

# BINGEN MUNICIPAL CODE

## Chapter 17.67

### WETLANDS AND WETLAND BUFFERS

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#### **17.67.010 Purpose.**

The purpose of this chapter is to protect the adverse environmental impacts of development by:

- A. Preserving, protection and restoring wetlands by regulating development within them and their buffers;
- B. Protecting the public against losses from:
  - 1. Unnecessary maintenance and replacement of public facilities,
  - 2. Publicly funded mitigation of avoidable impacts,
  - 3. Cost for public emergency rescue and relief operations, and
  - 4. Potential litigation from improper construction practices authorized for wetland areas;
- C. Achieve no overall net loss in acreage and functions of the state's remaining wetland base;
- D. Implement the policies of the State Growth Management Act and the Bingen Comprehensive Plan. (Ord. 440, Att. A (part) 1997).

**17.67.020 Definitions.**

For purposes of this chapter, the following definitions shall apply:

- A. “High intensity land use” means and includes land uses which are associated with moderate or high levels of human disturbance or substantial wetland habitat impacts including, but not limited to, medium and high-density residential, multifamily residential, active recreation, and commercial and industrial land uses.
- B. “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soils shall be determined following the methods described in the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands”.
- C. “Low intensity land use” means and includes land uses which are associated with low levels of human disturbance or low wetland habitat impacts, including, but not limited to, passive recreation, open space, or agricultural or forest management uses.
- D. “Mitigation” means and includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation, in the following order of preference is:
  - 1. Avoiding the impact altogether by not taking a certain action or parts of an action;
  - 2. 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;
  - 3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
  - 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
  - 5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
  - 6. Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures.
- E. “Native vegetation” means plant species which are indigenous to the area in question.
- F. “Regulated wetlands” means ponds twenty (20) acres or less, including their submerged aquatic beds, and those lands defined as wetlands under the Federal Clean Water Act, and those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances, do support, a prevalence

of vegetation typically adapted for life in saturated soil conditions. Regulated wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands created as mitigation and those modified for approved land use activities shall be considered as regulated wetlands. All category I wetlands shall be considered regulated wetlands. Regulated wetlands do not include category II and III wetlands less than 2,500 square feet and category IV wetlands less than 10,000 square feet. Regulated 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. The applicant shall bear the burden of proving that the site was not previously a wetland. For identifying and delineating a regulated wetland, local government shall consider the appropriate federal manual for identifying and delineating wetlands consistent with state statute.

- G. “Repair or Maintenance” means an activity that restores the character, scope, size and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional regulated wetlands are not included in this definition.
- H. “Wetland buffer” or “Wetland Buffer Zone” is an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.
- I. “Wetland permit” means any permit issued, conditioned or denied specifically to implement this chapter. (Ord. 440, Att. A (part) 1997).

**17.67.030 Lands to which this chapter applies.**

A. Wetland Areas.

Areas designated as wetlands in the Bingen Comprehensive Plan and areas that may be identified on a case-by-case basis as wetlands by professionals with expertise as defined by federal standards are subject to this section. Wetlands not shown on the wetland map in Bingen Comprehensive Plan are presumed to exist in the city and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the map conflict with the criteria set forth in federal standards, the criteria shall control.

B. Wetland Rating System.

The city shall use the state of Washington’s four-tier wetlands rating system for categorizing wetlands for purposes of this chapter. The wetland category shall be assigned by the planning department at the time of development review. Categories shall be applied as the regulated wetland exists on the date of adoption of this section; as the regulated wetland may naturally change thereafter; or as the regulated wetland may

change in accordance with permitted activities. Wetland rating categories shall not be altered to recognize illegal modifications.

C. Determination of Regulatory Wetland Boundary.

The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in Section 17.67.020F. The applicant is required to show the location of the wetland boundary on a scaled drawing as a part of a permit application. (Ord. 440, Att. A (part) 1997).

**17.67.040 Regulated activities and allowed activities.**

A. Regulated Activities.

A permit shall be obtained from the city prior to undertaking the following activities in a regulated wetland or its buffer unless authorized by Section 17.67.040B of this section.

