alternative development location exists; activities and uses shall be prohibited unless the applicant demonstrates that:

(a) The basic project purpose cannot reasonably be accomplished and successfully avoid, or result in less adverse impact on, a wetland on another site or sites in the general region

(b) All alternative designs of the project as proposed, that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.

Full compensation for the loss of acreage and functions of wetland and buffers shall be provided under the terms established under SMC 16.16.440.

...

(F) **Wetland buffers.**

(1) **Standard buffer widths.** The standard buffer widths set forth in the following tables (Tables 1 – 4) presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer planted to maintain the standard width. Required standard wetland buffers, based on wetland category and land use intensity, are as follows:

...

Table 2. Width of buffers needed to protect Category III wetlands

(Buffers for wetlands scoring 16 – 19 points for all functions)

Wetland Characteristics	Buffer Widths by Impact of Land Use	Other Measures Recommended for Protection
Moderate level of function for habitat (score for habitat 5 - 7 points) If wetland scores 8 - 9 habitat points, use Table 3 for Category II buffers	Low - 75 ft Moderate – 110 ft High – 150 ft	No recommendations at this time
Score for habitat 3 - 4 points	Low - 40 ft Moderate – 60 ft High – 80 ft	No recommendations at this time

...

Table 5. 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
High	Commercial Urban Industrial Institutional Retail sales Residential (more than 1 unit/acre) Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) High-intensity recreation (golf courses, ball fields, etc.) Hobby farms
Moderate	Residential (1 unit/acre or less) Moderate-intensity open space (parks with biking, jogging, etc.) Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) Paved trails Building of logging roads Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	Forestry (cutting of trees only) Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.) Unpaved trails Utility corridor without a maintenance road and little or no vegetation management.

(2) **Measurement of wetland buffers.** All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category and the proposed land use. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated areas are considered buffers. Lawns, walkways, driveways and other mowed or paved areas are not buffers.

...

(5) **Reductions in buffer widths.** The buffer widths recommended for proposed land uses with high-intensity impacts to wetlands can be reduced to those recommended for moderate-intensity impacts under the following conditions.

(a) For wetlands that score moderate or high for habitat (5 points or more for the habitat functions) the width of a wetland buffer may be reduced if both of the following criteria are met:

(i) A relatively undisturbed vegetative 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. 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; and

(ii) Measures to minimize the impacts of different uses on wetlands, such as the examples summarized in Table 6, are applied to the proposed use.

(b) For wetlands that score less than 5 points for habitat, the buffer width can be reduced to those required for moderate land-use impacts by applying measures to minimize the impacts of the proposed land uses, see examples in in Table 6.

Table 6. Examples of measures to minimize impacts to wetlands from proposed change in land use that have high impacts. (This is not a complete list)

Example of Disturbance	Activities and Uses that Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Warehouses • Manufacturing • Residential 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland
Toxic runoff*	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Application of agricultural pesticides • Landscaping 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Commercial • Landscaping 	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing development • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces • Lawns • Tilling 	<ul style="list-style-type: none"> • Infiltrate or treat, detain and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human	<ul style="list-style-type: none"> • Residential areas 	<ul style="list-style-type: none"> • Use privacy fencing, plant dense vegetation to delineate

disturbance		buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and buffer in separate tract
Dust	<ul style="list-style-type: none"> • Tilled fields 	<ul style="list-style-type: none"> • 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.		

...

(7) **Buffer maintenance.** Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive non-native weeds is required for the duration of the mitigation security.

...

(G) Signs and fencing of wetlands.

(1) **Temporary markers.** The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be conspicuously marked in the field. Markings are subject to inspection by the Town Administrator prior to commencement of permitted activities. Temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

(2) **Permanent signs.** The Town Administrator may require installation of permanent signs along the boundary of a wetland or buffer as a condition of any permit or authorization pursuant to this Chapter.

(a) Permanent signs shall be made of an enamel-coated metal face and attached to a metal post, or another non-treated material of equal durability, and be approximately 12 inches by 18 inches in size. Signs must be posted at an interval of one per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the Town Administrator:

- Protected Wetland Area
- Do Not Disturb
- Contact Town of Steilacoom
- Regarding Uses and Restrictions

(b) The provisions of subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

(3) Fencing.

(a) The Town Administrator may require installation of permanent fencing at the edge of the wetland buffer as a condition of any permit or authorization pursuant to this Chapter when fencing will prevent future impacts to the wetland.

(b) The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

(c) Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

...

Summary of request and applicable regulations

The Report classifies the wetland as Class III with a habitat rating of 4. (Report, page 3-5). Residential use of more than 1 unit per acre is considered a high impact usage. (SMC 16.16.430, Table 5). A Class III wetland with a habitat rating of 4 and a high impact use has a buffer area of 80 feet from the edge of the wetland. (SMC 16.16.430 Table 2).

SMC 16.16.430(5) allows the buffer widths to be reduced under certain conditions. For wetlands that have a habitat score of less than 5, SMC 16.16.430(5)(b) allows the buffer widths for high impact land uses to be reduced to those for moderate impacts using the minimization techniques in Table 6. In this case, the applicant is requesting reduction from 80 feet (high intensity) to 60 feet (moderate intensity).

