

McCULLOUGH HILL PLLC

November 10, 2025

VIA ELECTRONIC MAIL

Medina Planning Commission
c/o Steven Wilcox, Development Services Director
swilcox@medina-wa.gov

Re: Comments on 2025 Critical Areas Ordinance Update

Dear Planning Commission Members:

These comments are submitted on behalf of Mark Mowat, owner of two parcels in the City of Medina, regarding the City's proposed updates to its Critical Area Ordinance ("CAO").

First, we very much appreciate your inclusion of the "functionally and effectively disconnected buffer" concept in the proposed stream regulations in MMC 16.50.100.G.7. This revision will ensure consistency between wetland and stream regulations and provide predictability for property owners.

We have one remaining request—which is to clarify that if a functionally and effectively disconnected buffer affects more than 50% of a lot, the buffer should be presumed to be fully interrupted on the entirety of the lot, provided that presumption is supported by a critical areas report.

To be clear, we are not proposing that the City pre-determine that all 50%-plus functionally disconnected buffers extend to the entirety of the lot. We agree that such a request would not be supported by Best Available Science ("BAS"). Rather, our proposal would simply establish a presumption that would need to be supported by a site-specific critical areas report, which would need to be based on BAS.

Our proposed amendment is *more consistent* with BAS than the current draft regulations-- which allow the Director to make a completely discretionary functionally-disconnected determination with no requirement that the determination be based on a critical area report or BAS. Our proposed amendment will (1) provide more certainty to property owners and prospective purchasers of constrained lots; and (2) ensure that all functionally and effectively disconnected buffer determinations are supported by a critical area report, mitigating the risk of arbitrary decision-making and requiring compliance with BAS on a site-specific basis.

For context, the Mowat parcels are located east of Medina Elementary School. One of the parcels, 8120 Overlake Drive West, is developed with the family home. The adjacent parcel, 8216 Overlake Drive West, is currently undeveloped. A mapped stream runs along the western parcel boundary, approximately 80' from the property line of the eastern parcel, as depicted on the map below.



If the standard stream buffer were increased to 150', as currently proposed, a stream buffer could extend across the north half of the 8216 lot, significantly impacting development of that lot. The Owner should be entitled to submit a site-specific critical areas study demonstrating that the current house creates a functionally disconnected buffer on the entirety of the 8216 lot. If the critical area study cannot substantiate that conclusion based on BAS, the Director would not accept it. But the Director should not be able to make an arbitrary determination, without any sort of site-specific study, that would significantly, adversely impact development potential on that lot. This is the process outlined in the current draft regulations.

Our specific proposed amendment is underlined below:

Buffers may exclude areas that are functionally and effectively disconnected from the stream by an existing public or private road or legally established development, as determined by the Director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer. Significant developments shall include built public infrastructure such as roads and railroads, and private developments such as homes or commercial structures. An interruption that affects more than 50% of the buffer on a lot shall be presumed to exclude the buffer on the entirety of the lot, provided that presumption is supported by a critical areas report prepared by a qualified wetland consultant. The Director shall evaluate whether the interruption will affect the entirety of the buffer. Individual structures may not fully interrupt buffer function. In such cases, the allowable buffer exclusion should be limited in scope to just the portion of the buffer that is affected. Where questions exist regarding whether a development functionally disconnects the buffer, or the extent of that impact, the Director may require a critical area report to analyze and document the buffer functionality.

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The above revisions are consistent with Best Available Science, they will ensure functions and values are protected, and they will protect the City against potential takings claims by ensuring that lots are not arbitrarily rendered undevelopable.

Thank you for your attention to these comments.

Sincerely,

McCULLOUGH HILL PLLC

/s/Courtney E. Flora

cc: Medina City Council
Jennifer Robertson and Dawn Reitan, City Attorneys