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;
2. The dumping, discharging, or filing with any material;
3. The draining, flooding, or disturbing of water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

B. Allowed Activities.

The following uses shall be allowed within a wetland or wetland buffer to the extent that they are not prohibited by any other chapter or law and provided they are conducted using best management practices, except there such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected:

1. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
2. Outdoor recreational activities, including fishing, bird watching, hiking, boating, horseback riding, swimming, canoeing, and bicycling;
3. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources;
4. Existing and ongoing agriculture, aquaculture, irrigation, ranching or grazing of animals. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations;
5. The maintenance (but not construction) of drainage ditches;
6. Education, scientific research, and use of nature trails;
7. Navigation aids and boundary markers;
8. Boat mooring buoys;
9. Site investigative work necessary for land use applications submittals such as surveys, soil logs, percolation tests and related activities. In every case, wetland impacts shall be minimized and disturbed areas shall be immediately restored; and
10. The following uses are allowed within wetlands and/or wetland buffers provided that written notice at least 10 days prior to the commencement of such work has been given to the city and provided that wetland impacts are minimized and that disturbed areas are immediately restored;
  - a. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, facility, or improved area and does not include the construction of a maintenance road, and
  - b. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions.

C. Special Permit Uses.

Any activity other than those specified in this section may not be conducted in wetlands or wetland buffers except upon issuance of a wetland permit by the city. Where the

proposed activity requires any other permit approval by the city, the wetland permit shall be submitted with or incorporated ad part of the other permit application. (Ord. 440, Att. A (part) 1997).

**17.67.050 Procedures for wetland permits.**

A. Wetland Permit.

Except as specifically provided in Section 17.67.040B; no regulated activity shall occur or be permitted to occur within a regulated wetland or wetland buffer without a written permit from the city. All activities that are not allowed or permitted shall be prohibited. Applications for wetland permits shall be made to the administrator in forms furnished by that office. Permits shall be valid for a period of three years and shall expire at the end of that time unless a longer or shorter period is specified by the city upon issuance of the permit. Extensions may be granted upon written request.

B. Filling Fees.

At the time of an application a fee shall be paid in an amount established by the city council. The city may assess additional reasonable fees as needed to monitor and evaluate permit compliance and mitigation measures.

C. Notification.

Upon receipt of a completed permit application, the administrator shall notify the individuals and agencies, including federal and state agencies, having jurisdiction over or an interest in the matter to provide such individuals and agencies an opportunity to comment. The administrator shall establish a mailing list of all interested persons and agencies who wish to be notified of such applications.

D. Public Hearing.

Following the submittal of an application determined to be complete, the planning commission shall hold a public hearing on the application unless the administrator finds the activity is so minor as to not affect a wetland buffer. Notice of the hearing shall be given as provided in Section 17.12.090.

E. Permit Action.

1. Upon receipt of a complete application for a permit authorizing activities on a category I wetland or its buffer, the city shall submit the application to the State Department of Ecology for its review and comment within 30 days of submittal, or within a period approved otherwise by the city upon request of extension. When submitted, no permit shall be issued under this subsection prior to receipt of such comments or the expiration of the time period or any extension.

2. The planning commission shall approve, approve with conditions, or deny a permit application within thirty (30) working days of the public hearing, except that where additional information is required by the city, it may extend this period by sixty (60) days. In acting on the application, the commission shall in writing deny, permit, or conditionally permit the proposed activity. If a decision must be made in a 90 day period and there is insufficient information or time to process the application, a denial will be issued.
3. A permit shall only be granted if the permit, as conditioned, is consistent with the provisions of this chapter. Additionally, permits may only be granted if:
  - a. A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
  - b. The proposed activity results in no net loss; or
  - c. Denial of a permit would cause an extraordinary hardship on the applicant.
4. Wetland permits shall not be effective and no activity thereunder shall be allowed during the time provided to file a permit appeal.
5. Appeals. Any decision of the planning commission in the administration of this chapter may be appealed to the city council.
6. Modification of permits. A wetland permit holder may request and the planning commission may approve modification of a previously issued permit.
7. Resubmittal of denied wetland permit applications. A wetland permit application which has been denied may be modified and resubmitted no earlier than 180 days following action on the original application. (Ord. 440, Att. A (part) 1997).

