

**** Per Section 3 of Anacortes [Resolution 2082](#) Ratifying Proclamation of Emergency and Providing Temporary Procedures to Respond to the COVID-19 Epidemic, adopted by the Anacortes City Council on March 16, 2020, and [Resolution 3038](#), adopted June 28, 2021, extending the duration of portions of Resolution 2082 through September 30, 2021, City Council meetings may be held partially or entirely virtually.**

- Meetings may be viewed on the [City of Anacortes website](#), on the City of Anacortes [YouTube](#) Channel, or on TV [Channel 10](#).
- The public may also watch, listen to, or participate in the meeting live by visiting <https://us02web.zoom.us/j/89255646791> or by telephoning 1-253-215-8782 and entering Meeting ID 892 5564 6791.
- The public is encouraged to comment via email to cityclerk@cityofanacortes.org or via written comment addressed to City Clerk, P.O. Box 547, Anacortes, WA 98221. Public comments received by the [City Clerk](#) prior to 3:00 p.m. the day of the meeting will become part of the record for the meeting, just as if presented in person.
- Complete guidelines for virtual participation in Anacortes City Council meetings are available [here](#). View the quick video example for connecting to the meeting [here](#).



Anacortes City Council

Municipal Building Council Chambers

**** Attendees in Council Chambers must comply with [Dept. of Health orders](#) in effect on the date of each meeting ****

July 19, 2021
6:00 PM

PRELIMINARY AGENDA

[Packet Materials](#) / [Watch Meeting](#)

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Announcements and Committee Reports**
 - a. COVID-19 Update (Discussion)
 - b. Skagit County Law & Justice Council (Discussion)
 - c. Public Works Committee (Discussion)
 - d. Proclamation: Dinosaur Week (Discussion)
- 4. Public Comment**
- 5. Consent Agenda**
 - a. Minutes of July 12, 2021 (Action)
 - b. Approval of claims in the amount of \$658,127.51 (Action)
- 6. Other Business**
 - a. Resolution 3044: Disposition of Tommy Thompson Train (Discussion/Possible Action)
 - b. * Access Anacortes Fiber Internet Update (Discussion)
 - c. Ordinance 3064: Critical Area Update Draft 3 Discussion (Discussion)
- 7. Adjournment**

Per Resolution 2044, citizens wishing to comment on items not on the agenda may do so under the Public Comment portion of the agenda. Citizens wishing to comment on agenda items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting.*

The City of Anacortes is committed to making public meetings available and accessible to all members of the community. For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.



CITY OF ANACORTES PROCLAMATION

Dinosaur Week- July 26, 2021

WHEREAS, dinosaurs roamed the Earth millions of years ago but still capture the imagination of young and old alike; and

WHEREAS, this year the Parks and Recreation Department is offering a Dinosaur Camp for youths at Washington Park to promote learning and a love of science; and

WHEREAS, the Anacortes Public Library is our local resource for knowledge, and will host Paleontological Storytimes, present a famous dinosaurs in a literature scavenger hunt, and generally provide merriment all week long through summer reading activities with Parks & Recreation and beyond; and

WHEREAS, the Anacortes Museum contains thousands of artifacts and photographs in its collection and viewable online content for research and enjoyment; and

NOW, THEREFORE, BE IT RESOLVED it is fitting and appropriate that I, Laurie Gere, Mayor of the City of Anacortes, do hereby proclaim the week of July 26, 2021 as our celebration of

Dinosaur Week

in Anacortes and encourage our citizens to enjoy summer reading and the study of dinosaurs, history, and science.

Dated this 13th day of July 2021.

A handwritten signature in blue ink, reading "Laurie M. Gere".

Laurie Gere, Mayor

Hunt, Marcia

From: Hunt, Marcia
Sent: Monday, July 19, 2021 8:10 AM
To: CityClerk
Subject: FW: July 19 Council Meeting: Public Comment
Attachments: 4419 H Ave.pdf.zip

-----Original Message-----

From: Ian Munce <ianmunce@gmail.com>
Sent: Sunday, July 18, 2021 1:32 PM
To: City Council <citycouncil@cityofanacortes.org>
Cc: Gere, Laurie <laurieg@cityofanacortes.org>; Hoglund, Steve <steveh@cityofanacortes.org>; Swetnam, Darcy <darcys@cityofanacortes.org>; Measamer, Don <don@cityofanacortes.org>
Subject: July 19 Council Meeting: Public Comment

Good day, Council-members

I seek to have added to the public record of the July 19 City Council meeting this request that you, the City Council, solicit a written explanation from the Gere Administration as to why two acres of wetland and wetland buffer vegetation behind my house have just been destroyed. Yes, mowed to the ground with heavy equipment followed by riding mower(s).

Since the City's first wetland protection ordinance was adopted in 1990 the City Code has said that if a non-conforming use, e.g. wetland mowing, was discontinued for a year then it simply could not continue. Pretty standard critical area ordinance language and practice.

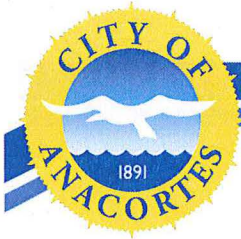
On May 25 this year the City confirmed that there was a protected two acre wetland behind my house. I attach this Order. However, a few weeks later the City upheld an appeal based on documentation that mowing had occurred before 1990. And this is somehow relevant? Due to file size City's appeal decision is being forwarded separately. In my entire career I have never seen such a blatant disregard of clear ordinance mandates and such a complete failure to explain the basis upon which the appeal was granted. (And what has been authorized, e.g. mowing every decade or every week?) Of course, I submit that this is because there simple is no supporting rationale to allow a mowing practice that was extinguished decades ago.

Amazingly, City staff have also concocted a new category of 'residential lawn' which appears to mean that otherwise protected wetland buffers can be mowed anytime to improve the landscaping or development potential.

I respectfully submit that the current Administration's approach of allowing critical area encroachments, i.e. a residential lawn exemption and resurrecting rights that have been lawfully extinguished is totally antithetical to your Comprehension Plan policies of not just protecting but restoring critical areas.

Thank you for considering this request.

Ian Munce, AICP



PLANNING, COMMUNITY & ECONOMIC DEVELOPMENT

May25, 2021

Brooks and Kelly Middleton

4419 H Ave

Anacortes WA, 98221

Re: Field Mowing 4419 H Ave (P32315 & P32318)

Dear Brooks and Kelly,

We are in receipt of your letter dated March 12, 2021 regarding documentation of mowing the field north of the single-family residence located at 4419 H avenue.

Having reviewed the information submitted, attachment A, including Mr. Munce's declaration, attachment B, we find inconclusive information to support mowing the wetland/buffer field prior to 1990 consistent with AMC 17.70.500, as an existing non-conforming activity.

As previously stated in my letter dated April 22, 2019 and GeoEngineers report dated January 15, 2019 "it is likely that a wetland of unknown size is present on the Middleton property in the unmown field. The boundaries of any wetlands identified on the Middleton property should be delineated (if access is granted) or estimated if not, and approximate buffers mapped on the Rice property". Attachment C

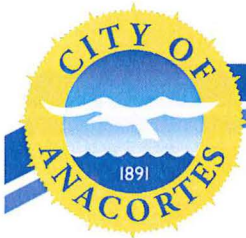
Doug Gresham, Department of Ecology, was consulted for review of the associated wetland reports and states "I agree with GeoEngineers that another site visit during the early growing season would help determine if any wetlands are present on the Rice property or within 300 feet of the property". Attachment D. Additional wetland reports have not been completed and city staff have been denied access to the property.

THE FOLLOWING SHALL BE CONSIDERED AN ADMINISTRATIVE ORDER CONSISTENT WITH AMC 20.20.040.

Given the available information it is the city's position that a wetland of unknown size and category exists on the property in the field north of the single-family residence located at 4419 H Avenue, therefore, mowing of the field is a regulated activity not a permitted use nor a legal non-conforming activity and is a violation of AMC 17.70. AMC 17.70.380, AMC 17.70.500. Regulated Activity, Wetlands means an activity with a significant impact on nontidal wetlands, including "The destruction or removal of plant life that would alter the character of a nontidal wetland". AMC 17.70.030

You are hereby notified to cease and desist mowing the field, wetland, and buffer areas.

Failure to cease and desist mowing the wetland and buffer areas may result in a civil penalty of up to \$25,000 for a civil violation of a critical areas. AMC 20.30.08.



PLANNING, COMMUNITY & ECONOMIC DEVELOPMENT

You may enter into a voluntary compliance agreement with the City consistent with AMC 20.30.020. If you would like to pursue the voluntary compliance agreement, please feel free to contact me.

You may appeal the Administrative Order consistent with AMC 20.20.100 within 14 days of service of the order. An appeal must be filed by submitting a notice of appeal to the director on forms provided by City, with the appeal fee of \$200.00.

If the appellant prevails on the appeal, the city will reimburse the appeal fee paid by the appellant.

If you have any questions, please feel free to contact me at 360.299.1942.

Sincerely,

Don Measamer,

PCED Director

City of Anacortes

Cc; Darcy Swetnam, City Attorney

12 March 2021

Don Measamer
Director of Planning, Community & Economic Development
City of Anacortes
904 6th Street
Anacortes, WA 98221

Subject:

Correspondence of April 22, 2019
Response of April 10, 2020
Letter of May 11, 2020
Potential Wetland Issues

Mr Don Measamer

As requested in your 11 May 2020 letter, in addition to the items previously submitted to the City showing historical (prior to 1990) mowing and field maintenance on the two acres we own at H Avenue in Anacortes, we have performed further research as summarized below and attached herewith:

1969 County Aerial image showing the field maintained

1977 neighbor photo (image 3) showing the field maintained

1978 neighbor photo (image 2) showing the field maintained

1979 neighbor photo (image 1) showing the field maintained

1981 Aerial image showing the field maintained

Neighbor's letter indicating mowing of field 1976-1980 and 1988 on

We believe this documentation, and the previously provided documentation, provides more than necessary evidence of the use and maintenance of the property prior to and after 1990.

We plan to continue this type of maintenance and care for our property as allowed by the City's Municipal Code.

Brooks Middleton
4419 H Avenue

Cc Craig Cammock via email

Brooks Middleton

From: Michael Fox <fox@expplumbing.com>
Sent: Monday, May 11, 2020 2:40 PM
To: Brooks Middleton
Subject: RE: H Avenue help

Follow Up Flag: Follow up
Flag Status: Flagged

I moved into quail drive in 1976
The Middleton property was owned by John Wing I believe
The field between quail drive and Middleton house was mowed for hay from 1976 until I left in 1980
I returned to the quail drive property in 1988
The field between quail drive and Middleton house was mowed yearly, for weed control only as no hay was bailed

Thank you, fox

fox@expplumbing.com

EXPERIENCE PLUMBING

WHERE VALUE & PERFORMANCE MEET

expplumbing.com / 360 982 1737

16607 Walking M Lane
Mt. Vernon, Wa., 98273

From: Brooks Middleton <brooks@brooksmiddletonarchitect.com>
Sent: Monday, May 11, 2020 2:22 PM
To: Michael Fox <fox@expplumbing.com>
Subject: H Avenue help

Hi Mike

I hope all is well

There is some hubbub in the neighborhood (from one neighbor) re Kelly and me mowing our field
Long exciting story short, the City is asking for proof that the field that we own between your old house and ours was mowed prior to 1990

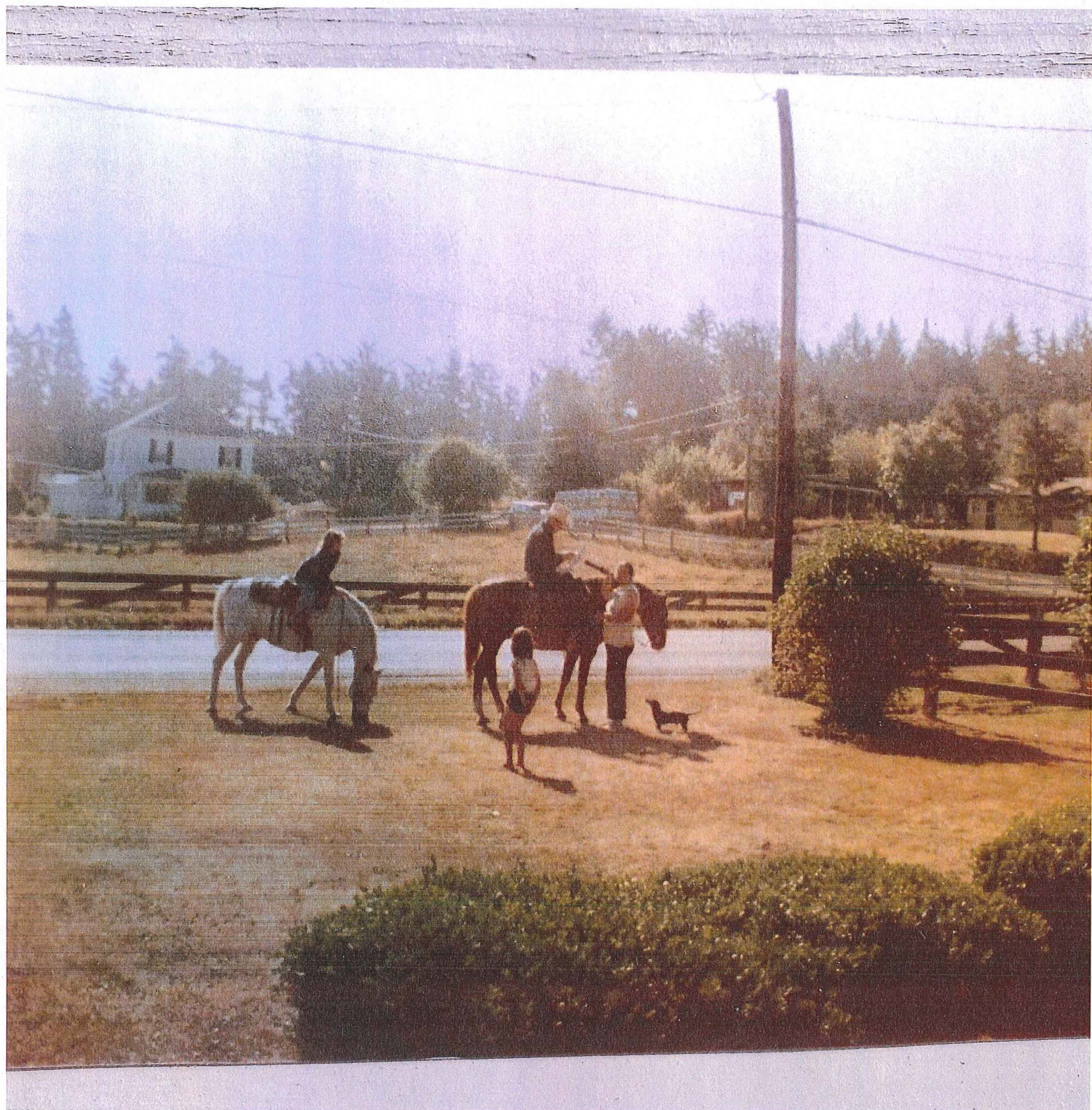
Apparently proof includes testimony from former owners or neighbors

Do you have any first hand knowledge that the field was mowed prior to 1990?

(seems pretty obvious to me since it's a field and not a forest)

Thanks for your help!

