

Critical Areas and Big Buffers—*six questions your local officials must answer before adopting a buffer-based critical area program*

By: Alexander W. (Sandy) Mackie

Over the next 90 days, cities and counties throughout the Puget Sound region will be rushing to meet the December deadline to update their critical area ordinances. Critical areas are defined to include “wetlands” and “fish and wildlife habitat.” The new regulations for these areas will govern development and activity along rivers and streams, lakes, ponds, marine shorelines, wetlands, and a host of natural and artificial waterways.

The centerpiece for most of the recommended programs now under consideration is a “buffer,” a prescribed distance from the water or wetland edge. Recommended buffers may range from 50 to 300 feet. Once the buffer is imposed, new development and replacement of damaged structures within the buffer is generally prohibited, and expansion of current structures and changes in activity are strictly controlled.

As recommended, buffers would encompass homes and businesses, docks, lawns, dikes, farmed fields, roadways, and a host of other urban, suburban, and rural landscapes. Within these buffers, existing development is “nonconforming” and subject to very strict rules and prohibitions. The question that must be asked is whether the state’s Growth Management Act (GMA) requires the social and economic disruption created by the imposition of large bands of nonconforming uses along our shorelines, rivers, lakes, and wetland edges.

The short answer is no. GMA requires the protection (not restoration) of the “functions and values” of critical areas. Yet buffer programs are at the heart of a restoration program designed to return the land to some prior state or condition, and conclude in the ultimate removal of “nonconforming” structures and uses within the buffers.

The current buffer-oriented proposals are designed to perpetuate the mythology that buffers must be part of any critical area program, or that the science of buffers is well suited and directed to existing developed conditions. But such is not the case. Simply put, buffers poorly address the critical area issues and concerns in the developed or “built environment.”

Before city and county governments move forward to adopt a “big buffer” based critical area ordinance, they should be able to provide the public with the answers to several pertinent questions. I have listed a few below:

The big buffer programs call for the same protection over the built or developed environment as they do for natural or undeveloped areas. Yet the studies promoted as best available science look to the habitat needs and activities of a wide range of species, common and otherwise, in natural settings. Furthermore, local, state, and federal agencies charged with protecting the environment routinely issue permits with habitat protection and enhancement requirements without imposing big buffers.

Where in science or practice are buffers the accepted approach to protecting critical functions and values in areas of intense development, economic trade and public use as commonly occurs along our streams, lakes, and marine shorelines?

Big buffer programs ignore the fact that the functions and values of the built environment are different from those of a natural area.

Where is the science behind the imposition of 50-300 foot buffers across the built environment as the most effective, or even appropriate, approach to managing the community, lake, river, and marine shorelines in our communities?

The “science” behind “big buffer” models is based on the habitat needs of all species, common as well as threatened or endangered.

Where in the GMA does the Legislature state that buffers (and related corridors) must be created to protect habitat for common species at the expense of creating large bands of nonconforming uses along our shorelines, lakes, and rivers?

Big buffer ordinances focus on *restoration* of the “functions and values” of critical areas. The GMA calls only for *protection* of such features, in concert with the other goals of the GMA.

Why is the community only considering a restoration model, rather than a protection model, to better achieve the wide variety of GMA goals?

Big buffer models are indiscriminate, affecting natural areas and lands already developed. In our urban or developed environments, homes, businesses, transportation, and commercial developments are already in place. Such structures and uses are *priority* uses of our shorelines under the Shoreline Management Act, and essential to the social and economic vitality of the community.

How will the community be able to achieve the goals of the Shoreline Management Act, which calls for the managed use of the developed shoreline areas for residential, public, transportation, and water-dependent commercial and industrial uses if the buffer programs are implemented, and most, if not all, developed

shoreline areas are rendered nonconforming and subject to major constraints or limitations on new or modified development?

Natural buffers have decreasing effectiveness over distance. For example, in water quality, natural buffers provide most of their water quality functions (50-70%) in the first 50 feet, and require another 200 feet to gain an additional 10-20% efficiency. Modern storm drain systems in the developed area are much more efficient in much less space.

Why is the community using natural area assumptions to promote critical area protection within the built environment when much more effective protections are available and used every day in modern permitting programs?

As a final note, communities may not blindly rely on reports from state agencies cited in support of the buffer recommendation such as those contained in the Department of Community, Trade, and Economic Development guidelines. The guidelines specifically warn that the recommendations are based on natural, not developed, conditions.

Critical area ordinances should be designed to optimize use of our existing built environment as well as to protect our natural areas. Incentives should be provided for more effective management and redevelopment of the existing built environment, without unjustified and unreasonable constraints to use of, and access to, our lakes, rivers, and other shorelines.

Until local elected officials can receive satisfactory answers to the questions raised above, they should move cautiously, if at all, when faced with big buffer proposals. “Big buffer” ordinances provide a significant habitat tax on local communities struggling to balance the many objectives of the Growth Management Act. Communities would be better served if local governments seek to identify alternate management strategies better in tune to meet the needs of a growing society. The “land bank” mentality for habitat protection built into the big buffers models is not supported by science, can be devastating to local communities and economies, and should not be uncritically adopted by local governments. There must be a better way.

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