Staff's Evaluation of Mitigation Request

Applicants proposed mitigation for reducing the standard buffer is spelled out in Chapter 5 of the Report. Per SMC 16.16.440(A), all mitigation shall follow the mitigation sequence below:

- (1) Mitigation shall be required in the following order of preference:
 - (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 - (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations;
 - (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;

The applicant is proposing the adoption of certain mitigation measures outlined in the Town Code to avoid, minimize, rectify, reduce and compensate for impacts to the buffer and wetland. The purpose of Table 6 mitigation measures in the Code is to provide property owners with guidance to mitigate their impacts.

All of the proposed mitigation measures should be included as conditions of approval of the critical area permit.

Staff believes that a physical fence, rather than just increased vegetation, should be in place to mark the 60-foot buffer boundary. Additionally, signage as described in SMC 16.16.430 (G) should be required.

Public Comment:

Notice of the application for the permit was posted on November 22, 2022, in accordance with SMC 14.16.010. The Town received three comments from neighboring property owners.

Kathrine Duel noted that the wetland in question was impacted by the development of St. Andrews plat to the west. She wondered what warranted approval of the application.

Barb Kohler stated that the reduction in buffer would result in more flooding of the wetlands, impacting her property as well as the neighboring Krzmarzick property.

Keith and Julie Krzmarzick, who own the property immediately abutting the applicant's property also requested that the buffer not be reduced to 60 feet due to concerns for impacts on the water level the wetland has on their property.

Recommendation:

Staff recognizes that the homeowners in the Shannon Glen development have been impacted by the wetland over the years and are justifiably leery of new development in the area.

Applicant hired a trained wetland biologist to physically inspect the wetland and buffer area. That biologist has provided a wetland report that addresses the conditions under which a wetland buffer can be reduced. The report states that, with proper measures, reducing the buffer to 60 feet "is sufficient to protect a Category III from development impacts." (Report, page 6-5).

Staff recommends that the Town Administrator issue a critical areas permit allowing the reduction of buffer area from the standard 80 feet to 60 feet in accordance with SMC 16.16.430, subject to the following conditions:

1. The applicant must submit an erosion control plan denoting the clearing limits and wetland buffer area of at least 60 feet from the edge of the wetland.
2. The erosion control plan must include the following best management practices (BMPs):
 - a. Silt fencing around the entirety of the development area so as to avoid and minimize any inadvertent, site-related stormwater runoff that could degrade the wetland or wetland buffer.
 - b. Straw wattles or other appropriate erosion and sediment control devices to keep stormwater runoff out of the wetland and wetland buffer.
 - c. Practices to control dust and erosion during active clearing.
 - d. Practices to reduce noise impacts during active clearing, including not leaving machinery idling. Compliance with the Town of Steilacoom noise ordinance, SMC 9.04.130, is required.

- e. Equipment used for clearing must be checked daily to ensure proper working order and to be free of leaks. Appropriate spill kits and secondary containment methods must be kept on-site during clearing.
3. The wetland buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be conspicuously marked in the field. Markings are subject to inspection by the Town Administrator or designee prior to commencement of permitted activities.
4. No clearing is allowed until after approval of the erosion control plan and the field markings.
5. All exposed soil must be covered with plastic sheeting, hydroseeding and straw or mulch.
6. Hydroseeding is restricted to the cleared area, excluding any portion of the 60-foot buffer area.
7. All the BMPs in conditions 1-6 must be maintained by the property owner until a permit for construction of a residence is approved by the Town of Steilacoom.
8. Immediately following clearing, a permanent fence must be installed along the wetland buffer edge.
9. In conjunction with the fencing, at least one permanent sign made of an enamel-coated metal face and attached to a metal post, or another non-treated material of equal durability, and be approximately 12 inches by 18 inches in size. Signs must be maintained by the property owner in perpetuity. The sign must be worded as follows or with alternative language approved by the Town Administrator or designee:
Protected Wetland Area
Do Not Disturb
Contact Town of Steilacoom
Regarding Uses and Restrictions
10. During construction of a residence, all stormwater must be diverted away from the wetland buffer and infiltrated into any area where stormwater has time to infiltrate to a pervious, vegetated surface away from the wetland buffer.
11. Stormwater from impervious surfaces must be kept out of the wetland buffer and wetland through diversion and/or infiltration to a pervious surface away from the wetland buffer. Stormwater infiltration, bioswales, and pervious surfaces are all possible techniques. The Town Administrator or designee must approve the stormwater design prior to installation.
12. The project design of any future impervious surfaces must include ways to sufficiently disperse or control the flow of resulting additional runoff out of the wetland buffer and wetland.
13. Pesticides and fertilizers must only be applied in ways that do not allow runoff into the wetland buffer or wetland.
14. Lighting from all future structures must be shielded or directed away from the wetland and wetland buffer area to avoid light and glare impacts to the wetland.

15. Human and pet disturbance of the wetland and wetland buffer is to be avoided. Pets should be leashed or fenced.
16. No hydroseeding of the buffer area is allowed.
17. Invasive plants may be removed from the buffer area by hand. Native plants, such as Oregon grape, salmonberry, salal, sword fern, snowberry and native conifers may be planted to enhance the buffer area. The Town Administrator or designee must approve any enhancements prior to planting.
18. This permit must be recorded with the Pierce County Auditor's Office to provide notice to future property owners. Applicant must provide the Town with proof of recording.

Prepared by:
Doug Fortner, Planner

Date: December 29, 2022