BROOKS MIDDLETON, ARCHITECT 2415 T AVENUE SUITE 202 ANACORTES, WA 98221 360 293 0106



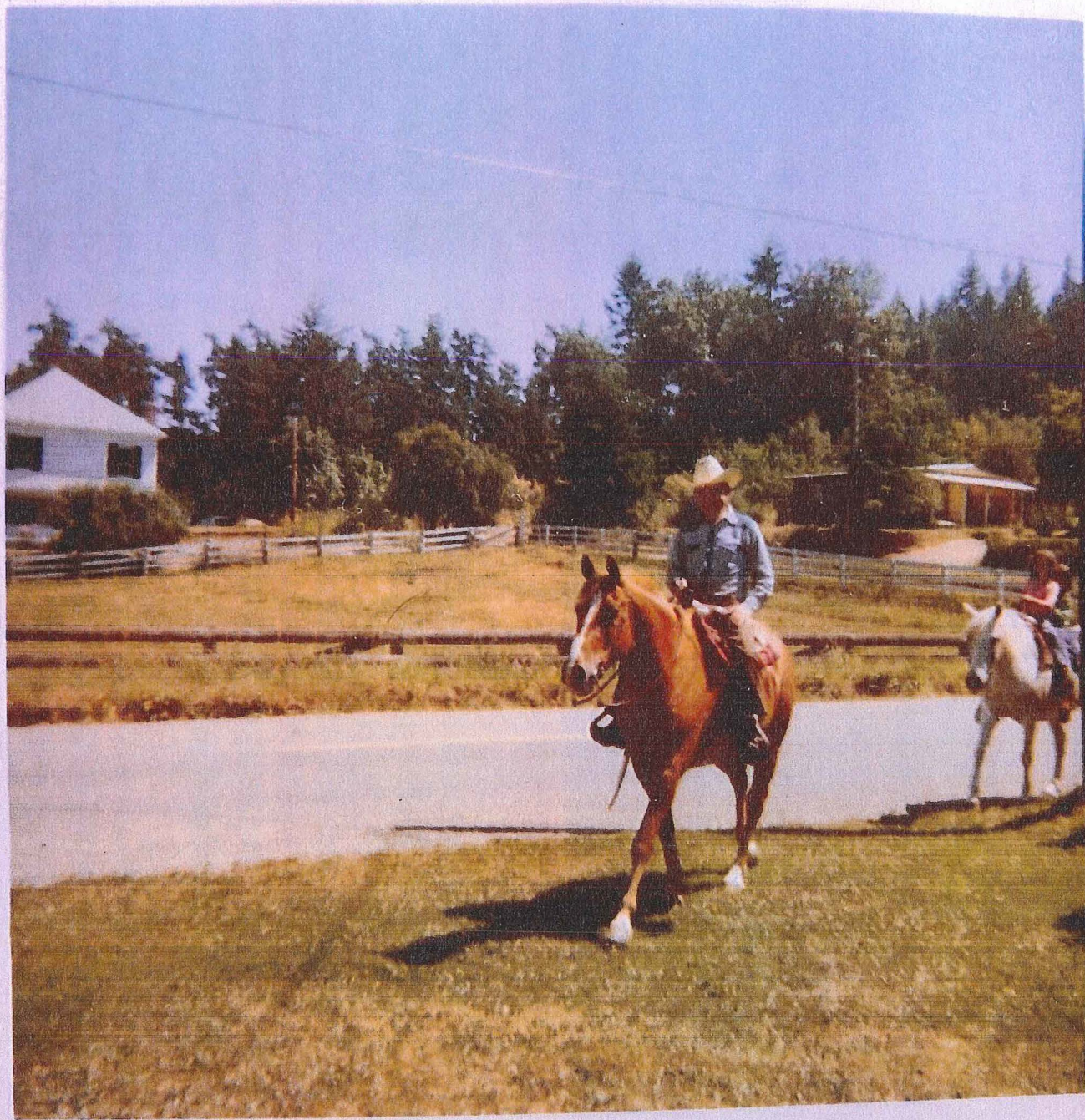
Anacortes Wa

1979

Elizabeth, Betsy, Woffles

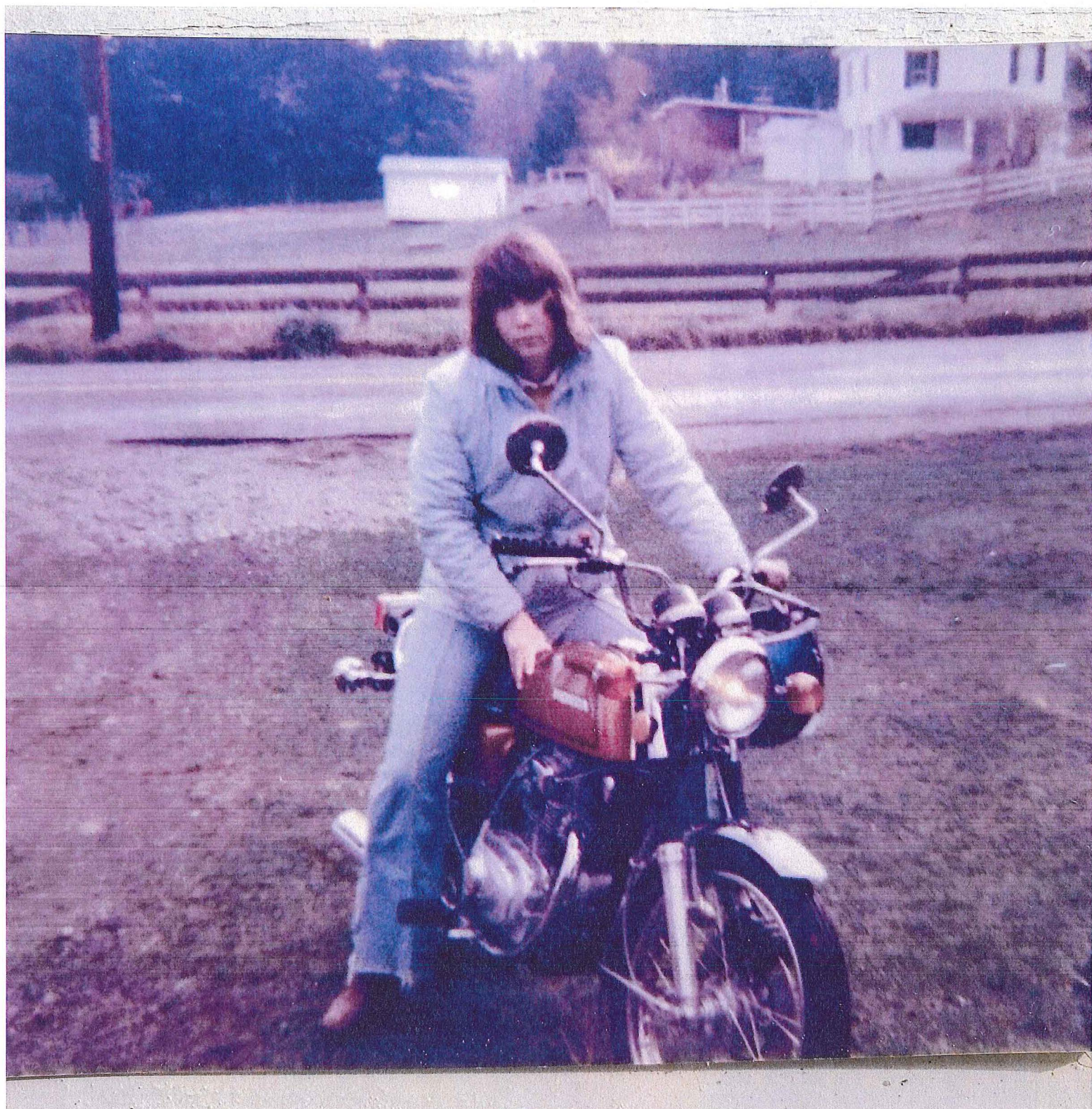
Scotty on Spook

on Danny



1978

Scotty on spook
Sharn + Elizabeth on Danny



Cricket new Honda Bikes
March 1977
Anasotes, Wa

1969 Aerial from Skagit County iMap



May 11, 2020

Legend



County Boundary

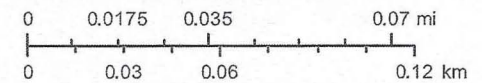
Hydro Labels

City Names

Regional Labels

Road Labels

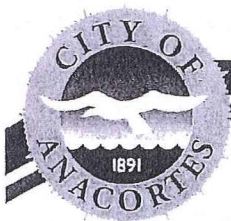
1:2,257



Data Accuracy Warning: All GIS data was created from available public records and existing map sources. Map features have been adjusted to achieve a best-fit registration. While great care was taken in this process, maps from different sources rarely agree as to the precise location of geographic features. Map discrepancies can be as great as 300 feet.

Copyright 2016





PLANNING, COMMUNITY & ECONOMIC DEVELOPMENT

May 11, 2020

Craig Cammock
Skagit Law Group
P.O. Box 336
Mount Vernon, WA. 98273

Brooks & Kelly Middleton
4419 H Avenue
Anacortes, WA 98221

Subject: Correspondence of April 22, 2019
Response of April 10, 2020
Potential Wetland Issues

Dear Craig, Brooks & Kelly;

We have received your letter regarding mowing the property at 4419 H Avenue where potential wetlands and/or buffers may exist based on peer review conducted by geo-engineers dated January 15, 2019. You describe the Middletons have consistently maintained their pasture including regular mowing for the 17 years they have owned the property.

Please provide documentation to support the activities you describe prior to the wetland regulations adoption in 1990 (other than the 1969 aerial included with your letter). Such documentation may include additional aerial photos, letters and/or statements from previous property owners.

The aforementioned documentation must clearly show existing non-conforming uses prior to the 1990 regulations consistent with AMC 17.70.500.

If you have any questions, please feel free to contact me at 360-299-1942.

Regards,

CITY OF ANACORTES



Don Measamer
Director of Planning, Community & Economic Development

cc: Libby Grage
Tess Cooper



SKAGIT LAW GROUP ^{PLLC}
Attorneys at Law

Craig E. Cammock craig@skagitlaw.com
Catherine R. (Kate) Szurek kate@skagitlaw.com
Megan Otis Masonholder megan@skagitlaw.com
Laura Minton Breckenridge laura@skagitlaw.com

Rec 4/10/20

April 7, 2020

Don Measamer
Planning, Community, & Economic Development Department
City of Anacortes
PO Box 547
Anacortes, WA 98221

Re: Correspondence of April 22, 2019

Dear Don:

I'm writing on behalf of Brooks and Kelly Middleton regarding their property at 4419 H Avenue. The Middletons received a letter from you dated April 22, 2019 which asks them to discontinue mowing of the pasture located on their property.

The Middletons have consistently maintained their pasture by activities which include regular mowing for the 17 years that they have owned the property. Their predecessors likewise conducted similar mowing and related activities for their ownership tenure dating back to 1988. Aerial photos show similar use and activity dating back through prior owners to at least 1969.

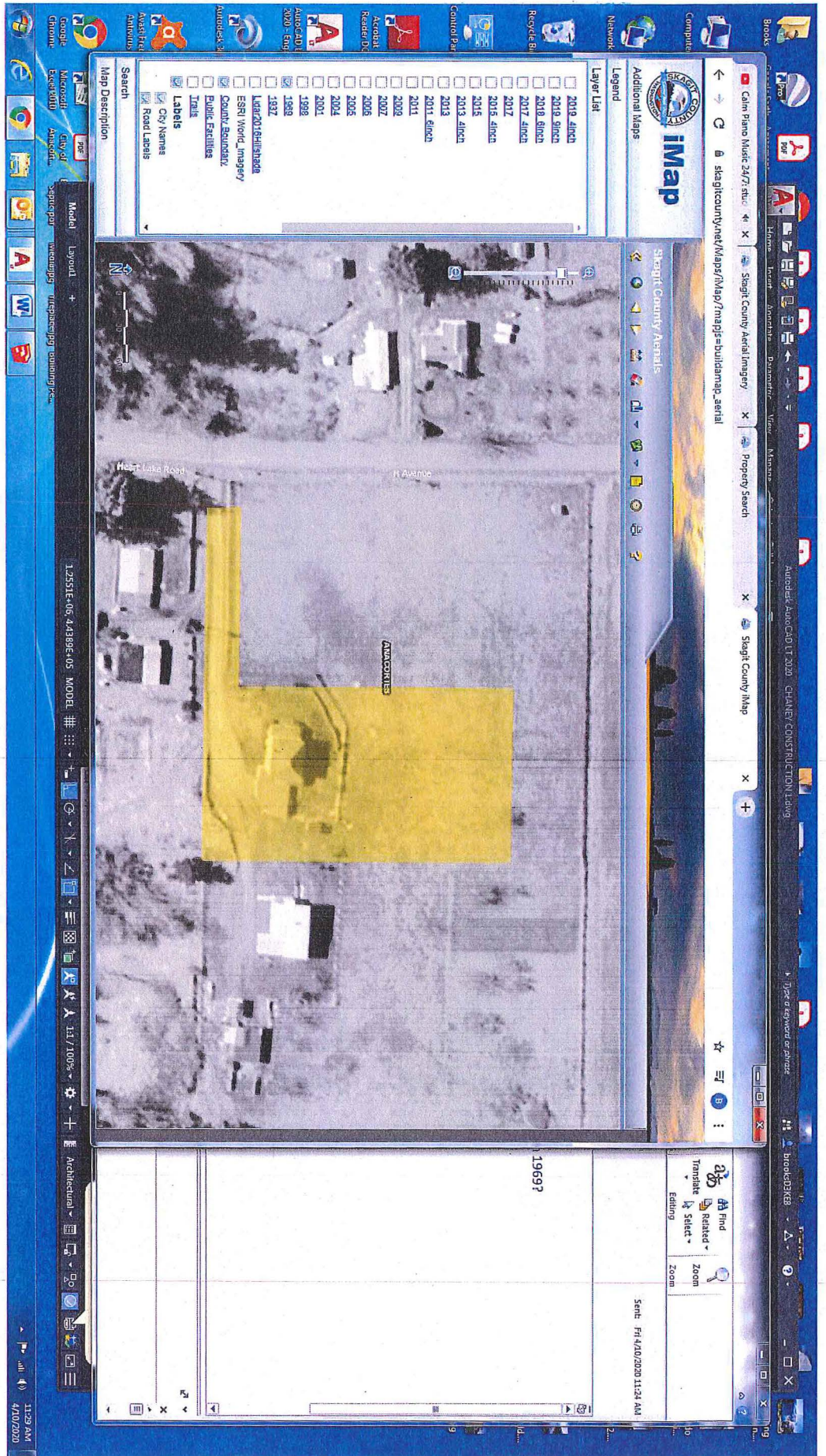
No wetlands have been shown to exist on the Middleton property. Mere suspicion that a wetland may exist does not create authority for a demand to cease any particular activity or for a wetlands delineation. Moreover, AMC 17.70.500 exempts any activity which commenced before passage of wetland regulation by the City in January 1990. As noted above, the Middletons have merely continued the long pattern of pasture maintenance activities that have occurred since at least 1969. The Middletons will continue to do so in the same manner.

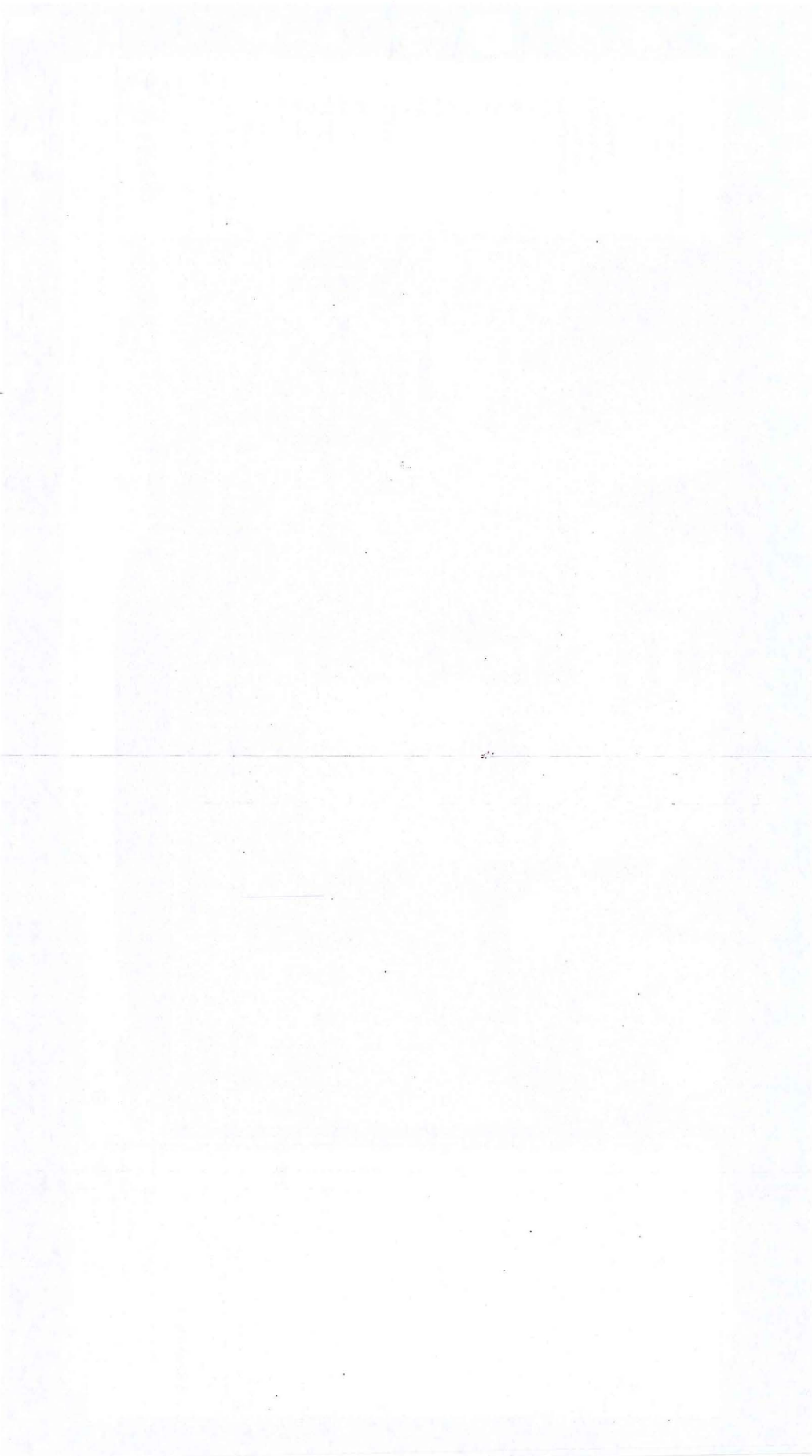
Please let us know if you would like copies of aerial photos relevant to this issue.

Sincerely,

SKAGIT LAW GROUP, PLLC

CRAIG E. CAMMOCK





Ian S. Munce
1711 Quail Drive
Anacortes, WA 98221
360-333-1646

May 9, 2021

RE: 4417/4419 H Avenue Wetland

Mr. Don Measamer
City Planning, Community, and
Economic Development Director
City of Anacortes

Dear Mr. Measamer,

I held the position of City of Anacortes Planning Director from 1981 to 2008.

For this entire time my family resided, and still resides at a home that is now addressed as 1711 Quail Drive.

In and around 1989 the property owner just to the south of my property, Mr. McKean, approached the City and me as Subdivision Administrator wanting to short plat his property into two lots.

I was concerned about this as the City maps showed the existence of a wetland on Mr. McKean's property, but approved the short plat in 1989 anyway as I was unaware of any authority that would allow denial.

Approximately two years ago, a public records request that I submitted, failed to produce the short plat file; it is simply missing.

As part of my review of the short plat I had multiple discussions with Mr. McKean, discussions at which he assured me that he would not disturb the wetland area.

In 1990 the City designated and mapped his wetland as a Category III wetland with a 25 foot buffer. Ordinance No. 2131.

Ordinance No. 2131 explicitly stated that nonconforming uses were prohibited if discontinued for a year from the adoption of Ordinance No. 2131.

As an immediate neighbor I was monitoring the situation carefully and there was absolutely no wetland incursion during this period.

Sincerely, Ian S. Munce Ian S. Munce 5/9/2021

Attachment B

10/10/2010
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Attachment C

**Planning, Community, & Economic Development
Department**

**PO Box 547
Anacortes, WA 98221
(360) 293-1907
Don Measamer, Director**

April 22, 2019

Brooks & Kelly Middleton
4419 H Ave.
Anacortes, WA 98221

Re: Potential wetland/wetland buffer violation at 4419 H Ave. (P32315 & P32318)

Dear Mr. & Mrs. Middleton;

We have recently been notified, and have confirmed, that the field located at 4419 H Ave., parcel numbers 32315 and P32318, has been mowed. City adopted critical areas maps show the approximate location and extent of wetlands in the City. According to these maps, potential wetlands are located in the vicinity of the aforementioned parcels. See attached map (Exhibit A). While the adopted critical areas maps do not provide a final critical area designation, recent wetland reports prepared for the adjacent Rice Short Plat application indicate the potential presence of a wetland on the subject property (see attached third-party review by GeoEngineers dated January 15, 2019).

I have highlighted the pertinent information in the GeoEngineers report on page 6, stating "based on site observation made during the December 10, 2018 site visit, it is likely that a wetland (of unknown size) is present on the Middleton property in the unmown field....The boundaries of any wetlands identified on the Middleton property should be delineated (if access is granted) or estimated if not, and the approximate buffer(s) should be mapped on the Rice property".

Regulated activities, including the destruction or removal of plant life that would alter the character of a nontidal wetland, is a regulated activity in a wetland per AMC 17.06.735. **You are hereby notified to cease and desist all mowing in the field until such time as a wetland report and mapping has been provided to determine the presence or absence of wetlands and buffers on the property.** As soon as possible, a wetland report and delineation, prepared in accordance with AMC 17.70 Critical Areas Regulations by a Professional Wetland Scientist, shall be provided to the City of Anacortes Planning Department. If it is determined that there are wetlands and associated buffers on the property, and that they were impacted by the recent mowing activity, a wetland restoration and creation report prepared consistent with AMC 17.70.470 must be submitted as well.

If you have any questions, please feel free to contact me at 360-299-1942.

Sincerely,

Don Measamer
Director, PCED

Exhibit B



600 Dupont Street
Bellingham, Washington 98225
360.647.1510

January 15, 2019

City of Anacortes
P.O. Box 547
Anacortes, Washington 98221

Attention: Libby Grage

Subject: Peer Review
Rice's H - Avenue Short Plat
4417 H Avenue
Anacortes, Washington
File No. 0382-033-00

INTRODUCTION AND SCOPE

This letter presents the results of GeoEngineers, Inc.'s (GeoEngineers') Wetlands and Fish and Wildlife Habitat Conservation Areas (FWHCAs) assessment peer review for the proposed development at 4417 H Avenue in Anacortes, Washington. The project site is located at the base of a slope in the vicinity of mapped wetlands and streams/drainages. Wetlands site assessments were conducted in 2015 by Advanced Environmental Solutions, with a series of site visits completed on June 23, September 16 and November 19, 2015 and the wetland report was completed in April of 2016 (AES, 2016). The proposed development will be subject to review under the City of Anacortes (City) Critical Area Regulations (Chapter 17.70) related to wetlands (Article IV), if wetlands are identified on the subject or if wetland buffers extend onto the subject parcel from adjacent parcels. Our services were performed in general accordance with our On-Call Consultant Agreement 17-051-PLN-002 with the City and approved by Kaitlyn Nelson of the City on December 3, 2018.

The proposed project includes a short plat with up to three new units, and associated infrastructure including a shared driveway, driveway apron, paved pedestrian path and utilities as well as compost-amended vegetated filter strips adjacent to proposed pollution generating impervious surfaces (PGIS). Infiltration is not proposed for stormwater management due to site soils with very low infiltration rates and high perched water tables. The drainage report asserts that the proposed parcel is located within a single Threshold Discharge Area, with surface flows draining primarily as sheet flow to a ditch on the adjacent northern property, with some limited areas of localized concentrated flow. This ditch flows eastward towards a forested area with a scrub-shrub and forested wetland mapped by the City (Attachment A - City of Anacortes Wetlands and Streams Map).

The short plat site is approximately 2.9 acres and has a moderate northwesterly slope of approximately 8.5 percent (Attachment B - Rice H-Avenue Short Plat Preliminary Plat Plan Set). The majority of the site is

lawn or pasture with several non-native fruit trees. The eastern 0.8 acres of the parcel is forested with native trees and mixed non-native (Himalyan blackberry [*Rubus armeniacus*]) and native (common snowberry [*Symphoricarpos albus*]) shrub understory.

