



Advanced Concepts in Environmental Regulatory Assistance

TECHNICAL MEMORANDUM

Client/Applicant:

Prakish Modi
14317 NE 186th Place
Woodinville, WA 98072

DATE: April 22, 2015

PROJECT: Modi Short Plat
Wetland and Stream Assessment
Report and Buffer Reduction Plan
PROJECT #: 130.001

SUBJECT: Disputed wetland category and response to OTAK Memorandum dated 4/8/2015
RE: Modi Short Plat Third Party Wetland Review

INTRODUCTION

This Technical Memorandum (Memo) is a response to a third party review requested by the City of Woodinville (City) of a Wetland and Stream Assessment Report and Buffer Reduction Plan prepared by ACERA in May 2014 and revised in January 2015 (Plan) for the proposed Modi Short Plat (Project). OTAK conducted the review and the results were presented to the City in a Memorandum dated 4/8/2015.

OTAK states that Wetland A should be rated Class 1 and not Class 3 as determined by ACERA. Jenny Ngo, Senior Planner with the City of Woodinville, has stated that the City will adopt the Class 1 rating as determined by the third party review in an email to Mr. Modi on April 10, 2015. The City has not provided any justification or explanation for agreeing with OTAK, and disagreeing with ACERA on this matter.

The OTAK review also states that the delineated boundary of Wetland A may not have included the entire wetland area. ACERA has not conducted an additional site visit at this time to determine if adjustments to the boundary are necessary. A change in wetland class from 3 to 1 may make the proposed project economically unfeasible due to the significant difference in buffer width between the two wetland classes. Therefore, the matter of wetland classification should be resolved prior to conducting additional site investigation work to reassess the wetland boundary.

WETLAND CATEGORY

ACERA has rated and classified Wetland A as Category IV/Class III based on the results of the Washington State Department of Ecology's (Ecology) wetland rating system "*Washington State Wetlands Rating System for Western Washington*" and the requirements of WMC 21.24.320. This wetland rating system has been extensively used by the majority of local permitting jurisdictions throughout Washington for many years. It is currently the "Best Available Science" (BAS) for determining the appropriate wetland category for wetlands in Washington State.

Best Available Science

The Washington State Growth Management Act (GMA) directs Cities and Counties to use the "Best Available Science" in regards to managing and protecting Critical Areas. The City of Woodinville Municipal Code also requires the use of BAS as follows:



Advanced Concepts in Environmental Regulatory Assistance

WMC 21.06.052 Best available science. Best available science: current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 375-195-900 through 375-195-925.

WMC 21.24.130 Contents of critical area special study.

(1) The critical area special study shall be in the form of a written report and shall contain the following, as applicable:

(a) Using the best available science, identification and characterization of all sensitive areas on or encompassing the development proposal site;

In addition, The City of Woodinville Municipal Code requires that the City's wetland classification ratings are to be similar to Ecology's wetland rating system "*Washington State Wetlands Rating System for Western Washington*" as follows:

WMC 21.24.320(1) Wetland Rating.

Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System found in the Washington State Wetland Rating System document, Western Washington, Ecology Publication No. 93-74.

Within the City of Woodinville Municipal Code, the provision *WMC 21.24.320(1) Wetland Rating* is placed first, before the City's own wetland classification system *WMC 21.24.320(2) Wetland Rating Categories*. Therefore, it should logically take precedence over the City's classification system which follows. Furthermore, *WMC 21.24.320(1)* states that "*Wetlands shall be rated similarly to the Department of Ecology Wetland Rating System...*". The Merriam Webster definition of similar is "*having characteristics in common: strictly comparable*". *WMC 21.24.320(1)* therefore takes precedence over, and requires consistency between the City's wetland classification system and Ecology's wetland categories. In addition, *WMC 21.24.130(1)(a)* requires that BAS shall be used for the "*identification and characterization of all sensitive areas*".

In this case, the BAS for classifying wetlands is: Ecology's *Washington State Wetlands Rating System for Western Washington*. Under this system, ACERA rated Wetland A as Category IV (25 points), the lowest possible category. Wetland A was rated low for water quality function (8), low for hydrologic function (2), and low for habitat function (13). The *WMC 21.24.320(2)* Class III designation is therefore the closest equivalent or "similar rating" to the rating of Category IV.

OTAK also rated Wetland A using Ecology's *Washington State Wetlands Rating System for Western Washington*. Under this system OTAK rated Wetland A as Category III (34 points). ACERA disagrees with some of the point determinations OTAK uses in their rating, and the resultant wetland categorization. However, a detailed discussion of these here is irrelevant for the determination of the City of Woodinville Wetland Class. Both ACERA and OTAK rate Wetland A as a slope wetland that is providing an overall low level of functions. ACERA rates Wetland A as a "high point value" Category IV, and OTAK rates it as a "low point value" Category III. The *WMC 21.24.320(2)* Class III designation is the closest equivalent or "similar rating" to the rating of Category III.



Advanced Concepts in Environmental Regulatory Assistance

DISCUSSION

Both OTAK and City planning staff are misinterpreting the requirements for rating wetlands under *WMC 21.24.320*. OTAK went through the process of rating the wetland using Ecology's *Washington State Wetlands Rating System for Western Washington*, and then completely ignored the results of this when determining the appropriate wetland class. OTAK misinterprets *WMC 21.24.320(1)* as requiring the use of a similar methodology or protocol for rating wetlands to Ecology's *Washington State Wetlands Rating System for Western Washington*. As discussed above, in this provision, "similar" is actually referring to the resultant wetland rating as determined by this rating system as well as the use of this rating system.

The language of *WMC 21.24.320* is admittedly ambiguous. The purpose of including both systems in *WMC 21.24.320* is to provide consistency between the City's original wetland classification system, which is based on simple generic descriptions of wetland characteristics, and Ecology's newer rating system, which is based on a comprehensive analysis of wetland hydrologic, water quality, and habitat functions. It is clear that the purpose of *WMC 21.24.320* is not to provide 2 different classifications for each wetland. It would not require the rating of a wetland using Ecology's *Washington State Wetlands Rating System for Western Washington*, if the results of said rating were not to be considered in the determination of the wetland class.

CONCLUSION

The determination by OTAK that Wetland A should be reclassified from Class 3 to Class 1 is not correct. OTAK did not consider the requirements of *WMC 21.24.320(1)* or the use of BAS which both supersede *WMC 21.24.320(2)* in making their determination of the appropriate wetland class. The Class 1 determination is therefore not valid.

The City of Woodinville should not adopt the wetland classification of Wetland A as Class 1 simply based on the results of a third party review, especially without providing any analysis or justification. In addition, the OTAK staff that conducted the third party review only recently received training from the Department of Ecology for rating wetlands (March 1, 2015). This brings into question how much prior experience rating wetlands the third party reviewers actually have, and if they should be considered experts by the City in this matter.

ACERA requests timely review of this matter by the City on behalf of the applicant. This issue has already caused significant project delays.

If you have any questions regarding this technical memorandum please contact me at (360) 292-9639.

Sincerely,
ACERA LLC

A handwritten signature in blue ink, followed by a circular professional seal. The seal features a central emblem with a sun and water, surrounded by the text "PROFESSIONAL WETLAND SCIENTIST" and "MICHAEL J. LAYES 2787".

Mike Layes
Professional Wetland Scientist