**17.67.060 Wetland buffers.**

Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland.

**A. Standard Buffer Zone Widths.**

All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to Section 17.67.030C. The width of the wetland buffer zone shall be determined according to wetland category and the proposed land use.

1. Category I
 

High intensity use	300 feet
Low intensity use	200 feet
  
2. Category II
 

High intensity use	200 feet
Low intensity use	100 feet
  
3. Category III
 

High intensity use	100 feet
Low intensity use	50 feet
  
4. Category IV
 

High intensity use	50 feet
Low intensity use	25 feet

B. Increased Wetland Buffer Zone Width.

The city shall require increased standard buffer zone widths on a case-by-case basis when a larger buffer is necessary to protect wetlands functions and values based on local conditions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the regulated wetland. Such determination shall be attached as a permit conditions and shall demonstrate that:

1. A larger buffer is necessary to maintain viable populations of existing species; or
2. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential habitat for those species or has unusual nesting or resting sites; or
3. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
4. The adjacent land has minimal vegetation cover or slopes greater than 15 percent.

C. Reduction of Standard Wetland Buffer Zone Width.

The city may reduce the standard wetland buffer zone widths on a case-by-case basis where it can be demonstrated that:

1. The adjacent land is extensively vegetated and has less than 15% slopes and that no direct or indirect, short-term or long-term, adverse impacts to regulated wetlands, as determined by the city will result from a regulated activity. The city may require long-term monitoring of the project and subsequent corrective actions if adverse impacts to regulated wetlands are discovered; or
2. The project includes a buffer enhancement plan using native vegetation which substantiates that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functions and values. An enhanced buffer shall not result in greater than a 25% reduction in the buffer shall not result in greater not be less than 25 feet.

D. Standard Wetland Buffer Width Averaging.

Standard wetland buffer zones may be modified by averaging buffer widths. Wetland buffer width averaging shall be allowed only where the applicant demonstrates all of the following:

1. That averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property;
2. That the wetland contains variations in sensitivity due to existing physical characteristics;
3. That low intensity land uses would be located adjacent to areas where buffer width is reduced, and that such low intensity land uses are guaranteed in perpetuity by covenant, deed restriction, easement, or other legally binding mechanism;
4. That width averaging will not adversely impact the wetland functional values;
5. That the total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging, In no instance shall the buffer width be reduced by more than 50% of the standard buffer or be less than 25 feet.

E. Wetland Buffer Shall Be Left in Natural Condition.

Except as otherwise specified, wetland buffers shall be retained in their natural condition. Where buffer disturbance has occurred during construction, re-vegetation with native vegetation may be required.

F. Permitted Uses in a Wetland Buffer Zone.

Regulated activities shall not be allowed in a buffer zone except for the following:

1. Activities having minimal adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include low intensity, passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing or hunting;
2. With respect to category III and IV wetlands, stormwater management facilities having no reasonable alternative on site location; or
3. With respect to category III and IV wetlands, development having no feasible alternative location.

G. Building Setback Lines.

A building setback line of 15 feet is required from the edge of any wetland buffer. Minor structural intrusions into the area of the building setback may be allowed if the city determines that such intrusions will not negatively impact the wetland. The setback shall be identified on a site plan which shall be filed as an attachment to any permit application submitted for approval by the city. (Ord. 440, Att. A (part) 1997).

**17.67.070 Avoiding wetland impacts.**

- A. Regulated activities shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied.
- B. With respect to category I wetlands, an applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.
- C. With respect to category II and III wetlands, the following provisions shall apply:
  1. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.
  2. Where nonwater-dependant activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:
    - a. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and
    - b. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would

avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and

- c. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.
- D. With respect to category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.
- E. Reasonable Use.
1. If an applicant for a development proposal demonstrates to the satisfaction of the city that application of these standards would deny all reasonable economic use of the property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the city:
    - a. That the proposed project is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative pursuant to Section 17.67.070;
    - b. That no reasonable use with less impact on the wetland and its buffer is possible;
    - c. That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;
    - d. That the proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;
    - e. That disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;
    - f. That the proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or priority habitats;

- g. That the proposed activities will not cause significant degradation of groundwater or surface-water quality;
  - h. That the proposed activities comply with all state, local, and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;
  - i. That any and all alterations to wetlands and wetland buffers will be mitigated in accordance with state regulations and policies
  - j. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
  - k. That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter.
2. If the city determines that alteration of a wetland and/or wetland buffer is necessary and unavoidable, the city shall set forth in writing in the file it maintains regarding a permit application its findings with respect to each of the items in this subsection. (Ord. 440, Att. A (part), 1997).