The City has requested that we review the applicant's submittals with regard to compliance with City Critical Area Regulations and adequacy of technical documentation. The purpose and scope of our services included: reviewing applicant submitted information provided by the City, in-house materials and published information pertinent to the proposed development; performing a brief site reconnaissance; providing independent assessment of the wetlands and FWHCA conclusions submitted by the applicant's wetland scientist; and providing an independent opinion regarding completeness of the submittals and/or suggestions for additional evaluation, if appropriate.

The City provided the following documentation for our review that related to wetland and FWHCA aspects of the project:

- **Critical Areas Assessment Report:** Advanced Environmental Solutions (2016). Rice – 4417 H Avenue Site Assessment. Mount Vernon, Washington. April 2016.
- **Drainage Plan:** Lervik Engineering (2018a). Stormwater Site Plan H-Avenue Short Plat for Darren & Jolynn Rice. Lervik Engineering Civil Design, Consulting and Construction Management. Anacortes, Washington. September 2018.
- **Short Plat Plan Set:** Lervik Engineering (2018b). Rice H-Avenue Short Plat Preliminary Plat Plan Set (Revision No. 1). July 2018.

SITE VISIT

Two GeoEngineers biologists visited the site on December 10, 2018 and met with Kaitlyn Nelson from the City. Prior to the site visit, November precipitation was lower than average years and December precipitation was much lower than average years. The following is a summary of observations:

- During an "over-the-fence" visual assessment of the parcel immediately east of the subject parcel, forested and scrub-shrub wetland vegetation was observed within a shallow valley that sloped to the north within at least 75 feet of the property boundary (the property boundary was not staked in the field). Within the potential wetland area vegetation consisted of twinberry (*Lonicera involucrata*), salmonberry (*Ribes spectabilis*), red alder (*Alnus rubra*) and western red cedar (*Thuja plicata*). Within adjacent potential buffer areas, vegetation consisted of Douglas fir (*Pseudotsuga menziesii*), snowberry (*Symphoricarpos albus*), trailing blackberry (*Rubus ursinus*) and sword fern (*Polystichum munitum*). The potential wetland area contained downed logs and standing snags (special habitat features and potentially priority logs and snags).
- A vegetated area with 1 to 3 inches of standing water was observed within the parcel immediately west of the subject parcel (Middleton property) at the base of a slope. Vegetation in this area consisted of slough sedge (*Carex obnupta*) and soft rush (*Juncus effusus*). The sedge area was located within a hummocky and unmown field within the Middleton property. Outside of the sedge area vegetation in the unmown field consisted primarily of mixed grasses and soft rush. Areas adjacent to the wet sedge area, had soils that were saturated to the surface (soggy ground) and a

high water table. Farther out from the wet sedge area (north towards the proposed access driveway) soils were no longer saturated to the surface.

- Informal soil pits dug along the proposed shared driveway revealed soils similar to those reported in the critical areas assessment report (Sample Plots 1, 3, 5 and 6); however, formal sample plots were not completed and soils were not officially colored (AES, 2016). Wetland hydrology was not observed within the soil pits. A shallow and narrow swale or linear depression was observed running west-east in the center of the proposed shared driveway. It was a long linear feature that appeared to be either a shallow excavated swale or a sunken area from buried drain tile or other linear buried feature. Soils within this small depressed area were observed to have more moisture content than adjacent soils indicating that the swale was likely collecting adjacent surface water.
- Within the proposed short plat parcel no field indicators of wetland vegetation or wetland hydrology were observed. Vegetation within the proposed development areas consisted primarily of mowed mixed grasses with some old fruit trees. A large patch of blackberry was observed in the northeast corner of the Rice property.
- Within the ditch extending west-east in the parcel immediately to the north shallow flowing water was observed.

REVIEW OF CRITICAL AREAS ASSESSMENT

We provide the following discussion based on our review of relevant submittals, our site reconnaissance, and review of appropriate regulations.

Designation, Rating, and Mapping Wetlands

- AMC 17.70.320(A) states that, "Wetlands are those areas, designated in accordance with the Washington State Department of Ecology, Wetlands Identification and Delineation Manual, March 1997, Pub. No. 96-94, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions."
 - As of March 14, 2011 the *Washington State Wetlands Identification and Delineation Manual* is no longer valid. According to the Washington State Department of Ecology, delineations should be done according to the currently approved federal manual and supplements.

The AES critical areas report used the United States Army Corps of Engineers (USACE) Wetlands Delineation Manual (Environmental Laboratory, 1987) and the Regional Supplement to the USACE Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0) (USACE, 2010) to complete the wetland assessment of the Rice and Middleton properties.

Some of the sample plot data collected and some interpretation of the sample plot data was counter to guidance in the USACE Regional Supplement Manual (USACE, 2010).

- On page 42 of the USACE Regional Supplement Manual it states, "For soils with deep, dark surface layers, deeper examination may be required when field indicators are not easily seen within 20 in. (50 cm) of the surface. The accumulation of organic matter in these soils may mask redoximorphic features in the surface layers. Examination to 40 in. (1 m) or more may be needed to determine

whether they meet the requirements of indicator A12 (Thick Dark Surface). A soil auger or probe may be useful for sampling soil materials below 20 in."

- On page 51 of the USACE Regional Supplement Manual it states, for a Thick Dark Surface (A12) "Deep observations may be necessary to identify the depleted or gleyed matrix below a thick, dark surface layer. In this example (photo was above), the depleted matrix starts at 20 in. (50 cm)."
- On page 59 of the USACE Regional Supplement Manual it states, for a Redox Dark Surface (F6), "Redox concentrations are often small and difficult to see in mineral soils that have dark (value of 3 or less) surface layers due to high organic-matter content. The organic matter masks some or all of the concentrations that may be present; it also masks the diffuse boundaries of the concentrations and makes them appear to be more sharp. Careful examination is required to see what are often brownish redox concentrations in the darkened materials. If the soil is saturated at the time of sampling, it may be necessary to let it dry at least to a moist condition for redox features to become visible."
- On page 65 of the USACE Regional Supplement Manual it states, "During the annual dry season, some wetlands in the region may lack hydrology indicators. However, the lack of an indicator is not evidence for the absence of wetland hydrology. See Chapter 5 (Difficult Wetland Situations in the Western Mountains, Valleys, and Coast Region) for help in identifying wetlands that may lack wetland hydrology indicators during dry periods."
- On page 116 of the USACE Regional Supplement Manual (Chapter 5) it states, "Wetland hydrology determinations are based on indicators, many of which were designed to be used during dry periods when the direct observation of surface water or a shallow water table is not possible. However, some wetlands may lack any of the listed hydrology indicators, particularly during the dry season or in a dry year. The evaluation of wetland hydrology requires special care on any site where indicators of hydrophytic vegetation and hydric soil are present but hydrology indicators appear to be absent." Chapter 5 of the USACE Supplement Manual describes a number of approaches that can be used to determine whether wetland hydrology is present on sites where indicators of hydrophytic vegetation and hydric soil are present but hydrology indicators may be lacking.
 - Verify that the area is in a landscape position that is likely to collect or concentrate water (e.g., concave surface or toe of slope)
 - Reference sites. If indicators of hydric soil and hydrophytic vegetation are present on a site that lacks wetland hydrology indicators, the site may be considered to be a wetland if the landscape setting, topography, soils, and vegetation are substantially the same as those on nearby wetland reference areas.
 - Evaluating multiple years of aerial photography. Wetness signatures for a particular state may include surface water, saturated soils, flooded or drowned-out vegetation, stressed vegetation due to wetness and patches of greener vegetation during dry periods.

None of the sample plots that were evaluated during June and September (the dry season, SP-1 through SP-8) had primary indicators of wetland hydrology and the AES report only considered SP-7 to possess two secondary indicators of wetland hydrology (i.e., geomorphic position and facultative plant species (FAC) -neutral test) (AES, 2016). It is our opinion that SP-8 also possesses two secondary indicators of wetland hydrology (i.e., geomorphic position and FAC-neutral test) and thus wetland hydrology was present. Of note, is that wetland hydrology was checked on page 1 of the wetland data form for SP-8, but not under the Hydrology section of the form. SP-8 is located at the toe of a slope, a geomorphic/landscape position

typical for wetlands and a secondary indicator of wetland hydrology per Chapter 5 of the Corps Supplement Manual (USACE, 2010). Dominant vegetation within SP-8 also passed the FAC-Neutral test, as 100 percent of the dominant species that remain after excluding the dominant FAC were facultative wetland plant species (FACW). In addition to this, the text in the report discussed that vegetation within SP-8 consisted of soft rush, sedge (carex), coltsfoot and iris, but sedge were not listed on the wetland data form. The sedge we observed in the vicinity of SP-8 during the site visit was slough sedge (*Carex obnupta*), an obligate wetland plant species (OBL).

The soils on the Rice and Middleton properties are Bow gravelly loam, dry, 3 to 8 percent slopes, a hydric soil (USDA-NRCS, 2018). Bow gravelly loams are somewhat poorly drained with clay loams at 17 to 31 inches and silty clays at 31 to 60 inches. The water table is at a depth of approximately 6 to 18 inches (USDA-NRCS, 2018). The AES report concludes that soils in SP-8 were not hydric; however, with soil colors of 5YR 3/1 down to 16 inches it is possible that below this depth there is a layer of 5YR 2.5/1 and then a depleted matrix below that, thus meeting Thick Dark Surface (A12). With USDA-mapped clay loams at 17- to 31-inch depth and silty clays below that, it is possible that a low permeability layer could create a depleted matrix below 16 inches. With two secondary indicators of wetland hydrology and a potential for qualifying as a Thick Dark Surface SP-8 could qualify as a wetland. Hydrology and vegetation observed in the vicinity of SP-8 during the December 10, 2018 site visit indicated wetland conditions.

Sample plots where AES observed hydric soils and hydrophytic vegetation, but no primary and only one secondary indicator of wetland hydrology was observed including SP-1, SP-3 and SP-5. These sample plots were observed in the dry season (e.g., June and September). It is common in Western Washington during the summer drought to not observe primary indicators of wetland hydrology. In addition, all these areas are mowed such that growth of sedges and other wetland plants with apical meristems (plants that grow from the tip instead of the base like grasses) is suppressed, making it more difficult for these areas to pass to the FAC-neutral test.

During the wet season site visit on November 19 (at the end of the growing season), the water table was observed 4 inches below ground surface (bgs) and soils were saturated to the surface at SP-9 and SP-10. SP-9 is near SP-8 and SP-4 (within approximately 35 to 55 feet), and SP-10 is in the vicinity of (within approximately 90 to 100 feet) and upslope of SP-3 and SP-5. Only SP-9 and SP-10 were evaluated in November; however, if groundwater levels were consistent between them across the gently sloping field, it is possible that the other areas of the same field would have had saturation and a high water table within the 12 inches of the ground surface at that time.

The AES report concluded that SP-9 and SP-10 were not within wetland areas because their soils did not meet the criteria for a hydric soil. However, SP-10 was very close to meeting a Redox Dark Surface (F6) but AES observed only 2 percent redox instead of the required 5 percent for 3/2 soils. Redox concentrations are difficult to see in dark surface soils, and careful examination is required to see what are often brownish redox concentrations in the darkened materials. Saturated soils can be left to dry, at least to a moist condition, for redox features to become visible.

Area Addressed in Critical Area Report

- AMC 17.70.330(B)(2) requires that "All wetlands and recommended buffers within three hundred feet of the project area;" be addressed in a critical area report for wetlands. In addition, 17.70.330(B)(2) states that "Critical area reports should consider wetlands and other critical areas

within three hundred feet due to the maximum potential buffer size for wetlands. Critical area size and characteristics beyond the project area may be estimated through aerial photographic interpretation and discussions with agency staff if the adjacent property owner denies access;"

Other than the Middleton property, adjacent properties were not assessed for the presence of wetlands or other FWHCAs. There is no mention of attempting to contact adjacent property owners to access their property for wetlands in the critical areas report.

A potential large forested wetland was observed (over-the-fence visual assessment) east of the property within a depression that sloped towards to the north. This wetland is mapped on the City of Anacortes Critical Areas map (Attachment A). The potential wetland was forested, with snags and downed logs and relatively intact buffers, so that it could score as a Category II or III with a moderate to high habitat value. The range of possible City of Anacortes standard buffer widths for these Categories is 110 to 225 feet (AMC 17.70.340(1)). The approximate wetland boundary was no more than approximately 75 feet from the forest edge, and therefore was likely 25 feet from the eastern parcel boundary, such that the wetland buffer would extend onto the Rice property. A 110-foot buffer would extend into Lot 4, while a 225-foot buffer would extend into Lot 3.

During the GeoEngineers site visit on December 10, properties to the north and south were not visually assessed for potential wetlands. The City maps a wetland to the north of the Rice property (approximately 280 feet north of the northern property boundary) within a field that appears wet on aerial photographs. The field is approximately 200 feet north of the northern property boundary just north of Quail Drive. Properties to the south are on a steep slope and do not appear wet on aerial photographs.

CONCLUSIONS AND RECOMMENDATIONS

Based on our review of the information described above and our site visit, we conclude that the critical areas report and the site plans should be considered preliminary because they may be missing some wetland and buffer features and thus they may not be accurately representing the potential critical area impacts of the project. We also conclude that the critical areas report is not in full conformance with the City of Anacortes Critical Areas Regulations (Chapter 17.70).

- Because all the sample plots on the Rice property were observed in the dry season and because almost all of the Rice property is mowed making it more difficult for these areas to pass to the FAC-neutral test (secondary indicator of wetland hydrology), we recommend that a site visit be conducted in the wet season at the beginning of the growing season to confirm an absence of wetland hydrology on the Rice property.
- We recommend that the Middleton property (areas within 300 feet of proposed work on the Rice property) also be evaluated in the spring, and that soils be allowed to partially dry to make redox features more visible in the dark soils. We also recommend that soil pits be dug deeper to investigate for the potential presence of a deeper depleted or gleyed layer (Thick Dark Surface).
- Based on review of the Critical Areas Report and the City of Anacortes wetlands and streams map and based on observations made during the December 10, 2018 site visit, it is likely that a wetland (of unknown size) is present on the Middleton property in the unmown field. The boundaries of any

wetland(s) identified on the Middleton property should be delineated (if access is granted) or estimated if not, and the approximate wetland buffer(s) should be mapped on the Rice property.

- Based on observations made during the December 10, 2018 site visit and based on review of the City of Anacortes wetlands and streams map and the drainage report (Lervik Engineering, 2018a) it is likely that a wetland (of unknown size) is present on the property to the east of the Rice property within the forest. The western boundaries of this wetland should be delineated (if access is granted) or estimated if not, and the approximate wetland buffer should be mapped on the Rice property.

LIMITATIONS

We have prepared this letter report for use by the City of Anacortes. Our services were provided solely to assist the City in reviewing the proposed development at the subject site under their Critical Area Regulations, and may be made available to parties associated with the project.

Within the limitations of scope, schedule and budget, our services have been executed in accordance with generally accepted practices in the field of wetland delineation and critical areas assessment in this area at the time this report was prepared. No warranty or other conditions, express or implied, should be understood. This report may be made available to the property owner for their review.

REFERENCES

Advanced Environmental Solutions (AES, 2016). Rice – 4417 H Avenue Site Assessment. Mount Vernon, Washington. April 2016.

City of Anacortes Municipal Code Chapter 17.70 Critical Area Regulations. Available at: <https://anacortes.municipal.codes/AMC>

Environmental Laboratory (1987). Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.

Lervik Engineering (2018a). Stormwater Site Plan H-Avenue Short Plat for Darren & Jolynn Rice. Lervik Engineering Civil Design, Consulting and Construction Management. Anacortes, Washington. September 2018.

Lervik Engineering (2018b). Rice H-Avenue Short Plat Preliminary Plat Plan Set. (Revision No. 1). July 2018.

United States Army Corps of Engineers (USACE, 2010) Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region, ed. J.S. Wakeley, R. W. Lichvar, and C.V. Noble. ERDC/EL TR-10-3. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

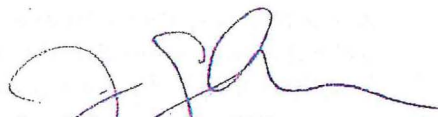
United States Department of Agriculture – National Resource Conservation Service (USDA-NRCS, 2018). Web Soil Survey. Available at: <http://websoilsurvey.nrcs.usda.gov/app/>.

We appreciate the opportunity to provide these services. Please call if you have any questions regarding this peer review letter.

Sincerely,
GeoEngineers, Inc.



Fiona McNair, MS, PWS
Senior Biologist



Joe Callaghan, MS, PWS
Associate Biologist

Attachments:

Attachment A—City of Anacortes Wetlands and Streams Map

Attachment B—Rice H-Avenue Short Plat Preliminary Plat Plan Set

JOC:FMM:tlm

One copy submitted electronically

Disclaimer: Any electronic form, facsimile or hard copy of the original document (email, text, table, and/or figure), if provided, and any attachments are only a copy of the original document. The original document is stored by GeoEngineers, Inc. and will serve as the official document of record.

ATTACHMENT A
City of Anacortes Wetlands and Streams Map

City of Anacortes Streams, Stormwater and Wetlands GIS Layer – KMZs in Google Earth



ATTACHMENT B
Rice H Avenue Short Plat Preliminary Plat Sheet Plan Set

A PORTION OF THE SW 1/4 OF THE SE 1/4 SECTION 25, TOWNSHIP 35 NORTH, RANGE 01 EAST, W.M.

RICE's H-AVENUE SHORT PLAT PRELIMINARY PLAT PLAN SET

ANACORTES, WASHINGTON

PLAT/PARCEL DATA

ZONING R1
TOTAL NET AREA 2.929 ACRES
TOTAL GROSS AREA 2.970 ACRES
TOTAL LOT AREA 129,359 SF
EXISTING LOTS 1
PROPOSED LOTS 4
DENSITY ALLOWED 2.0 DU/ACRE
DENSITY PROPOSED 1.4 DU/ACRE
NO DWELLES ARE PROPOSED

GRADING DATA

CUT VOLUME 1,120 CY
FILL VOLUME 1,370 CY

SURFACE DATA

SURFACE	EXISTING	PROPOSED
IMPERVIOUS	10,470 SF	37,730 SF
PERVIOUS	0.246 AC	0.843 AC
	116,876 SF	90,836 SF
	2.683 AC	2.035 AC

*Note: Assumes 2800 SF house, with driveway as shown on plans.
Exact developed configurations may vary.

SITE INFORMATION

TAX ID NUMBERS P32314

CURRENT ZONING R1
SCHOOL DISTRICT ANACORTES
NATURAL GAS CASCADE NATURAL GAS
WATER PROVIDER CITY OF ANACORTES
SANITARY SEWER CITY OF ANACORTES
POST OFFICE ANACORTES (98221)
POWER PROVIDER PUECT SOUND ENERGY

LEGAL DESCRIPTION

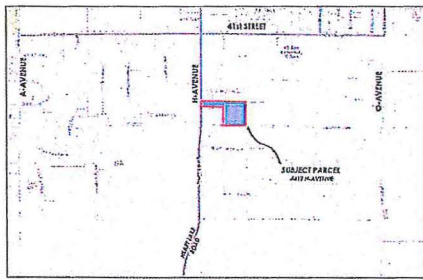
THE EAST 1/2 OF THE SOUTH 1/2 OF THE SW 1/4 SE 1/4 OF SECTION 25, TOWNSHIP 35 NORTH, RANGE 1 E, TOGETHER WITH THE NORTH 60 FEET OF THE WEST 1/2 OF THE SW 1/4 SE 1/4 OF SEC 25, TOWNSHIP 35 NORTH, RANGE 1 EAST, W.M.

