We don’t consider wetlands, wetland buffers, or stream buffers as regulated sensitive areas if they occur on the road prism, on existing elevated fill, or in elevated medians in most cases.

This guidance does not apply to cut slope wetlands or streams flowing through roadside ditches or medians. These are regulated sensitive areas, requiring permitting when impacts are unavoidable, even though they occur within the road prism.

Definition - Road Prism

A road prism is part of the transportation infrastructure. It includes the road surface and subsurface fill, cut slope, and fill slope (Figure 1).
**Definition - Elevated Median**

An elevated median is constructed of fill material deposited between the lanes of a divided highway, raising the grade above the original ground surface (Figure 2). They are part of the road prism and transportation infrastructure. Not all medians are elevated.

**WSDOT Guidance on Sensitive Areas within Road Prisms**

*Wetlands on Road Prisms*

We have an agreement with the US Army Corps of Engineers (Corps) that road prisms, including elevated medians, are transportation structures and are exempt from wetland and buffer regulations. We don’t consider sensitive areas occurring on transportation infrastructure as regulated features in most cases. Wetlands, wetland buffers, or stream buffers occurring on transportation infrastructure aren’t identified as jurisdictional features, except when required by local jurisdictions. Existing road prisms constructed in wetlands, wetland buffers, and stream buffers either were already permitted when the road was constructed or modified or pre-date wetland and buffer regulations.

*Cut Slope Wetlands & Streams on Road Prisms*

Cut slope wetlands and streams on transportation infrastructure are regulated features. Impacts to these sensitive areas requires permitting and appropriate mitigation.

*Biological Wetland vs. Jurisdictional Wetland*

Consider the difference between biological wetlands and jurisdictional wetlands when assessing wetlands within the transportation infrastructure. Biological wetlands meet the criteria of a wetland as defined by the Corps Wetlands Delineation Manual (1987) and the Corps Regional Delineation Supplements. However, the Corps and Washington State Department of Ecology (Ecology) don’t regulate all biological wetlands.

Examples of biological wetlands considered to be non-jurisdictional features within the road prism include:

- Wetlands that form on lawfully placed fill material (e.g. elevated medians).
- Wetlands that were unintentionally created as a result of road construction (e.g. compacted construction staging areas).
- Wetlands formed in uplands as a result of hydrologic inputs from built structures or inputs, or from construction activities. These wetlands would not have established without artificial alterations to the landscape (e.g. roadside ditches, constructed in uplands, conveying only stormwater runoff).

The above examples don’t capture all complexities or potential scenarios. A qualified wetland biologist may determine that regulated sensitive areas are present in the road prism.

Review applicable city and county critical areas ordinances and municipal codes to determine how wetlands, streams, and buffers are regulated in their municipalities. Local jurisdictions, tribes, or state agencies may have different requirements for regulating wetland impacts and mitigation than the Corps or Ecology.
Examples of Roadway Fill and Wetland Impacts

Elevated Median

A roadway fill prism, constructed across a jurisdictional wetland, may include an elevated median (Figure 2).

- Section A shows those areas outside of the road prism including wetlands (in green), and ditch portions (in orange) regulated as wetlands, when the ditch meets wetland criteria and is contiguous with the adjacent wetland.
- Section B shows the road prism including fill areas from one toe of the road fill to the other toe of fill. Biological wetlands occurring in elevated fill areas within the road prism (B) are non-jurisdictional in most cases, although jurisdictional streams may be present (B). Placement of additional fill in section B would not require a wetland fill permit from the Corps or Ecology.

Local jurisdictions regulatory requirements vary and are reviewed on a project specific basis. Road prisms are often considered transportation structures, and exempt from local jurisdiction regulation. Proposed wetland impacts outside of the roadway prism (A), require federal, state, and local permits and compensatory mitigation prior to conducting work.

Non-Elevated Median

In other cases, the roadway median does not include fill material and occurs at the same elevation as surrounding wetlands (Figure 3). Sections A and B represent the same features and have the same regulations as the elevated median described above (Figure 2).

In contrast with the elevated median (Figure 2), section C shows the non-filled, non-elevated median, occurring at the same elevation as surrounding wetlands. Proposed construction activities in wetland areas within the non-elevated median (C) or wetlands beyond the road prism (A), require federal, state, and local permits and compensatory mitigation, unless the area had previously permitted impacts which can be documented.
**WSDOT Guidance Based on Regulatory Law and Policy**

WSDOT guidance for delineating wetlands, streams, and buffers adjacent to or on road prisms is based on the following law, policy, and technical manuals:

*Corps of Engineers Wetlands Delineation Manual 1987*

“If hydrophytic vegetation is being maintained only because of man-induced wetland hydrology that would no longer exist if the activity (e.g., irrigation) were to be terminated, the area should not be considered a wetland.”

Example:

Areas meeting biological wetland criteria, but are non-regulated features because wetland characteristics only exist due to the presence of stormwater runoff that would otherwise be lacking if the roadside features were not present. The following features are common to transportation projects, and often have biological wetlands which are non-regulated features:

- Ditches excavated in uplands and exempted from Corps jurisdiction.
- Fill slopes with hydrophytic vegetation and wetland hydrology.
- Stormwater features.


“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, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.”

Example:

A biological wetland, that is a non-regulated feature because it formed on roadway fill placed after July 1, 1990.

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The following feature is not a water of the United States: “water-filled depressions created in dry land incidental to . . . construction activity.”

Example:

A biological wetland, that is a non-regulated feature because it either incidentally formed on soils compacted during construction, or on fill material lawfully placed during construction, including on elevated medians between highway lanes (Figure 2). Include as-builts in project documentation if they are available and document previous construction activity.

*Local Jurisdictions*

Review city and county municipal codes and critical areas ordinances for regulations that may differ from federal and state jurisdiction.