**17.67.080 Minimizing wetlands impacts.**

After it has been determined by the city pursuant to Section 17.67.040 that losses of wetland are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize wetland impacts. These measures shall include but are not limited to:

- A. Limiting the degree or magnitude of the regulated activity;
- B. Limiting the implementation of the regulated activity;
- C. Using appropriate and best available technology;
- D. Taking affirmative steps to avoid or reduce impacts;
- E. Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;
- F. Involving resource agencies early in site planning; and
- G. Providing protective measures such as siltation curtains, hay bales, and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife

and fisheries rearing, resting, nesting or spawning activities. (Ord. 440, Att. A (part), 1997).

**17.67.090 Acting on applications.**

As a condition of permit approval for any land containing a wetland area designated and/or defined pursuant to this chapter, the city shall condition the approval to delineate existing wetlands and identify applicable buffers. Wetland areas and buffers shall be included in the area of the lot for purposes of subdivision method and zoning minimum lot size. (Ord. 440, Att. A (part), 1997).

**17.67.100 Compensating for wetland area impacts.**

As a condition of any permit allowing alteration of wetland areas and/or wetland area buffers, or as an enforcement action, the city shall require that the applicant engage in the restoration, creation, or enhancement of these areas in order to offset the impacts resulting from order to offset the impacts resulting from the applicant's or violator's actions. For wetlands, the overall goal of any compensatory project shall be no net loss of wetlands function and area and to strive for a net resource gain in wetlands over present conditions. Compensatory mitigation shall follow an approved mitigation plan prepared by a professional with expertise approved by the city.

A. Wetland Mitigation Plans.

All wetland restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified wetland professionals approved the city. Written approval of the mitigation plan by the city shall be secured prior to enhancement activity.

B. Monitoring Program.

A program outlining the approach for monitoring construction of the compensation project shall be provided.

C. Permit Conditions.

Any compensation project prepared pursuant to this chapter and approved by the city shall become part of the application for the permit.

D. Performance Bonds and Demonstration of Competence.

A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervision the project shall be provided, including educational

background and areas of expertise, training and experience with comparable projects. In addition, bonds ensuring fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted in the amount of one hundred twenty percent of the expected cost of compensation.

E. Agency Consultation.

The city shall consult with and solicit comments of any federal, state, regional, or local agency, including tribes, having any special permit expertise with respect to any mitigation proposal which includes wetlands compensation. The compensation project proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the mitigation proposal.

F. Compensatory mitigation is not required for regulated activities:

1. For which a permit has been obtained that occur only in the buffer or expanded buffer and which have no adverse impacts to regulated wetlands; or
2. For those allowed activities pursuant to Section 17.67.040B provided such activities utilize best management practices to protect the functions and values of regulated wetlands. (Ord. 440, Att. A (part), 1997).

**17.67.110 Temporary emergency permit.**

Notwithstanding the provisions of the chapter, the administrator may issue a temporary emergency wetlands permit if:

- A. The administrator determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and
- B. The anticipated threat or loss may occur before an approval can be granted or modified under the procedures otherwise required by this chapter.
- C. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency activities under this chapter.
- D. The emergency permit may be terminated at any time without process upon a determination by the city that the action was not or is no longer necessary to protect human health or the environment.
- E. Issuance of an emergency permit does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities.
- F. Notice of the issuance of the emergency permit and request for public comments shall be published at least once a week on the stone day of the week for two consecutive weeks in

a newspaper having a general circulation in the city no later than ten days after issuance of the emergency permit. The applicant shall be responsible to provide this notice at applicant's expense. (Ord. 440, Att. A (part), 1997).