OWNER/APPLICANT
DARREN & JULYNN RICE
4417 H-AVENUE
ANACORTES, WA 98221

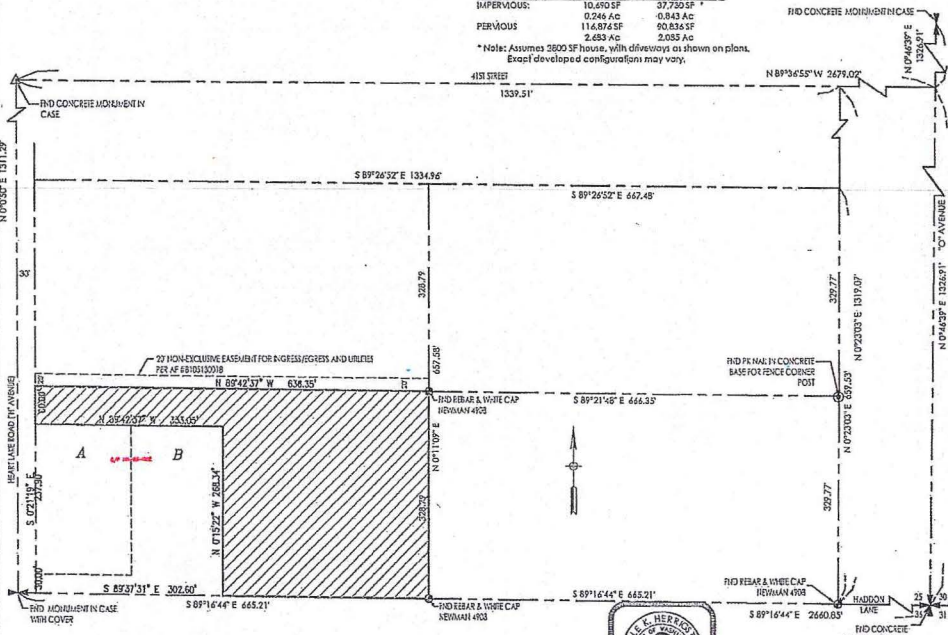
CONTACT PERSON
MIKE HEADRICK
2320 Lake Park Drive
Anacortes, WA 98221
360.293.2598
CorumDevelopment@gmail.com

PROJECT SURVEYOR
DALE HERRIGSTAD, PE, PLS
HERRIGSTAD ENGINEERING & SURVEYING
4320 WHISTLE LAKE ROAD
ANACORTES, WA 98221
PHONE: 360.299.8804

PROJECT ENGINEER
DAVID A. LERVIK, PE
LERVIK ENGINEERING
PO BOX 684
ANACORTES, WA 98221-0684
360.588.1592



VICINITY MAP
(NOT TO SCALE)



DISCLAIMER
KNOW ALL PEOPLE BY THESE PRESENTS that we, the undersigned owners of interest in the land hereby short subdivided, hereby declare this short plat to be the graphic representation of the short subdivision made hereby, and do hereby declare to the use of the public for all purposes not inconsistent with the use thereof for public highway purposes, and do hereby declare to make all necessary steps for cut and fill upon the lots shown hereon in the original reasonable grading of said streets, and further declare to the use of the public all the easements and loads shown on this short plat for all public purposes as indicated thereon, including but not limited to, open space, utilities and drainage unless such easements or loads are specifically identified on this short plat as being dedicated or conveyed to a person or entity other than the public to which case we do hereby dedicate such streets, easements, or loads to the person or entity identified on this short plat.

Further the undersigned owners of the land hereby short subdivided agree for themselves, their heirs and assigns and any person or entity claiming title for the undersigned, any and all claims for damages against the City of Anacortes, its successors and assigns to which may be occasioned by the establishment, construction, or maintenance of roads and/or drainage system within this short subdivision other than claims resulting from inadequate maintenance by the City of Anacortes.

Further the undersigned owners of the land hereby short subdivided agree for themselves, their heirs and assigns to indemnify and hold the City of Anacortes, its successors and assigns, harmless from any damage, including any costs of defense, claimed by persons within or without this short subdivision to have been caused by alterations of the ground surface, vegetation, drainage, or surface or subsurface water flow within this short subdivision or by establishment, construction or maintenance of the roads within this short subdivision.

This subdivision, dedication, waiver of claims and agreement to hold harmless is made with the free consent and in accordance with the desires of said owners.

IN WITNESS WHEREOF we set our hands and seals

Home _____

Home _____

State of Washington _____

County of _____

I certify that I know or have satisfactory evidence that _____ signed the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

History Public: _____ my appointment expires: _____

Dated: _____

State of Washington _____

County of _____

I certify that I know or have satisfactory evidence that _____ signed the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

History Public: _____ my appointment expires: _____

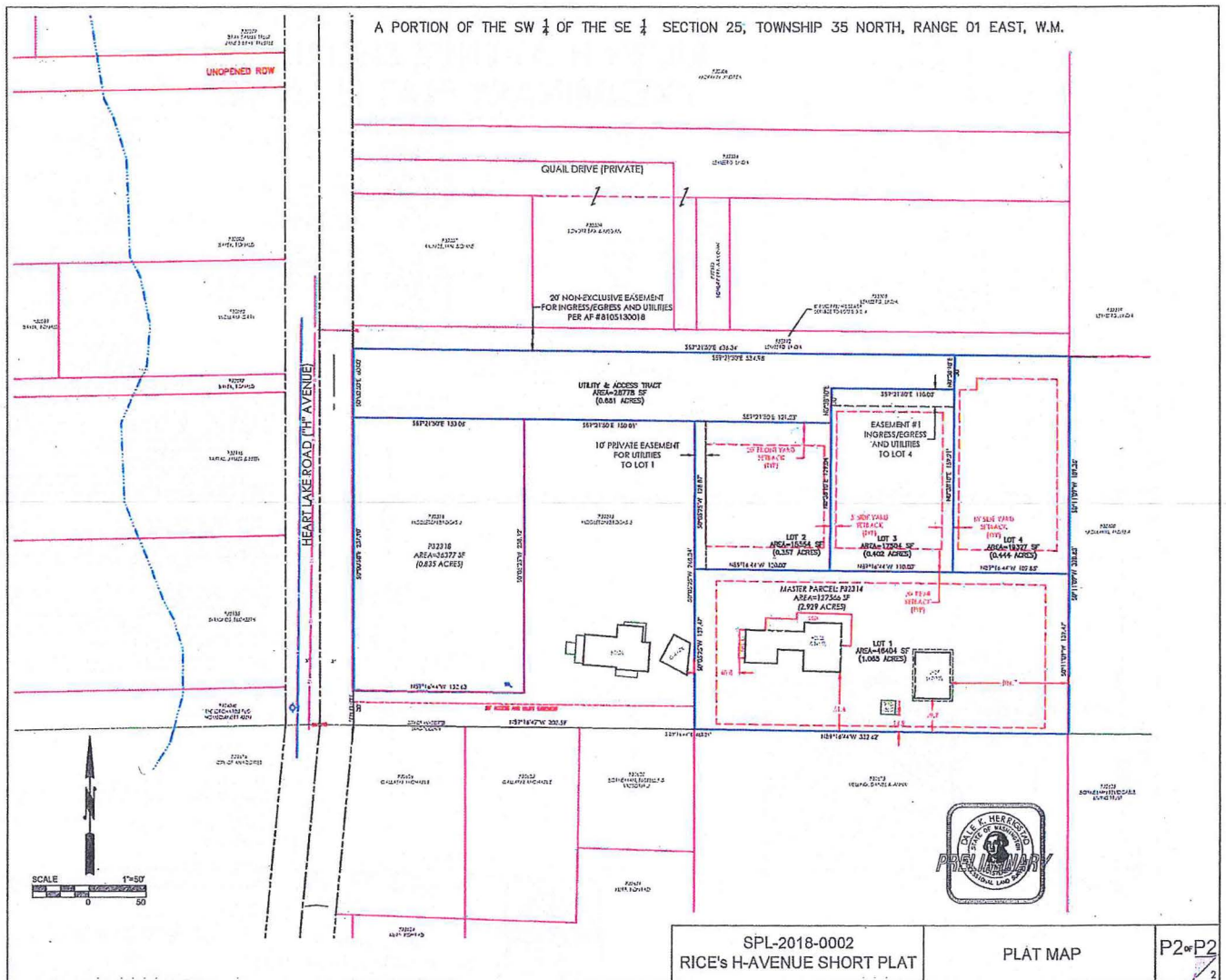
Dated: _____



SPL-2018-0002
RICE's H-AVENUE SHORT PLAT

PROJECT INFORMATION
AND
SECTION BREAKDOWN

P1 of P2
2



ANACORTES, WASHINGTON

2002 AS 2001

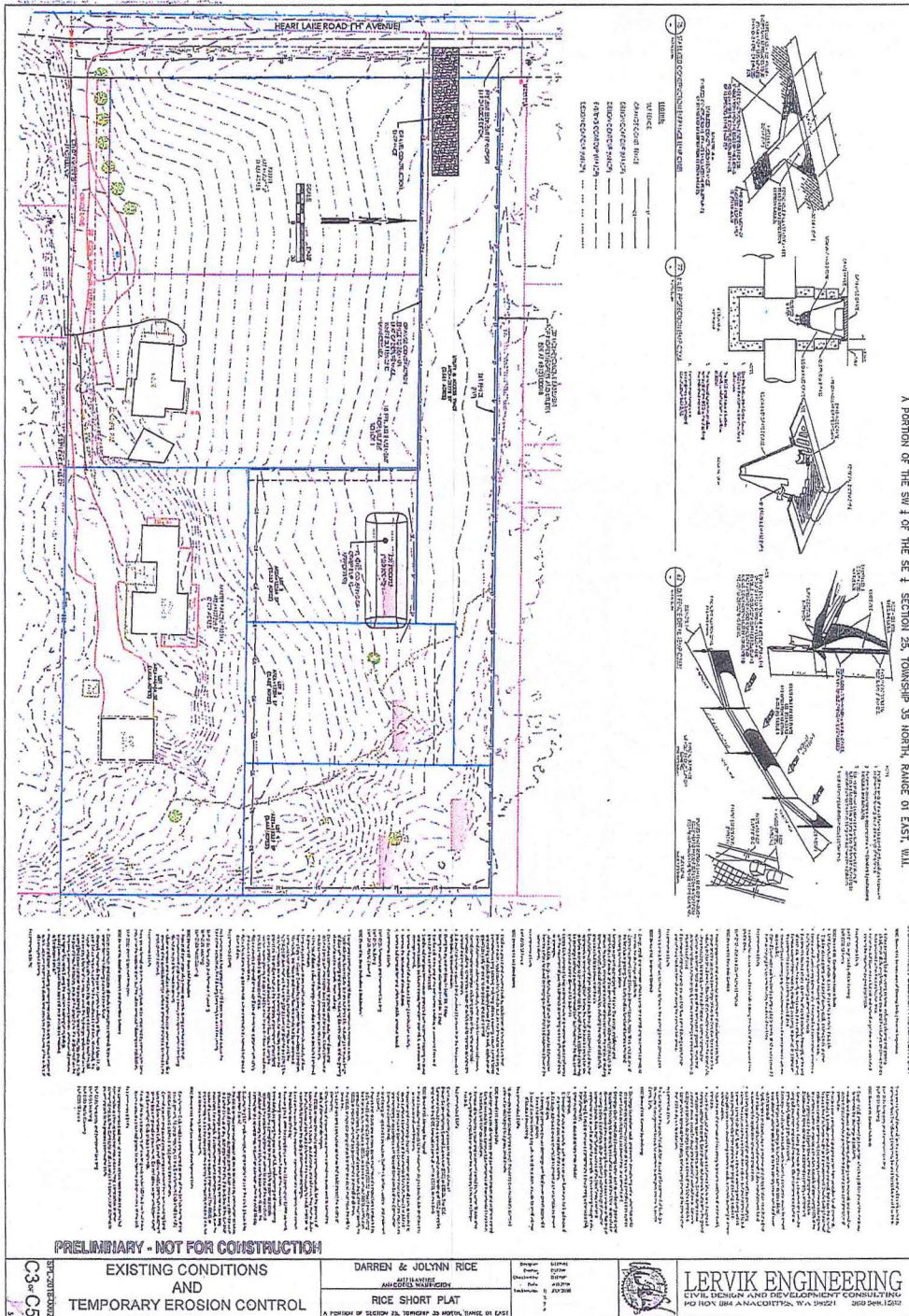
CS	CATCHBASE
CE	CLEAROUT
DC	DUCTILE IRON
EA	EAST
ED	EDGE OF ASPHALT PAVEMENT
EP	EDGE PAVEMENT
EXIST	EXISTING
FF	FINISHED FLOOR
FG	FINISHED GRADE
FL	FLYLINE
FE	FINISH ELEVATION
INT	INTERSECTION
LT	LEFT
OF	OFFSET
P	PIPE
PC	POINT OF CURVATURE (TANGENT)
PO	PORT
PT	POINT OF TANGENCY (CURVE)
RT	RIGHT
SD	STORM DRAIN
SDCB	STORM DRAIN CATCH BASIN
SDMB	STORM DRAIN MANHOLE
ES	STORM SEWER
STA	STATION
V	VATER
D	DRAINER

SURFACE DATA	
DEPTH	TEMP.

LEGAL DESCRIPTION
THE EAST 1/2 OF THE SECTION

100

[illegible]



GENERAL NOTES

1. GENERAL

A. CONTRACT

1. CONTRACT NO. 100-1000

2. PROJECT NO. 100-1000

3. SHEET NO. 100-1000

4. DATE OF ISSUE

5. PROJECT LOCATION

6. PROJECT DESCRIPTION

7. PROJECT BOUNDARIES

8. PROJECT SCHEDULE

9. PROJECT BUDGET

10. PROJECT RISK

11. PROJECT IMPACT

12. PROJECT BENEFITS

13. PROJECT CHALLENGES

14. PROJECT OPPORTUNITIES

15. PROJECT CONCLUSIONS

16. PROJECT RECOMMENDATIONS

17. PROJECT ACTION PLAN

18. PROJECT MONITORING

19. PROJECT EVALUATION

20. PROJECT LESSONS LEARNED

21. PROJECT FUTURE WORK

22. PROJECT CONTACT INFORMATION

23. PROJECT REFERENCES

24. PROJECT APPENDICES

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26. PROJECT INDEX

27. PROJECT SIGNATURES

28. PROJECT STAMPS

29. PROJECT NOTES

30. PROJECT COMMENTS

31. PROJECT REVISIONS

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34. PROJECT ETHICS

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54. PROJECT INTEGRITY

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56. PROJECT FAITHFULNESS

57. PROJECT TRUTHFULNESS

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59. PROJECT GENUINENESS

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62. PROJECT FACTUALITY

63. PROJECT VERIFIABILITY

64. PROJECT CONFIRMABILITY

65. PROJECT PROVEABILITY

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70. PROJECT RATIONALITY

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80. PROJECT TRANSPARENCY

81. PROJECT ACCOUNTABILITY

82. PROJECT INTEGRITY

SEWER MAINS

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81. PROJECT ACCOUNTABILITY

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CONCRETE CONSTRUCTION

1. GENERAL

A. CONTRACT

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2. PROJECT NO. 100-1000

3. SHEET NO. 100-1000

4. DATE OF ISSUE

5. PROJECT LOCATION

6. PROJECT DESCRIPTION

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STORM DRAIN GENERAL PLAN NOTES

1. GENERAL

A. CONTRACT

1. CONTRACT NO. 100-1000

2. PROJECT NO. 100-1000

3. SHEET NO. 100-10

Measamer, Don

Attachment D

From: Gresham, Doug (ECY) <DGRE461@ECY.WA.GOV>
Sent: Thursday, January 31, 2019 3:35 PM
To: Cricchio, Kevin
Cc: Measamer, Don; Grage, Libby; Luerkens, Chris (ECY)
Subject: RE: Wetland Reports, Addendum & Third Party Review, "H" Avenue, 4 Lot Rice Short Plat, SPL-2018-0002

Kevin,

Thank you for sending these wetland reports and requesting my technical assistance. I have reviewed the original wetland report by Advanced Environmental Solutions (AES), the third-party review by GeoEngineers, and an addendum to the AES report. Conducting delineations during the summer season in a disturbed area like this can produce confusing results. It appears that the soils on the Rice property have been disturbed by agricultural practices, the lawn is regularly mowed so plant identification is difficult, and there are seasonal differences in hydrology.

I observed that the AES report followed industry standards for a literature review, wetland delineation methods, plant community characterization, and photos. I was impressed that AES made three site visits over a six-month period in order to identify wetlands on the Rice property, because most consultants only make one visit. I was also impressed that AES examined ten soil pits in suspected wet areas during this study, because this is more thorough than other consultants. Although some of the soil pits met the hydrophytic vegetation and hydric soil indicators, they lacked hydrology and were not considered wetland pits. AES acknowledged that precipitation amounts were below average during this time period so it is possible that during a normal rainfall year, some of the soil pits would have met the hydrology criteria.

Therefore, I agree with GeoEngineers that another site visit during the early growing season would help determine if any wetland areas are present on the Rice property and within 300' of the property. Let me know if you have any questions.

Doug Gresham, Wetland Specialist
Washington State Department of Ecology
3190 - 160th Ave. SE
Bellevue, WA 98008
Phone: (425) 649-7199
Email: Doug.Gresham@ecy.wa.gov

From: Cricchio, Kevin [mailto:kevinc@cityofanacortes.org]
Sent: Wednesday, January 23, 2019 3:00 PM
To: Gresham, Doug (ECY)
Cc: Measamer, Don ; Grage, Libby
Subject: Wetland Reports, Addendum & Third Party Review, "H" Avenue, 4 Lot Rice Short Plat, SPL-2018-0002

1-23-19

RE: Wetland Report, Addendum & Third Party Review, "H" Avenue, 4 Lot Rice Short Plat, SPL-2018-0002

Hi Doug. Can you please review the attached wetland report, wetland addendum and third party review for wetland review concerning the subject 4 lot short plat known as the "H" Avenue or "Rice Short Plat?"

According to the city's third party reviewer (Geo-Engineers) for wetlands (attached), a site visit is recommended to be conducted in the wet season at the beginning of the growing season to confirm an absence of wetland hydrology on the Rice property. Also attached is the original wetland report dated 4-16-2016 and the addendum to it dated 1-15-2019. Also attached is the short plat map and a GIS map and Assessor's information for reference. Can you please review the attached and give us some guidance on the matter? Please confirm receipt of this email and attachments. If you have any questions or need additional information, please let me know. Thank you Doug.

Kevin Cricchio, AICP, ISA, WPIT | Senior Planner | Certified Arborist

Planning, Community & Economic Development Dept.

City of Anacortes | P.O. Box 547 | 904 6th Street | Anacortes, WA 98221

360.293.1937 (work) | kevinc@cityofanacortes.org | www.cityofanacortes.org

My incoming and outgoing email messages are subject to public disclosure requirements per RCW 42.56.

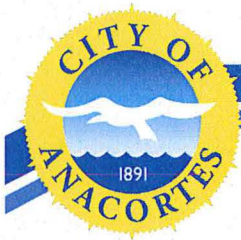
Hunt, Marcia

From: Hunt, Marcia
Sent: Monday, July 19, 2021 8:10 AM
To: CityClerk
Subject: FW: City Letter Granting appeal
Attachments: Rescinding Middleton Administrative Order.zip

2nd part from Ian.

Steve
(360) 293-1906 (office)
(360) 661-3182 (cell)

From: Ian Munce <ianmunce@gmail.com>
Sent: Sunday, July 18, 2021 1:35 PM
To: City Council <citycouncil@cityofanacortes.org>
Cc: Gere, Laurie <laurieg@cityofanacortes.org>; Hoglund, Steve <steveh@cityofanacortes.org>; Swetnam, Darcy <darcys@cityofanacortes.org>; Measamer, Don <don@cityofanacortes.org>
Subject: City Letter Granting appeal



PLANNING, COMMUNITY & ECONOMIC DEVELOPMENT

June 29, 2021

Mr. Timothy D. Schermetzler
1500 Railroad Avenue
Bellingham, WA 98226-6643

RE: 4419 H Avenue, Anacortes; Parcel Nos. P32315 and P32318
Brooks and Kelly Middleton

Dear Mr. Schermetzler;

Thank you for the additional documents included in your letter of June 18, 2021, regarding the existing activity (mowing) on the property located at 4419 H Avenue prior to 1990 consistent with AMC 17.70.500.

Based on the information provided in the attached Exhibits A through J, the field was being mowed prior to 1990 therefore an existing nonconforming activity consistent with AMC 17.70.500.

We therefore have determined that a legal nonconforming activity exists and rescind the Administrative Order dated May 25, 2021.

If you have any questions, please feel free to contact me at 360-299-1942.

Sincerely,

CITY OF ANACORTES

Don Measamer, Director

Cc: Darcy Swetnam, City Attorney
Brooks Middleton
Ian Munce
Joann Stewart



PLANNING COMMISSION REPORT AND RECOMMENDATIONS

1. Introduction

The Planning Commission has reviewed the proposed development and finds it to be in accordance with the Comprehensive Zoning Ordinance.

The Commission recommends that the proposed development be approved subject to the following conditions:

1. The applicant shall submit a site plan showing the proposed development.

2. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

3. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

4. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

5. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

6. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

7. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

8. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

9. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

10. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

11. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

12. The applicant shall submit a site plan showing the proposed development and the location of the proposed development.

EXHIBIT A

Brooks Middleton

From: J. Gordon <jgordon@geoengineers.com>
Sent: Friday, May 28, 2021 8:25 AM
To: Brooks Middleton
Subject: RE: 4419 H Avenue

Who is that funny looking guy on the motorcycle?

Looks mowed to me! I don't quite understand what pressure the City is feeling on this to be responding this way....

J. Gordon, PE
Senior Principal Geotechnical Engineer | GeoEngineers, Inc.
Telephone: 360.922.5100
Mobile: 360.319.4389
Email: jgordon@geoengineers.com

From: Brooks Middleton <brooks@brooksmiddletonarchitect.com>
Sent: Friday, May 28, 2021 8:00 AM
To: J. Gordon <jgordon@geoengineers.com>
Subject: FW: 4419 H Avenue

[EXTERNAL]

Good morning, J

I hope all is well!

Kelly and I are still working with the City on our field mowing project 😊

Im gathering info to send to the City

Could you take a look at the attached images and tell me if you looked at these you would agree that the field has been mowed/maintained at or around the times these images were taken

Thanks in advance for your help!

BROOKS MIDDLETON ARCHITECT 2415 T AVENUE SUITE 202 ANACORTES WA 98221 360 293 0106

Confidentiality: This message is confidential and intended solely for use of the individual or entity to whom it is addressed. If you are not the person for whom this message is intended, please delete it and notify me immediately, and please do not copy or send this message to anyone else.

Brooks Middleton

From: Leah Forbes <leahf@co.skagit.wa.us>
Sent: Friday, May 28, 2021 8:05 AM
To: Brooks Middleton
Subject: RE: 4419 H Avenue

Hi Brooks,

Although portions of the field appear quite wet, it does look like it has been regularly mowed for decades.

Leah Forbes, AICP
Senior Planner
Skagit County Planning & Development Services
Direct Line 360.416.1337
Main Number 360.416.1320
Pronouns: she/her

From: Brooks Middleton <brooks@brooksmiddletonarchitect.com>
Sent: Friday, May 28, 2021 7:56 AM
To: Leah Forbes <leahf@co.skagit.wa.us>
Subject: 4419 H Avenue

Good morning, Leah

I hope all is well!

My wife and I are working with the City of Anacortes regarding the mowing of the field below our house

We are establishing verification that the field has been historically mowed/maintained

Im gathering info to send to the City

Could you take a look at the attached images and tell me if you looked at these you would agree that the field has been mowed/maintained at or around the times these images were taken

Also – check out the awesome hairdo from 1977 😊

Thanks in advance for your help!

BROOKS MIDDLETON ARCHITECT 2415 T AVENUE SUITE 202 ANACORTES WA 98221 360 293 0106

Brooks Middleton

From: Tina Mirabile <tmirabile5@gmail.com>
Sent: Tuesday, June 1, 2021 1:45 PM
To: Brooks Middleton
Subject: Re: 4419 H Avenue

Hi Brooks,

It's my understanding that the herbaceous vegetation on the subject property has been mowed seasonally for pasture management for decades. The historic photographs that you have distributed for review of the site conditions indicate that regular mowing has resulted in the retention of the existing mixed grass and weedy herbaceous plant communities currently represented on the property. If mowing had not been implemented through the years, non-native and invasive Himalayan blackberry, which is currently present along the edges of cleared areas within the general vicinity of the site, would have infiltrated the site, changing the existing field to a non-manageable scrub-shrub community.

Tina Mirabile PWS
Advanced Environmental Solution
1500A East College Way, #506
Mount Vernon, WA 98273
(360) 202-6839
tmirabile5@gmail.com

On Fri, May 28, 2021 at 7:52 AM Brooks Middleton <brooks@brooksmiddletonarchitect.com> wrote:

Good morning, Tina

I hope all is well!

Kelly and I are still working with the City on our field mowing project 😊

Im gathering info to send to the City

Could you take a look at the attached images and tell me if you looked at these you would agree that the field has been mowed/maintained at or around the times these images were taken

Thanks in advance for your help!

BROOKS MIDDLETON ARCHITECT 2415 T AVENUE SUITE 202 ANACORTES WA 98221 360 293 0106

EXHIBIT B

June 1, 2021

To Whom it May Concern,

My parents purchased 4404 H Ave Anacortes, WA in the late 1960's. My sister now owns the property. I have always known the use of the Middleton's property. Originally it had livestock and it was used for hay. Later the property had horses on it and was hayed or mowed. It has always been maintained.

Sincerely,

Cricket Loesch

Helen "Cricket" Loesch
2811 Morton Ave
Anacortes, WA 98221
360-982-8000

EXHIBIT C

1969 Aerial from Skagit County iMap



May 11, 2020

Legend



County Boundary

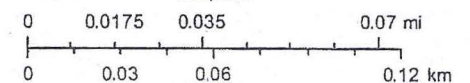
Hydro Labels

City Names

Regional Labels

Road Labels

1:2,257



Data Accuracy Warning: All GIS data was created from available public records and existing map sources. Map features have been adjusted to achieve a best-fit registration. While great care was taken in this process, maps from different sources rarely agree as to the precise location of geographic features. Map discrepancies can be as great as 300 feet.

Copyright 2016

EXHIBIT D

June 1, 2021

To Whom it May Concern,

My name is Elizabeth Stout property owner of 4404 H Ave Anacortes, WA. I have lived at this address since 1973.

Since my property is directly across the street from Brooks and Kelly Middleton I have first hand knowledge that this property has always been maintained by either haying or mowing.

Sincerely,

Elizabeth Stout

Elizabeth Stout
4404 H Ave
Anacortes, WA 98221
360-202-3126
2014stout@gmail.com

EXHIBIT E



Anacortes Wa
1979

Elizabeth, Betsy, Waffles
Scotty on Spook
on Danny



1978

Scotty on spoon
Sharon + Elizabeth on Danny



Cruick news Honda. Belle
March 1977
Amante, Wa

EXHIBIT F

Brooks Middleton

From: Julie Wollam <julie@bayshoreoffice.com>
Sent: Tuesday, June 1, 2021 10:08 AM
To: Brooks Middleton
Subject: Property mowing issue

To Brooks Middleton

In response to your email I'm writing to confirm that during the time I lived across the street from your property which was from approx 1968-1979 and 1982-1989 I recall the field being occasionally mowed even bailed by I believe Wally Jhort(sp?) Who lived on 41st street and has long since passed. He also bailed my property.

Regards

Perry Wollam

Julie Wollam
Customer Service Specialist
Bayshore Office Products, Inc.
603 Commercial Avenue
Anacortes, WA 98221
p: (360) 293-4669
f: (360) 293-4660
julie@bayshoreoffice.com
Authorized Sealy Posturepedic
and Stearns & Foster Dealers

☐	
☐	

EXHIBIT G

Brooks Middleton

From: Per Kefgen <kefgen@gmail.com>
Sent: Thursday, May 27, 2021 3:59 PM
To: Brooks Middleton
Cc: Nic Kefgen
Subject: Pasture

Hi Brooks,

My brother, Nick and I grew up on south Fidalgo Island and have been driving into town via Heart Lake Road since the early 80s. Nick's memories go back further than mine, but we both remember how much of that area was pasture prior to development and was regularly maintained through mowing or grazing in the 80s and 90s.

We both have memories of your front pasture being mowed during this time. It's a pretty distinct occurrence as the first property right out of the forest lands. The phenomenon still happens on a few plots in town. I'm thinking of that one where 41st turns into O avenue. You really notice when a scruffy, wild field one day just, poof, disappears.

Hope this helps with a little trip down memory lane,

Per and Nick Kefgen
2315 24th St
Anacortes, WA 98221

EXHIBIT H



EXHIBIT I

OWNER'S DECLARATION:

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED OWNERS, HEREBY DECLARE THIS SHORT SUBDIVISION MADE WITH OUR FREE CONSENT AND IN ACCORDANCE WITH OUR WISH.

DEDICATION OF ADDITIONAL RIGHT-OF-WAY FOR "H" AVENUE:

WE, THE UNDERSIGNED OWNER'S HEREBY DEDICATE AN ADDITIONAL TEN FEET (10') TO THE CITY OF ANACORTES, FOREVER FOR PUBLIC ACCESS AND UTILITY PURPOSES, NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES. ALSO GRANTING THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS AS SHOWN ON THIS "SURVEY MAP". ALSO THE RIGHT TO MAINTAIN AND DRAIN THE STREET OVER AND ACROSS ANY TRACT, WHERE WATER MIGHT TAKE A NATURAL COURSE. GRANTED HEREBY IS A WAIVER OF ALL CLAIMS FOR DAMAGES AGAINST THE "CITY OF ANACORTES" WHICH MAY BE OCCASIONED TO THE ADJACENT LAND WITHIN THIS SHORT SUBDIVISION, BY THE ESTABLISHED CONSTRUCTION, DRAINAGE AND MAINTENANCE OF SAID STREET.

Wayne L. McKean
WAYNE L. MCKEAN
HUSBAND

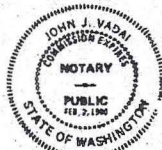
Christine A. McKean
CHRISTINE A. MCKEAN
WIFE

ACKNOWLEDGMENT:

STATE OF: WASHINGTON S.S.
COUNTY OF: SKAGIT

ON THIS 5TH DAY OF AUGUST 1988, PERSONALLY APPEARED BEFORE ME, WAYNE L. MCKEAN AND CHRISTINE A. MCKEAN - HUSBAND AND WIFE, TO ME KNOWN TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY SIGNED THE SAME AS THEIR FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN MENTIONED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.



John J. Vadai
JOHN J. VADAI
NOTARY PUBLIC IN AND FOR THE STATE OF: WASHINGTON
RESIDING AT: ANACORTES

LENDER'S CONSENT:

LENDER'S: "INTERVEST SAVINGS BANK", A WASHINGTON STATE CORPORATION, HEREBY CONSENT TO THIS SHORT SUBDIVISION OF "WAYNE L. AND CHRISTINE A. MCKEAN" AND TO THE DEDICATION OF ROADS FOR PUBLIC ACCESS PURPOSES AS WELL AS TO ALL EASEMENTS HEREIN GRANTED.

FOR INTERVEST SAVINGS BANK

Joe Stella
JOE STELLA
VICE PRESIDENT

ACKNOWLEDGMENT:

STATE OF: WASHINGTON S.S.
COUNTY OF: ISLAND

THIS IS TO CERTIFY THAT ON THIS 5 DAY OF AUGUST, 1988, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, PERSONALLY APPEARED: JOE STELLA TO ME KNOWN TO BE THE: VICE PRESIDENT OF "INTERVEST SAVINGS BANK", A WASHINGTON STATE CORPORATION, WHICH CORPORATION EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE THE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

AULA KAY NIXON

NOTARY PUBLIC

NOTARY OF WA.

COUNTY OF WASHINGTON

Aula Kay Nixon
NOTARY PUBLIC IN AND FOR THE STATE OF: WASHINGTON
RESIDING AT: Oak Harbor

REMARKS:

- 1) WATER SUPPLY: EXISTING SHARED WELL WATER SUPPLY FOR TRACT "B" AND A PROPOSED INDIVIDUAL WELL FOR TRACT "A". INDIVIDUAL WELLS, WATER OF SUFFICIENT QUANTITY AND/OR QUALITY FOR NORMAL DOMESTIC PURPOSES IS NOT PROVIDED AT THE TIME OF FILING THE PLAT, THE BUYER SHOULD INQUIRE AND INVESTIGATE AS TO THE AVAILABILITY OF SAID WATER.
- 2) SEWAGE DISPOSAL: EXISTING AND A INDIVIDUAL SEPTIC SYSTEM. SOIL LOG DATA FOR INDIVIDUAL SEPTIC TANKS AND DRAIN FIELD DISPOSAL SYSTEMS WERE SUBMITTED TO THE SKAGIT COUNTY HEALTH DEPARTMENT BY: MIKE MEHUSEN P.E., ON 8/1/88. TRACT "B": APPROVED FOR ALTERNATIVE SYSTEM (IF NEEDED) - TRACT "A": SEE ATTY-POSS OWNERS' LETTER-D.P. 8808110005.
- 3) EXISTING ZONING: RURAL (R).
- 4) ALL LOT CORNERS ARE MONUMENTED WITH 5/8" REBARS AND CAPS, UNLESS NOTED OTHERWISE.
- 5) THE RESUBDIVISION OF THESE TRACTS, ALSO THE CONSTRUCTION OF BUILDINGS AND DRIVEWAYS ETC., ARE SUBJECT TO THE APPROVALS OF THE APPROPRIATE CITY OFFICIALS.
- 6) THE MAINTENANCE OF PRIVATE ROADS (IF ANY) ARE THE RESPONSIBILITY OF THE LOT OWNERS AND SHALL BE IN DIRECT RELATIONSHIP TO THE USAGE OF THE ROADS.
- 7) THE PREPARATION AND SURVEY OF THIS SHORT SUBDIVISION IS BASED ON THE FOLLOWING SOURCES:
 - A) FIRST AMERICAN TITLE COMPANY'S SHORT PLAT CERTIFICATE NO: 23539
 - B) OUR SUBDIVISION OF SUBJECT SECTION 25.
 - C) APPLICABLE STREET, SECTION, AND PROPERTY MONUMENTS FOUND AT THE VICINITY OF SUBJECT PROJECT.

SURVEYOR'S CERTIFICATE:

I, JOHN J. VADAI, PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THIS SHORT SUBDIVISION IS BASED UPON AN ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE CITY OF ANACORTES SHORT SUBDIVISION ORDINANCE NO. 1805, AND THAT THE COURSES AND DISTANCES ARE SHOWN CORRECTLY HEREON.

DATED IN ANACORTES ON THIS 5TH DAY OF AUGUST, 1988.

John J. Vadai
JOHN J. VADAI
CERTIFICATE NO. 9636

**TREASURER'S CERTIFICATE:**

I HEREBY CERTIFY THAT ALL TAXES HERETOFORE LEVIED AND WHICH HAVE BECOME A LIEN UPON THE LANDS HEREIN DESCRIBED HAVE BEEN FULLY PAID AND DISCHARGED, ACCORDING TO THE RECORDS OF MY OFFICE, UP TO AND INCLUDING THE YEAR 1988.

THIS 11th DAY OF August, 1988.

Robert L. Lohr
ROBERT L. LOHR
TREASURER OF SKAGIT COUNTY

BY: DEPUTY TREASURER

CERTIFICATE OF TITLE:

RECORDED THIS 11 DAY OF August, 1988 UNDER AUDITOR'S FILE NO: 8808110006, VOLUME 771 OF OFFICIAL RECORDS, AT PAGE(S) 565-565, RECORDS OF SKAGIT COUNTY, WASHINGTON.

APPROVALS:

THE WITHIN AND FOREGOING SHORT PLAT IS APPROVED IN ACCORDANCE WITH THE PROVISIONS OF THE CITY OF ANACORTES SHORT SUBDIVISION ORDINANCE NO. 1805. THIS 5TH DAY OF August, 1988.

James Lee for Jan Muncie
JAN MUNCIE
PLANNING DIRECTOR

Daniel M. Joffe
DAVID FORD JR. P.E.
CITY ENGINEER

AUDITOR'S CERTIFICATE:

FILED FOR RECORD THIS 11 DAY OF August, 1988 AT 11:27 AM, IN VOLUME 8 OF SHORT PLATS AT PAGE(S) 54-55 UNDER AUDITOR'S FILE NO: 8808110007, AT THE REQUEST OF JOHN J. VADAI.

Gerry Smith
GERRY SMITH
SKAGIT COUNTY AUDITOR

James Lee
JAMES LEE
BY: DEPUTY AUDITOR

SHORT PLAT OF

PART OF W1/2S1/2 SW1/4SW1/4SE1/4 OF SEC.25, TWP.35N, RANGE 1 E., W.M.

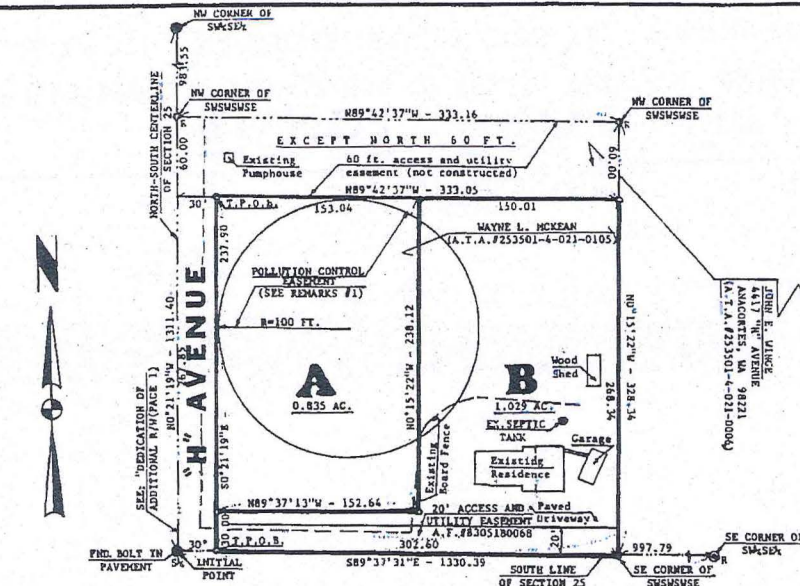
CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON



Phone: (206) 293-9591

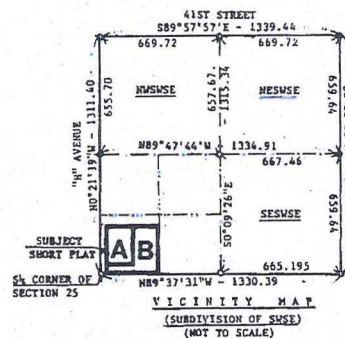
WAYNE L. & CHRISTINE A. MCKEAN		
PREPARED FOR: 4419 "H" AVENUE ANACORTES, WA 98221 TEL: (206) 293-7359		
SCALE: N/A	DRAWN BY: N/A	JOB NO: 1345-88
DATE: 7/29/88	APPROVED BY:	DRAWING NO: - " -
DESCRIPTION: N/A		
JOHN J. VADAI & ASSOCIATES 3215 Commercial Ave., Anacortes, Wn.		MERIDIAN: N/A

see 8 SP P954



RICHARD B. BALDWIN
1101 HEART LAKE ROAD
ANACORTES, WA 98221
A.T.A.#363501-0-007-0009

WAYNE L. MCKEAN
4419 "H" AVENUE
ANACORTES, WA 98221
(ADDITIONAL OWNERSHIP
IN SECTION 36-35-01)



SYMBOLS:

- o = REBAR AND CAP (SET)
- RO = REFERENCE POINT
- = STREET MONUMENT (FOUND)

NOTE

IMPROVEMENTS AND GROUND FEATURES NOTED ON THIS DRAWING
ARE SHOWN AS THEY EXISTED ON 7/29/88.

LEGAL DESCRIPTION:
(PER FIRST AMERICAN TITLE COMPANY'S SHORT PLAT CERTIFICATE NO: #23539)

1) TOTAL PROPERTY:

THE WEST 1/4 OF THE SOUTH 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 35 NORTH, RANGE 1 EAST, W.M.; EXCEPT THE WEST 20 FEET THEREOF FOR C.R. DONNELL COUNTY ROAD NO. 2; AND ALSO EXCEPT THE NORTH 60 FEET THEREOF;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE NORTH 60 FEET OF THAT PORTION OF THE WEST 1/4 OF THE SOUTH 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION, LYING EASTERLY OF THE C.R. DONNELL COUNTY ROAD NO. 2.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SW CORNER OF SE 1/4 OF SAID SECTION 25;

THENCE: S89°37'31"E - ALONG THE SOUTHERLY LINE OF SAID SE 1/4 - 30.00 FEET, TO THE EASTERLY R/W LINE OF "H" AVENUE AND THE TRUE POINT OF BEGINNING (T.P.O.B.) OF THIS DESCRIPTION;

THENCE: CONTINUING S89°37'31"E - 302.60 FEET TO THE SE CORNER OF THE "SWSWSWSE";

THENCE: N0°15'22"W - ALONG THE EASTERLY LINE OF SAID "SWSWSWSE" - 268.34 FEET TO THE SOUTHERLY LINE OF SAID "NORTH 60 FEET";

THENCE: N89°42'37"W - ALONG THE SOUTHERLY LINE OF SAID "NORTH 60 FEET" - 303.05 FEET TO THE EASTERLY R/W LINE OF SAID "H" AVENUE;

THENCE: S0°21'19"E - 267.90 FEET TO THE POINT OF BEGINNING, CONTAINING: 1.844 ACRES MORE OR LESS, SITUATED IN THE CITY LIMITS OF ANACORTES, SKAGIT COUNTY, WASHINGTON.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, ETC., AS SHOWN AND/OR OF RECORDS.

2) PARCEL "A"

COMMENCING AT THE SW CORNER OF SAID "SE 1/4";

THENCE: N0°21'19"W - 267.85 FEET;

THENCE: S89°42'37"E - 30.00 FEET TO THE TRUE POINT OF BEGINNING (T.P.O.B.);

THENCE: S0°21'19"E - 237.90 FEET;

THENCE: S89°37'31"E - 152.64 FEET;

THENCE: N0°15'22"W - 238.12 FEET;

THENCE: N89°42'37"W - 153.04 FEET TO THE TRUE POINT OF BEGINNING (T.P.O.B.), CONTAINING: 0.835 ACRE, MORE OR LESS

3) PARCEL "B"

COMMENCING AT THE SW CORNER OF SAID "SE 1/4";

THENCE: S89°37'31"E - 30.00 FEET TO THE TRUE POINT OF BEGINNING (T.P.O.B.);

THENCE: CONTINUING S89°37'31"E - 302.60 FEET;

THENCE: N0°15'22"W - 268.34 FEET;

THENCE: N89°42'37"W - 150.01 FEET;

THENCE: S0°15'22"E - 238.12 FEET;

THENCE: N89°37'31"W - 152.64 FEET;

THENCE: S0°21'19"E - 30.00 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING: 1.029 ACRES MORE OR LESS.

SHORT PLAT OF

PART OF W1/2S1/2SW1/4SW1/4SE1/4 OF SEC.25, TWP.35N, RANGE 1 E., W.M.
CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON



WAYNE R. & CHRISTINE A. MCKEAN PREPARED FOR: 4419 "H" AVENUE ANACORTES, WA 98221			
SCALE: 1" = 60'	DRAWN BY: T.L.V.	JOB NO: 1345-88	TEL: (206) 293-7359
DATE: 7/29/88	APPROVED BY:	DRAWING NO: - -	
DESCRIPTION: SEE ABOVE			
JOHN J. VADAI & ASSOCIATES 3215 Commercial Ave., Anacortes, Wa.			MERIDIAN: ASSUMED LOCAL

4418 SP PG 55

EXHIBIT J

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DECLARATION OF BROOKS MIDDLETON

I, BROOKS MIDDLETON, under penalty of perjury under the laws of the State of Washington, state and allege as follows:

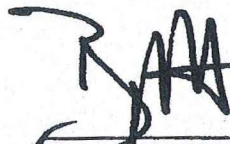
1. I am over the age of eighteen and have personal knowledge of the facts testified to herein.

2. In June 2003, my wife Kelly and I purchased the real property commonly referred to as 4419 H Avenue, Anacortes, Washington, Skagit County Assessor Parcel Numbers P32315 and P32318 (the "Property").

3. When we purchased the Property, there was a mowed and maintained field on the northern portion of the Property. At that time, it was clear to us that the field had been mowed and maintained as part of the Property's yard for several years prior to us moving in.

4. Since purchasing the Property, we have continually maintained the field by haying, mowing, clearing brush and weeding. Some years we mowed the field ourselves, other years we've hired someone to mow or hay the field.

DATED this 17 day of JUNE, 2021, at Anacortes, Washington.



BROOKS MIDDLETON

Anacortes City Council Minutes - July 12, 2021

Call to Order

Mayor Laurie Gere called to order the Anacortes City Council meeting of July 12, 2021 at 6:00 p.m. Councilmembers Anthony Young, Ryan Walters, Christine Cleland-McGrath, Carolyn Moulton, Bruce McDougall and Matt Miller were present. Councilmember Jeremy Carter was absent. Mr. Carter had been excused in advance at the May 24, 2021 regular City Council meeting.

Pledge of Allegiance

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

COVID-19 Update: Mayor Gere announced that all city facilities were completely open to the public for regular business hours. Mayor Gere shared current case statistics and vaccination progress for Anacortes, Skagit County and Washington State.

Housing Affordability and Community Services Committee: Ms. Moulton reported from the Committee meeting held the previous Wednesday. The topics discussed included the lack of adult daycare available in the community, the Unite Us service provider platform, ever increasing community participation in the committee meetings, planning for the upcoming community roundtable, Housing Authority waiting list criteria, and housing voucher availability.

Planning Committee: Ms. Cleland-McGrath reported from the Committee meeting held earlier in the evening. The topics discussed included a Main Street program advocated by several community members.

Public Comment

No one present wished to address the Council on any topic not already on the agenda.

Consent Agenda

Mr. Miller moved, seconded by Mr. Young, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

- a. Minutes of July 6, 2021
- b. Approval of claims in the amount of \$570,121.33
The following vouchers/checks were approved for payment:
EFT numbers: 100569 through 100611, total \$385,103.40
Check numbers: 100612 through 100620, total \$178,322.60
Wire transfer numbers: 276778 through 286953, total \$6,121.04
- c. Street Fair Application: Fueling Education Fun Run, Shell Puget Sound Refinery

PUBLIC HEARINGS

Ordinance 3091: An Interim Ordinance to Facilitate the Development of Day Care Facilities in the R4 Zone

Planning Director Don Measamer introduced the advertised public hearing on interim Ordinance 3091 which had been first presented to City Council at its June 28, 2021 meeting. Mr. Measamer referenced the packet materials for this agenda item. He highlighted the subsequent work plan and community input opportunities if the interim ordinance were to be adopted.

Mayor Gere invited members of the audience to comment on this agenda item. No one present wished to address the Council. No one wishing to speak, Mayor Gere closed the public hearing.

MATT MILLER moved, seconded by BRUCE MCDOUGALL, to approve Ordinance 3091 as presented. Vote: Ayes - ANTHONY YOUNG, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, MATT MILLER. Nays - None. Result: Passed

OTHER BUSINESS

Resolution 3042: A Resolution establishing the 2021 Docket of Comprehensive Plan and Development Regulation Amendments

Planning Manager Libby Grage summarized the discussion of this item and public comment received when this topic was last addressed at the regular City Council meeting on June 28. Ms. Grage reported that the comment period had subsequently closed and that no additional comments had been received. She advised that based on Council direction at the June 28 meeting, staff had drafted Resolution 3042 to establish the 2021 docket. Ms. Grage recommended adoption of the resolution.

Mayor Gere invited members of the audience to comment on this agenda item. No one present wished to address the Council.

RYAN WALTERS moved, seconded by ANTHONY YOUNG, to adopt Resolution 3042, a resolution establishing the 2021 Docket of Comprehensive Plan and Development Regulation Amendments. Vote: Ayes - ANTHONY YOUNG, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, MATT MILLER. Nays - None. Result: Passed

Ordinance 3092: Repealing AMC Chapter 5.47 Related to Single-Use Plastic Bags

Finance Director Steve Hoglund introduced draft Ordinance 3092. He summarized the rationale for the ordinance as reflected in its recitals.

Mayor Gere invited members of the audience to comment on this agenda item. No one present wished to address the Council.

BRUCE MCDOUGALL moved, seconded by CHRISTINE CLELAND-MCGRATH, to approve Ordinance 3092 repealing Ordinance 3053 and AMC chapter 5.47. Vote: Ayes - ANTHONY YOUNG, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, MATT MILLER. Nays - None. Result: Passed

Thompson Train Static Display Plan

City Attorney Darcy Swetnam reopened the discussion of this topic from the June 16, 2021 regular City Council meeting. Ms. Swetnam said that the only material added to the packet since that meeting was a letter from Thompson family attorney Lisa Carney. No other concrete community offers of donations had been received.

Mayor Gere invited members of the audience to comment on this agenda item.

Headen Thompson spoke on behalf of the Thompson family. He recounted the history of the train, its donation to the City of Anacortes, and subsequent events. Mr. Thompson stated for the record that the Thompson family had no plans to sell or profit from the train. He pleaded with Council to return the train to the Thompson family since the City had not met the terms of the 2012 donation.

Tammy Guffey said she had spent the past three weeks investigating community feeling on this topic. Ms. Guffey said she supported returning the train to the Thompson family so that money, time and energy could be spent on the civil services the city needs and deserves. She urged Council to vote to return the train to the Thompsons.

Lisa Carney, attorney for the Thompson family, said that Mr. Thompson's comments reflect the family's message and she had nothing to add.

The six councilmembers present each shared their reasons for now agreeing that the train should be returned to the Thompson family and offered thanks to the Thompson family.

Mr. Walters suggested that the City Attorney draft documents to make that transaction happen. Ms. Cleland-McGrath suggested that other train accessories should be addressed as well. Mayor Gere concluded that Ms. Swetnam would draft a documents to return the train to the Thompson family and bring those back to full City Council for action at a future meeting.

Adjournment

There being no further business, at approximately 6:50 p.m. the Anacortes City Council meeting of July 12, 2021 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the July 19, 2021 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
287310	8/13/2020	WAANA126952	FASTENAL COMPANY	BATTERIES, FLASHLIGHT	\$ 153.89	medic
287312	10/23/2020	WAANA129428	FASTENAL COMPANY	SAFETY GLASSES, BATTERIES	\$ 9.68	medic
287328	3/25/2021	104796	VECA ELECTRIC & TECHNOLOGIES	GENERATOR CONNECTION @ FIRE STATION 2	\$ 457.05	pwfac
287336	4/5/2021	299470	PARAMOUNT SUPPLY COMPANY	MAINTENANCE SUPPLIES- INCINERATOR	\$ 216.63	dwwtp
287337	4/19/2021	311252	PARAMOUNT SUPPLY COMPANY	MAINTENANCE - INCINERATOR	\$ 159.97	dwwtp
287342	5/4/2021	INVLT000602	LIFE TEK, INC	FA CPR BBP TRAINING	\$ 300.00	dwwtp
287321	5/6/2021	INV-21472	IMAGE360	BALANCE DUE ON LOGO SIGNS	\$ 290.73	medic
287343	5/11/2021	INVLT000603	LIFE TEK, INC	FA CPR BBP TRAINING	\$ 300.00	dwwtp
287095	5/20/2021	0269303-IN	REISNER DISTRIBUTOR INC	HYDRAULIC FLUID- #601	\$ 145.00	dshop
287344	5/24/2021	INVLT000604	LIFE TEK, INC	FA CPR BBP TRAINING	\$ 300.00	dwwtp
287199	6/1/2021	9321728542	GRAYBAR ELECTRIC COMPANY, INC	CONDUIT PLUGS FOR FIBER EXPANSION	\$ 586.43	fiber
287193	6/14/2021	E21040P	ELEMENTAL AIR, LLC	WASTEWATER TREATMENT PLANT ALL METALS TESTING	\$ 8,240.00	pw1
287335	6/16/2021	22355534	AMERICAN RED CROSS	FA/CPR/AED TRAINING	\$ 80.00	dwwtp
287305	6/16/2021	19356	SEASIDE AUTO BODY	REPAIRS VEH #028	\$ 1,017.50	dshop
287350	6/22/2021	11880	ENGINEERED PROCESS CONTROL LLC	MAINTENANCE - RAS, WAS, SECONDARY BYPASS TRANSMITTERS	\$ 9,861.63	dwwtp
287214	6/22/2021	3309792	ZOLL MEDICAL CORPORATION	DEFIBRILLATOR, BATTERIES, CARRYING	\$ 53,891.62	medic
287097	6/23/2021	51930	CITIES DIGITAL, INC.	DOCUSIGN ANNUAL SUBSCRIPTION 9/1/21-9/1/2022	\$ 2,992.00	legal
286769	6/23/2021	MV256528	MOTOR TRUCKS, INC	TENSIONER ASSY FAN #609	\$ 454.06	dshop
287340	6/28/2021	1230203	BLACKSTONE PUBLISHING	TEEN BOOKS	\$ 139.58	publib
287194	6/28/2021	E21040P-20	ELEMENTAL AIR, LLC	WASTEWATER TREATMENT PLANT ALL METALS TESTING	\$ 2,060.00	pw1
286981	6/28/2021	3866	MASSEY, BILLIE JAMES	LOT BUY BACK BILLIE JAMES MASSEY	\$ 1,422.00	parks1
287311	6/28/2021	12857357	PAPE MACHINERY INC.	ARM & RACK #856	\$ 204.74	dshop
287338	6/28/2021	332394	PARAMOUNT SUPPLY COMPANY	MAINTENANCE - INCINERATOR	\$ 638.61	dwwtp
286980	6/28/2021	9882910722	VERIZON WIRELESS	City Cell Phones 5/19-6/28/21	\$ 11,413.44	finance
287075	6/28/2021	360-293-3725-0501135	ZIPLY FIBER	DEPOT PHONE 06/28-07/27/21	\$ 64.13	parks1
287200	6/29/2021	9322172711	GRAYBAR ELECTRIC COMPANY, INC	OPTICAL NETWORK TERMINALS	\$ 35,392.17	fiber
287202	6/29/2021	9322172712	GRAYBAR ELECTRIC COMPANY, INC	CONDUIT PLUGS FOR FIBER EXPANSION	\$ 2,345.73	fiber
287306	6/29/2021	12857364	PAPE MACHINERY INC.	ARM VEH #856	\$ 532.78	dshop
287307	6/29/2021	12857761	PAPE MACHINERY INC.	ABSORBER VEH #856	\$ 199.34	dshop
287203	6/29/2021	331 0582451	UNIFIRST CORPORATION	UNIFORM LAUNDRY - FIBER	\$ 40.76	fiber

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
287092	6/29/2021	33677	WESTERN SYSTEMS REFUSE &	WATER PUMP- #601	\$ 18,383.66	dshop
287341	6/30/2021	64601938	150-PRAXAIR DISTRIBUTION INC	CYLINDER RENTAL	\$ 259.74	dwwtp
287029	6/30/2021	351	BUBBA SUDZ CAR WASH, INC.	JUNE CAR WASHES- 7	\$ 70.00	dshop
287174	6/30/2021	WAANA134967	FASTENAL COMPANY	TOOLS	\$ 238.16	dwwtp
287201	6/30/2021	9322199336	GRAYBAR ELECTRIC COMPANY, INC	OPTICAL NETWORK TERMINALS	\$ 31,662.74	fiber
287034	6/30/2021	Pay App 12	IMCO GENERAL CONSTRUCTION	SKAGIT RIVER RAW WATER PIPELINE AND CLEARWELL PROJECT - JUNE 2021	\$ 145,171.92	pw1
287333	6/30/2021	9020577002	LANGUAGE LINE SERVICES, INC	TELEPHONE INTERPRETER SERVICES COURT DAY	\$ 17.44	court
287215	6/30/2021	18284441	MCKESSON MEDICAL-SURGICAL	EMS CASE, BP CUFF, OXIMETER CUFF &	\$ 208.81	medic
286705	6/30/2021	MV256918	MOTOR TRUCKS, INC	MIRROR GLASS KIT- #609	\$ 120.23	dshop
287334	6/30/2021	36762	PACIFIC SECURITY	SECURITY DETAIL COURT DAYS	\$ 735.00	court
287192	6/30/2021	9809	PETDATA, INC	PETDATA LICENSING FEES JUNE	\$ 118.90	finance
286983	6/30/2021	1556369	POLYDYNE, INC	INCINERATOR MAINTENANCE	\$ 6,756.48	dwwtp
287318	6/30/2021	2021 Q2-Ana	SKAGIT COUNTY DEM	2ND QTR SHARED COSTS	\$ 12,890.94	medic
287032	6/30/2021	0173	SKAGIT COUNTY SOLID WASTE FUND	JUNE TONNAGE HAULED	\$ 91,322.46	dshop
287185	6/30/2021	11175	SKAGIT PUBLISHING LLC	PUBLISH AA-114452	\$ 117.74	finance
287186	6/30/2021	11176	SKAGIT PUBLISHING LLC	PUBLISH AA-114453	\$ 121.80	finance
287189	6/30/2021	11177	SKAGIT PUBLISHING LLC	PUBLISH AA-114581	\$ 178.64	finance
287190	6/30/2021	11178	SKAGIT PUBLISHING LLC	PUBLISH AA-115355	\$ 186.76	finance
287191	6/30/2021	11179	SKAGIT PUBLISHING LLC	PUBLISH AA-115387	\$ 117.74	finance
287175	6/30/2021	1060117	UTILITIES UNDERGROUND LOCATION	JUNE LOCATE TICKETS	\$ 307.02	dshop
287316	7/1/2021	AN 805271	CENTRAL WELDING SUPPLY CO, INC	O2 FOR AMBULANCE	\$ 51.29	medic
287176	7/1/2021	052-0010-00	CITY OF ANACORTES	OPS 6/1-6/30/21	\$ 1,408.97	dshop
287345	7/1/2021	190-1840-00	CITY OF ANACORTES	WWTP 6/1-6/30/21	\$ 6,382.51	dwwtp
287329	7/1/2021	07/01/2021	FIDALGO CLEANING	MUSEUM CLEANING 7/1-7/15/21	\$ 140.00	museum
287330	7/1/2021	07/01/2021	FIDALGO CLEANING	HERITAGE CENTER CLEANING 7/1-7/15/21	\$ 80.00	museum
287187	7/1/2021	812-18146	GCR TIRES & SERVICES	TIRE ROTATE- #512	\$ 193.66	dshop
287188	7/1/2021	812-18144	GCR TIRES & SERVICES	TIRE DISMOUNT & MOUNT- #511	\$ 28.56	dshop
287195	7/1/2021	812-18143	GCR TIRES & SERVICES	TIRES- #512 & #514 / REPAIRS #511	\$ 1,876.52	dshop
287094	7/1/2021	70863	INDUSTRIAL RESEARCH PRODUCTS	PINK CLEANER- #90008	\$ 2,331.04	dshop
287308	7/1/2021	18286581	MCKESSON MEDICAL-SURGICAL	MUCOSAL, SAM SPLINTS	\$ 171.94	medic
287320	7/1/2021	460509	SKIDMORE PHARMACY INC.	MEDICATION	\$ 15.00	hr
287317	7/1/2021	20013154763	VANSCHAICK, HOLLY	REIMBURSEMENT FOR STATION BOOTS	\$ 168.94	medic
287098	7/1/2021	127598	VENTEK INTERNATIONAL	ANNUAL FEE 07/01/21-06/30/22	\$ 1,408.56	parks1
287067	7/1/2021	1393651-0043-8	WASTE MANAGEMENT	JUNE 2021 CONTRACTED SERVICES	\$ 118,710.90	finance
287197	7/1/2021	102853701-0008908	WAVE	DEDICATED INTERNET ACCESS 7/1-7/31/21	\$ 1,469.82	fiber
287198	7/1/2021	102958801-0008908	WAVE	DEDICATED IINTERNET ACCESS 7/1-7/31/21	\$ 1,469.82	fiber

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
286978	7/1/2021	360-293-1900-0122885	ZIPLY FIBER	CITY MAIN PHONE 7/1-7/31/21	\$ 1,261.27	finance
287319	7/1/2021	360-293-0045-0223175	ZIPLY FIBER	STA 1 BACKUP LINES: 7/1 - 7/31/21	\$ 155.23	medic
287212	7/2/2021	6544489	CARDINAL HEALTH 110, INC.	PHARMA: MIDAZOLAM	\$ 52.65	medic
287206	7/2/2021	1871045	MILES SAND & GRAVEL CO.	CRUSHED ROCK FOR FIBER INSTALLATIONS	\$ 183.87	fiber
287026	7/2/2021	MV256993	MOTOR TRUCKS, INC	FUEL WATER SEPARATOR	\$ 43.97	dshop
287064	7/2/2021	652557	USA BLUE BOOK	SPADNS ACCUVAC AMPULES X 12	\$ 552.56	dwtpt
287070	7/5/2021	93151942	CHEMTRADE CHEMICALS US LLC	ALUMINUM SULFATE	\$ 5,297.99	dwtpt
287033	7/5/2021	654	SPORTSITES, INC.	SOFTWARE TOOLS ANNUAL SUBSCRIPTION 5/1/21-4/30/22	\$ 5,000.00	parks1
287031	7/6/2021	580	BLUE COW CARWASH	JUNE CARWASHES- 41	\$ 410.00	dshop
287207	7/6/2021	6547926	CARDINAL HEALTH 110, INC.	PHARMA: DEXTROSE	\$ 170.45	medic
287208	7/6/2021	6550891	CARDINAL HEALTH 110, INC.	ACCU-CHEK	\$ 317.70	medic
287028	7/6/2021	226621	NAPA	BATTERY #609	\$ 384.99	dshop
287030	7/6/2021	80808	STOW-IT	20' CONTAINER RENTAL 7/6 - 8/5/21	\$ 217.60	wdist
287204	7/6/2021	331 0583525	UNIFIRST CORPORATION	UNIFORM LAUNDRY - FIBER	\$ 40.76	fiber
286985	7/7/2021	RefundDavis	DAVIS, ADAM	CAMPING REFUND ADAM DAVIS	\$ 43.00	parks1
286982	7/7/2021	cpls	DEPARTMENT OF LICENSING	CPLS TO D.O.L. - JUNE 2021	\$ 540.00	apd
287101	7/7/2021	198904	NORTHSTAR CHEMICAL INC.	PLANT CHEMICALS	\$ 1,963.84	dwwtpt
287209	7/7/2021	190402	OASYS INC	PLOTTER CHARGE BASE AND CONTRACT 7/9-8/8/21	\$ 79.69	pw1
287068	7/7/2021	220013286525	PUGET SOUND ENERGY INC	HEART OF ANACORTES 6/5-7/6/21	\$ 26.38	plan
287071	7/7/2021	220015523313	PUGET SOUND ENERGY INC	CAR CHARGING STATION: 501 Q AVE 6/5-7/6/21	\$ 101.68	dshop
287083	7/7/2021	200015995380	PUGET SOUND ENERGY INC	APD 6/5-7/6/21	\$ 1,983.56	apd
287099	7/7/2021	220021901958	PUGET SOUND ENERGY INC	SKYLINE TSUNAMI SIREN 6/5-7/6/21	\$ 11.08	dwwtpt
287100	7/7/2021	220022355618	PUGET SOUND ENERGY INC	TSUNAMI SIREN 500 T 6/8-7/7/21	\$ 11.08	dwwtpt
287184	7/7/2021	0271346-IN	REISNER DISTRIBUTOR INC	OIL- SHOP	\$ 244.70	dshop
287066	7/7/2021	331 0583667	UNIFIRST CORPORATION	WTP LAUNDRY SERVICE	\$ 95.61	dwtpt
287322	7/8/2021	303276B	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 37.74	pwfac
287326	7/8/2021	304238	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 1,068.92	pwfac
287035	7/8/2021	InsuranceMoe	MOE, ALLEN	ALLEN MOE LIBERTY MUTAL INSURANCE PAYOUT	\$ 3,000.00	parks1
287093	7/8/2021	MV257273	MOTOR TRUCKS, INC	SLACK ADJUSTER- #514	\$ 187.92	dshop
287073	7/8/2021	227124	NAPA	BRAKE CLEANER- SHOP	\$ 130.04	dshop
287077	7/8/2021	227111	NAPA	WIPER BLADES- #035	\$ 56.38	dshop
287309	7/8/2021	12885851	PAPE MACHINERY INC.	HYDR QUICK #630	\$ 228.49	dshop
287346	7/8/2021	ReimbPrice	PRICE, RANDY	REIMBURSEMENT FOR LIGHTS ON ANTIQUE	\$ 266.81	medic
287069	7/8/2021	220013297076	PUGET SOUND ENERGY INC	1100 STATE ROUTE 20 6/8-7/7/21	\$ 17.96	plan
287332	7/8/2021	200000667101	PUGET SOUND ENERGY INC	LIBRARY 1220 10TH 6/8-7/7/21	\$ 2,969.10	publib

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
287331	7/8/2021	2nd QTR PROBATION	SKAGIT COUNTY DISTRICT COURT	2ND QTR 2021 PROBATION SERVICES	\$ 5,550.00	court
287074	7/8/2021	RefundSmith	SMITH, GINA	CAMPGROUND REFUND GINA SMITH	\$ 88.00	parks1
287076	7/9/2021	INV2325152	COPIERS NORTHWEST, INC	CANON/IRC5560I FINANCE/OPS/WWTP 6/8-7/7/21	\$ 314.94	finance
287082	7/9/2021	05/25/2021	ECONOWASH LAUNDRY&CLEANERS	UNIFORM CLEANING 5/25-6/25/21	\$ 55.22	apd
287196	7/9/2021	E21032P	ELEMENTAL AIR, LLC	WWTP EMISSIONS TESTING, JUNE 28 - JULY 02 2021	\$ 25,438.00	pw1
287210	7/9/2021	WABUR227090	FASTENAL COMPANY	WTP SAFETY SUPPLIES	\$ 628.53	dwtp
287183	7/9/2021	812-18343	GCR TIRES & SERVICES	TIRES- #511	\$ 456.70	dshop
287080	7/9/2021	JUNE 2021	HUMANE SOCIETY OF	STRAY/ABANDON INTAKE - APD CASE 21-A03518	\$ 66.00	apd
287313	7/9/2021	21053	HUTCH'S POLYGRAPH SERVICES	PRE-EMPLOYMENT POLYGRAPH; BRANHAM	\$ 200.00	apd
287180	7/9/2021	227256	NAPA	FUSE- #304	\$ 3.91	dshop
287181	7/9/2021	227166	NAPA	LIGHT BULB- #304	\$ 73.94	dshop
287182	7/9/2021	227165	NAPA	BATTERY- #406	\$ 352.40	dshop
287072	7/9/2021	220013297498	PUGET SOUND ENERGY INC	CASINO DR UNDER TWIN BRIDGES: 6/8- 7/7/21	\$ 55.84	dshop
287205	7/9/2021	21000633 RI 05700	VEOLIA ENVIRONMENTAL SERVICES	SAND PUMP REBUILD PARTS	\$ 16,030.89	dwtp
287096	7/9/2021	113911	WALTON BEVERAGE COMPANY, INC	CITY HALL BREAK ROOM SUPPLIES	\$ 94.00	finance
287177	7/9/2021	113912	WALTON BEVERAGE COMPANY, INC	OPS BREAKROOM SUPPLIES	\$ 52.50	dshop
287213	7/9/2021	113910	WALTON BEVERAGE COMPANY, INC	AFD BREAKROOM SUPPLIES	\$ 98.50	medic
287315	7/10/2021	00005W5A83281	UNITED PARCEL SERVICE, INC	UPS SHIPPING CHARGES; WEEK ENDING 7-10-21	\$ 10.20	apd
287178	7/12/2021	227409	NAPA	HYDRAULIC HOSE FITTINGS- #704	\$ 113.48	dshop
287304	7/12/2021	227455	NAPA	SPARK PLUGS #2915	\$ 6.64	dshop
287325	7/12/2021	2021-265	PUBLIC SAFETY TESTING, INC	SAFETY TESTING POLICE	\$ 672.00	hr
287179	7/12/2021	RefundShelton	SHELTON, DIANA	CAMPING REFUND DIANA SHELTON	\$ 32.00	parks1
287348	7/13/2021	6569947	CARDINAL HEALTH 110, INC.	PHARMA: AMIDATE	\$ 55.37	medic
287351	7/13/2021	5068724965	CINTAS CORPORATION	FIRST AID SUPPLIES - VARIOUS DEPTS	\$ 1,722.25	finance

Total **\$658,127.51**



City Council Agenda Bill

Meeting Date: July 19, 2021

Agenda Item: 6.a.

Agenda Item Title: Resolution 3044: Disposition of Tommy Thompson Train

Staff Contact(s): DARCY SWETNAM, BRET LUNSFORD

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
DARCY SWETNAM	Resolution

Item Summary: Proposed Resolution 3044 carries out Council's direction at the July 12, 2021 meeting to return the Train to the Thompson family. The Resolution declares the Train and related equipment are surplus and should be returned to the Thompson family.

Budget Impact:

Previous Action: Mayor presented a plan to the City Council for development of a static display on June 12, 2021. Council asked for a three week period to allow interested community donors to come forth and support the budget requirements for a static display. Council reconsidered the plan on July 12, 2021 and determined that the Train should be returned to the Thompson family.

Recommended Motion: I move to adopt Resolution 3044 declaring the Thomas G. Thompson, Jr. Train and related equipment to be surplus to the needs of the City of Anacortes and directing the return of the Train and equipment to the Thompson family.

Alternative Actions: N/A

Attachments (listed in order presented):

1. Resolution 3044

RESOLUTION NO. 3044

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ANACORTES, WASHINGTON DECLARING THE THOMAS G.
THOMPSON, JR. TRAIN AND RELATED EQUIPMENT TO BE SURPLUS
TO THE NEEDS OF THE CITY OF ANACORTES AND DIRECTING THE
RETURN OF THE TRAIN AND EQUIPMENT TO THE THOMPSON
FAMILY**

WHEREAS, Anne Thompson, the widow of Thomas G. Thompson Jr., donated the Thomas G. Thompson, Jr. Train, which included an engine and three cars, to the City of Anacortes in 2012; and

WHEREAS, the donation to the Train by the City was accomplished by a donation letter, signed by Mayor Dean Maxwell and Anne Thompson, and stated that the Train was being donated to the City with directions that the Train be displayed in a static exhibit open to the public; and

WHEREAS, the City is in possession of rails, miscellaneous railroad equipment, and a turntable, which were left by the Thompson family upon the termination of the franchise agreements they held to operate the Train within City right-of-way by Ordinances 1995 and 2114;

WHEREAS, between 2012 and 2021, the City considered proposals and options to develop a public attraction with the Train, including engaging several community groups who expressed interest in supporting such a project; and

WHEREAS, on January 8, 2021, the family of Thomas G. Thompson, Jr., including his wife, Anne Thompson, and his son, Headen Thompson, sent a letter to the City requesting that the Train be returned to their family because the City had not developed a static display for the Train, as requested in the 2012 donation; and

WHEREAS, on June 21, 2021, the Mayor presented a plan to City Council to develop a static display for the Train, which included budget requirements to improve the Train Shed where the Train is currently stored, ongoing maintenance costs, and staffing costs; and

WHEREAS, at the June 21, 2021 meeting, Council publicly requested that any community members who wished to financially support the cost of developing a static display come forward; and

WHEREAS, on July 12, 2021, the Mayor brought back the plan to City Council for development of a static display for the Train, noting that no public support for the display had been offered; and

WHEREAS, at the July 12, 2021 meeting, Council determined that, out of respect for the family and due to the cost of the display, the City could not move forward with the development of the static display as required by the donation, and Council directed staff to prepare necessary instruments to return the donated Train to the Thompson family; and

WHEREAS, the City Council finds that it is in the best interest of the City to return the Train and equipment to the Thompson family.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Anacortes, Washington, as follows:

1. That the Thomas G. Thompson, Jr. Train is declared surplus to the needs of the City of Anacortes.
2. That the rails, miscellaneous railroad equipment, and turntable in the City's possession are surplus to the needs of the City of Anacortes.
3. That the Train, rails, trucks and turntables should be returned to the Thompson family.
4. The Thompson family must retrieve the Train, rails, trucks, and turntable within 90 days of this Resolution.

INTRODUCED, PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ANACORTES on this ____ day of _____, 2021.

LAURIE M. GERE, MAYOR

Approved as to form and legality:

Darcy Swetnam, WSBA #40530
City Attorney

ATTEST:

Steve D. Hoglund, City Clerk Treasurer



July 2021

GPON CUSTOMER COUNT & REVENUE

Month	In Service	Static IPv4 Address	Internet Service Revenue	Static IPv4 Revenue	GPON Revenue	Other Revenue	MONTHLY REVENUE
Jan-21	524	31	\$33,616.00	\$411.00	\$34,027.00	\$2,023.25	\$36,050.25
Feb-21	575	34	\$36,445.00	\$449.00	\$36,894.00	\$2,023.25	\$38,917.25
Mar-21	624	31	\$38,906.00	\$400.00	\$39,306.00	\$2,023.25	\$41,329.25
Apr-21	698	34	\$43,962.00	\$438.00	\$44,400.00	\$2,023.25	\$46,423.25
May-21	720	35	\$45,200.00	\$447.00	\$45,647.00	\$2,023.25	\$47,670.25
Jun-21	772	39	\$48,868.00	\$494.00	\$49,362.00	\$2,023.25	\$51,385.25
Jul-21	808	39	\$50,902.00	\$494.00	\$51,396.00	\$2,023.25	\$53,419.25

CUSTOMER ORDERS

Residential	Count	Monthly Revenue	Commercial	Count	Monthly Revenue	Other Customers			
100Mbps	234	\$ 9,126.00	100Mbps	37	\$ 3,293.00	\$867.00			
100Mbps managed	225	\$ 11,025.00	100Mbps managed	30	\$ 2,970.00	\$1,156.25			
1Gbps	142	\$ 9,798.00	1Gbps	37	\$ 5,513.00				
1Gbps managed	90	\$ 7,110.00	1Gbps managed	13	\$ 2,067.00				
One Static IP	4	\$ 36.00	One Static IP	22	\$ 198.00				
Five Static IPs	2	\$ 40.00	Five Static IPs	11	\$ 220.00				
Total:	691	\$ 37,135.00	Total:	117	\$ 14,261.00				
Grand Total	\$ 53,419.25								
	CBD	Old Town	M Ave	2020 Aerial Areas	West End	Guemes View	East Side Expansion	South Fidalgo Bay	Total
Potential Customers	255	562	160	1296	2302	872	1815	367	7629
Sign-ups	125	244	75	434	594	179	553	25	2229
Take-Rate	49.0%	43.4%	46.9%	33.5%	25.8%	20.5%	30.5%	6.8%	29.2%
Partial Installs	1	0	0	0	0	0	0	0	1
In-Service	113	236	70	362	0	0	18	9	808
Percentage of Orders in Service	90.4%	96.7%	93.3%	83.4%	0.0%	0.0%	3.3%	36.0%	

In our current service areas 878 orders have been received of the potential 2273 customers which equates to 38.6% market share.

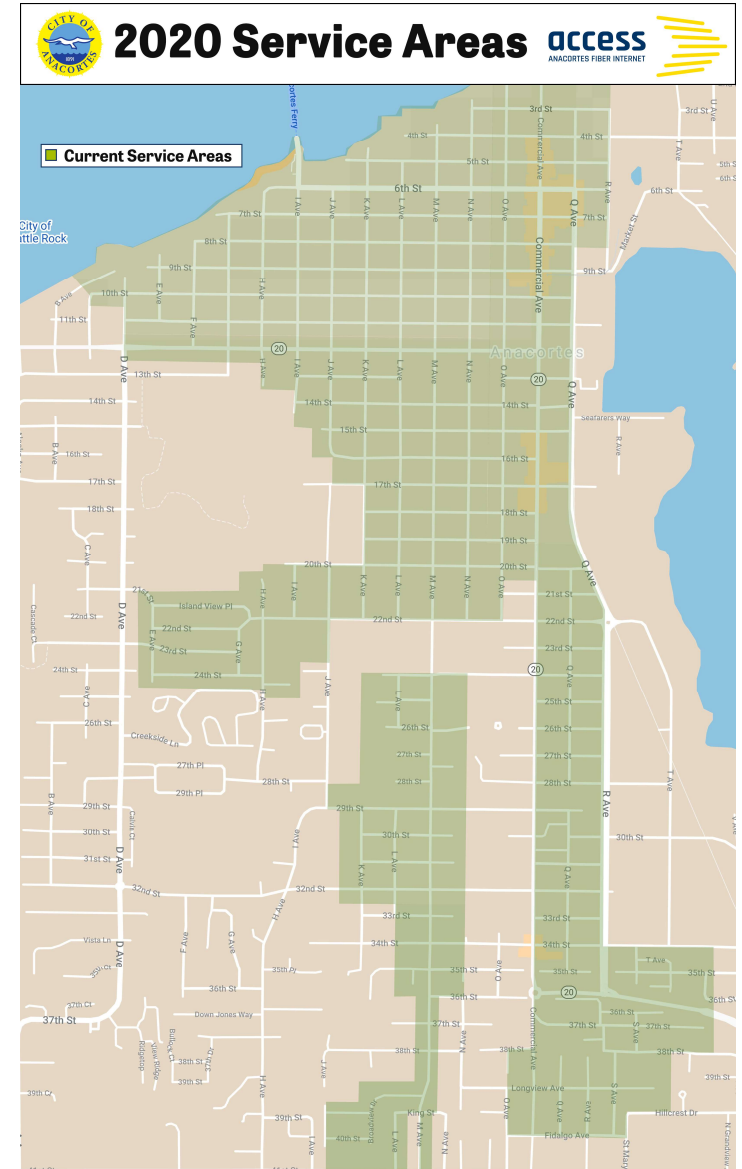
FIBER DIVISION CASHFLOWS

January 1 – June 30, 2021

	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUNE</u>	<u>YTD</u>
REVENUES							
Internet	32,792	36,681	39,612	42,933	45,429	48,564	247,011
Dark Fiber	1,156	1,156	1,156	1,156	1,156	1,156	6,936
Ethernet	867	867	867	867	867	867	5,202
Installation	<u>5,790</u>	<u>4,044</u>	<u>20,474</u>	<u>4,504</u>	<u>3,309</u>	<u>4,136</u>	<u>42,257</u>
total revenues	41,606	42,748	62,110	49,460	50,761	54,723	301,406
OPERATING EXPENSES	(<u>70,310</u>)	(<u>95,050</u>)	(<u>74,877</u>)	(<u>70,011</u>)	(<u>68,869</u>)	(<u>62,538</u>)	(<u>441,646</u>)
OPERATING CASHFLOW	(<u>28,704</u>)	(<u>52,302</u>)	(<u>12,759</u>)	(<u>20,551</u>)	(<u>18,108</u>)	(<u>7,815</u>)	(<u>140,240</u>)
CONSTRUCTION EXPENSES							
Backbone &							
Customer installations	(<u>127,861</u>)	(<u>90,498</u>)	(<u>223,514</u>)	(<u>100,223</u>)	(<u>308,185</u>)	(<u>360,449</u>)	(<u>1,210,730</u>)
Core equipment	(<u>12,443</u>)	(<u>422</u>)	(<u>4,421</u>)	(<u>2,091</u>)	(<u>2,399</u>)	(<u>11,470</u>)	(<u>33,246</u>)
LINE OF CREDIT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>306,905</u>	<u>306,905</u>
TOTAL CASHFLOW	(<u>169,008</u>)	(<u>143,222</u>)	(<u>240,694</u>)	(<u>122,865</u>)	(<u>328,692</u>)	(<u>72,829</u>)	(<u>1,077,311</u>)

ACCESS ANACORTES FIBER INTERNET SERVICE AREA

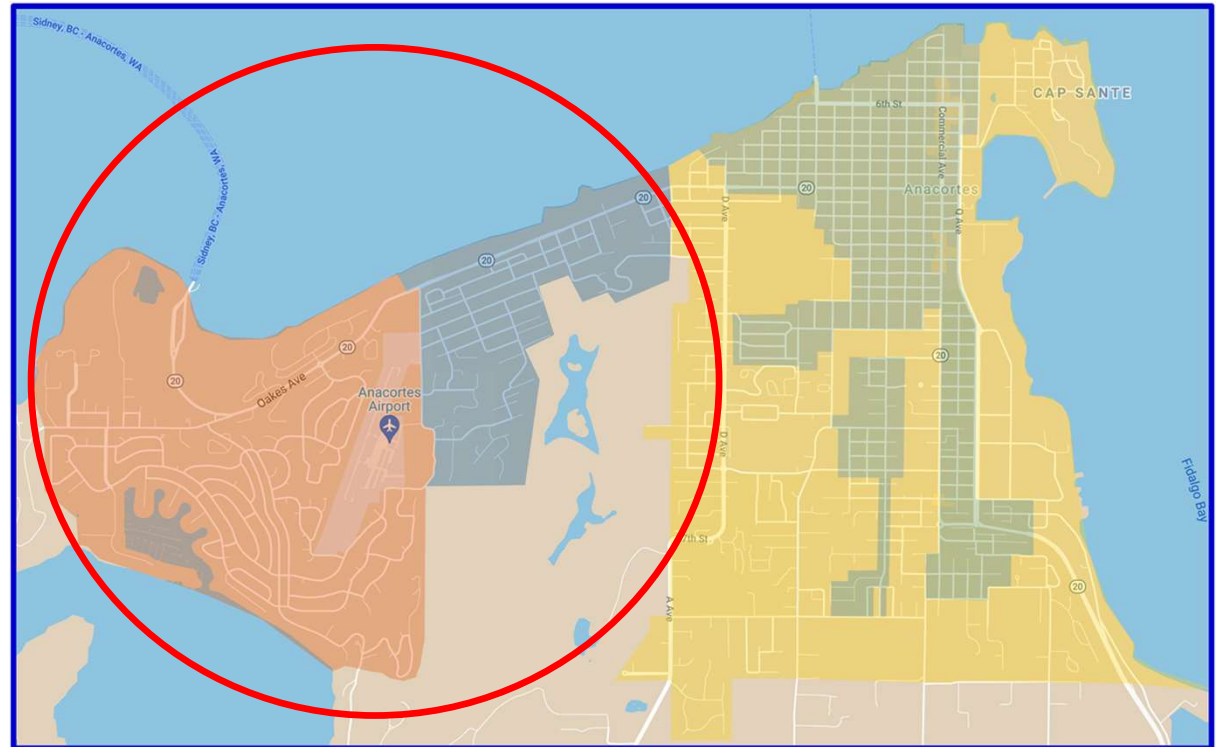
Fiber technicians are systematically completing installations and placing customers into service. There are 97 orders in queue for service in our current service areas.



FUNDING OPPORTUNITIES

American Recovery Plan Act

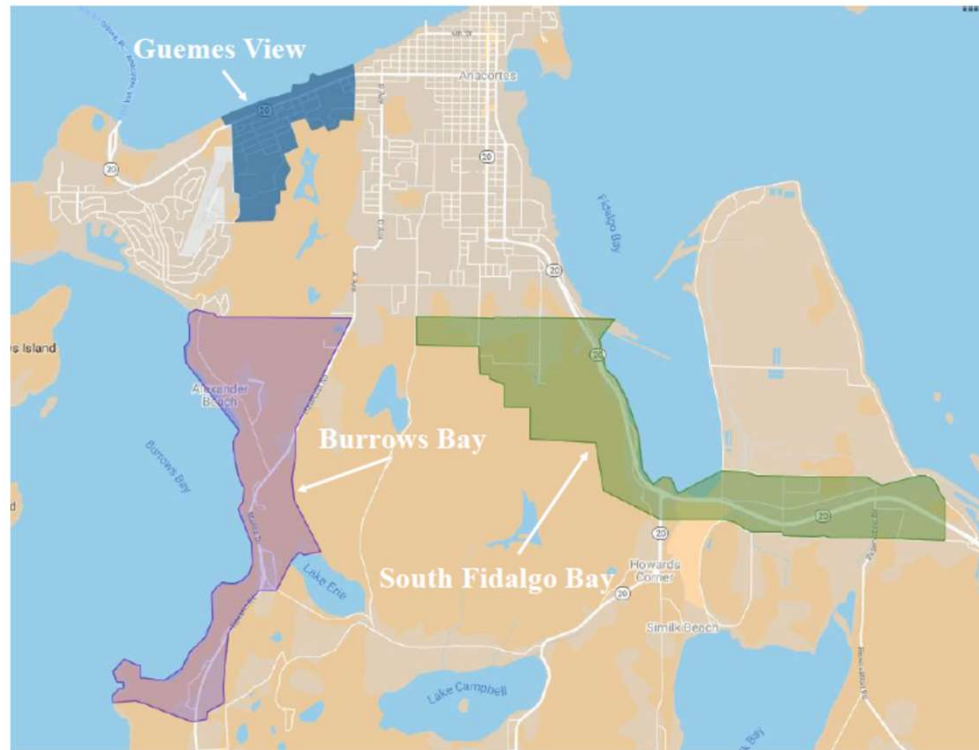
- Access applied for funding through WA State Broadband Office
- \$9.75M requested for West End & Guemes View
- Separate pool of ARPA funds available through WA Public Works Board... Fiber may apply for grant



FUNDING OPPORTUNITIES

National Telecommunications and Information Administration Broadband Infrastructure Program

- City responded to RFI in July
- Proposed 3 Project Areas expanding service area to pass additional 1705 premises
- November 2021 Funding Decision
- \$8.9M requested

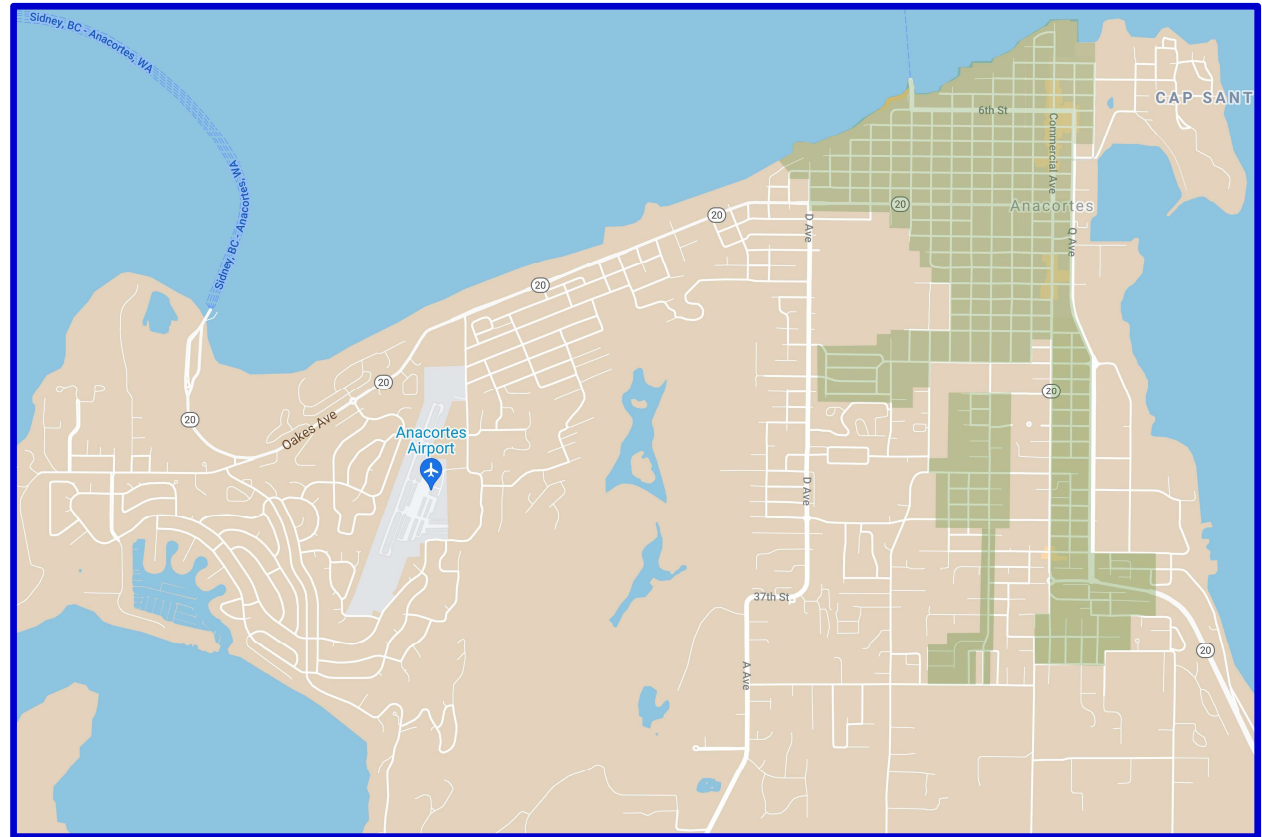


NETWORK EXPANSION

Area	Pass	Projected Expansion Timeframe	Funding
“West End” West of Anacopper Mine Rd.	2375	2021 construction underway and installations begin fall 2021. Installations will continue into early 2022.	Savibank Line of Credit (up to \$4.5M) Submitted this phase of the project for ARPA Funding which is being administered through the WA State Broadband Office
East of A Ave. Backfilling current service area	1815	2021 design followed by 2022 construction and installations	Economic Development Administration (EDA) grant for \$2.25M. Balance of project to be funded through Line of Credit.
Guemes View (East of Anacopper Mine Rd. to A Ave.)	875	2022 if grant application successful, otherwise 2023	Submitted this phase of the project for ARPA Funding which is being administered through the WA State Broadband Office Included in NTIA grant application
South Fidalgo Bay (Urban Growth Area along HWY 20 & March’s Point)	367	2022 if grant application successful, otherwise 2023-2024	Included in NTIA grant application
Burrows Bay	466	2022 if grant application successful, otherwise will not proceed	Included in NTIA grant application

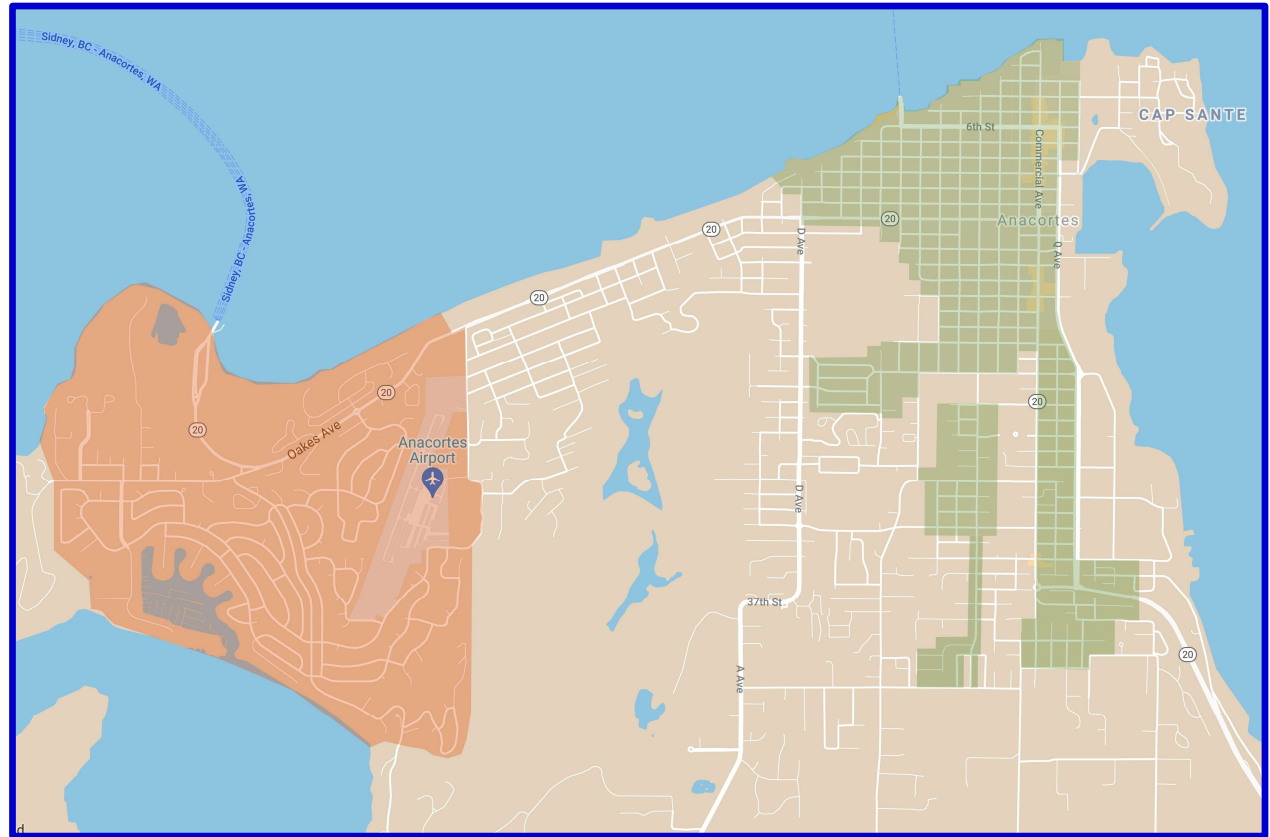
CURRENT SERVICE AREA

- Pilot Areas
 - Central Business District
 - Old Town
 - M Avenue
- 2020 Aerial Areas
- 2,273 potential customers



2021 EXPANSION

- Construction underway
- Installations begin Fall 2021
- Securing easements on private streets
- Accepting pre-orders for service



SPECIAL PROJECTS

- ☐ **ANACORTES SENIOR ACTIVITY CENTER**
2nd quarter 2021
Fiber being extended to City property for enterprise network
Replaces wireless connectivity
- ☐ **ROCK ISLAND COMMUNICATIONS**
2nd quarter 2021
Dark fiber lease, Anacortes to Mount Vernon
Dark fiber lease, within Anacortes
- ☐ **SWINOMISH INDIAN TRIBAL COMMUNITY**
3RD quarter 2021
Business class internet service
- ☐ **WESTERN WASHINGTON UNIVERSITY – SHANNON POINT MARINE CENTER**
Late 2021
Dedicated internet access
- ☐ **ISLAND HOSPITAL- ADDITIONAL SITE**
Late 2021
Dark fiber lease



ANACORTES FIBER INTERNET

We are your City owned and operated municipal fiber network providing high speed fiber internet service to meet your business and residential needs.

Here When You Need Us



Fast.
Reliable.
Yours.

access
ANACORTES FIBER INTERNET



COMING ACTIVITY

- *EDA grant application continues to be processed*
- *Finalizing easements with west end HOAs & property owners*
- *Seeking ARPA grant funding through WA State Broadband Office*
- *Applied for NTIA grant opportunity (\$8.9M)*
- *Following pending federal broadband expansion legislation*

- > **Faster Speeds**
- > **Lower Prices**

- > **More Reliable**
- > **Locally Run**

Residential Plans

Month to Month

100 Mbps	\$39/month
1 Gbps	\$69/month
Managed WiFi	\$10/month
Install Fee	\$100

Business Plans

12 Month Contract

100 Mbps	\$89/month
1 Gbps	\$149/month
Managed WiFi	\$10/month
Install Fee	\$100

access
ANACORTES FIBER INTERNET





City Council Agenda Bill

Meeting Date: July 19, 2021

Agenda Item: 6.c.

Agenda Item Title: Ordinance 3064: Critical Area Update Draft 3 Discussion

Staff Contact(s): TESS COOPER

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
TESS COOPER	Discussion

Item Summary: Staff will present a Draft 3 of the 2016 critical areas regulations update, as required under the periodic update requirements of the Growth Management Act. The attached third draft document with comments on final changes, is provided to allow opportunity for City Council feedback to inform the finalization of this document.

Budget Impact:
N/A

Previous Action: Public Hearing, Discussion, and Public Comment

Recommended Motion: Approve with suggested changes

Alternative Actions: Continue discussion

Attachments (listed in order presented):

1. Notice of Additional Public Comment
2. AMC Chapter 19.70 - Critical Areas Draft 3.2
3. AMC Chapter 19.20
4. AMC Chapter 19.78
5. CC Additional Comment Packet
6. Staff Slide Presentation



Notice of Additional Written Public Comment Period Critical areas regulations update

Description of Proposal: The proposed non-project legislative action is to amend the Critical Area regulations in accordance with the Growth Management Act requirements. The critical areas ordinance regulates certain activities and development in and near wetlands, streams, fish & wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, and critical aquifer recharge areas. The draft includes updates in accordance with state law and best available science, reorganization, and functional changes to certain requirements.

Project File: PLN-2019-0010

Proponent: City of Anacortes 904 6th Street, P.O. Box 547, Anacortes, WA 98221-0547

Location of Proposal: City limits of the City of Anacortes

To View Documents: Documents associated with this proposal, including the most recent draft (2nd Draft), can be viewed on the City of Anacortes website, at: <https://www.anacorteswa.gov/201/Critical-Areas-Regulations-Update>, or may be reviewed at the City of Anacortes Planning Department.

Written comment period: The City Council is taking additional public comment ONLY on the proposed change to Table 19.70.045 Permitted Alterations, item number 2, Public Roads and Utilities, as shown in Draft 3 Version 2, labeled Ch 19.70-CriticalAreasCC_Draft3.2. All written comments must be submitted to the contact person below by 5:00 PM on July 14, 2021.

proposal; pg 18 in CAO 3.2 draft:

“Public services” include, but are not limited to, water supply, sewer and stormwater management facility; electric power, ~~telephone, cable television,~~ telecommunication and natural gas lines; and ~~transportation by public road for persons and freight~~ public road, and multimodal transportation corridors (e.g., the Tommy Thompson Trail and Guemes Channel Trail).

Contact Person:

Tess Cooper, Senior Planner; Planning, Community, & Economic Development Department; P.O. Box 547, Anacortes, WA 98221; 360-588-8234; tessc@cityofanacortes.org.

Date of Notice: June 30, 2021

DRAFT Ordinance No. ____

An Ordinance adopting, repealing, and amending AMC Chapter 19.70 and Chapter 17.70 relating to critical areas regulations.

Whereas _____;

Whereas _____;

Whereas _____;

Whereas _____;

Whereas RCW 36.70A.170 and RCW 36.70A.172 provide that the City must designate critical areas and include the best available science in developing policies and development regulations to protect the functions and values of critical areas;

Whereas RCW 36.70A.130 requires continuing review, evaluation and periodic update of development regulations, including critical areas regulations,

Whereas

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

Section 1. The Anacortes Municipal Code is amended as shown in Attachment A.

Section 2. Consistent with RCW 35A.12.130, this ordinance takes effect five days after passage and publication.

PASSED and APPROVED this ____ day of _____, **2021**.

CITY OF ANACORTES:

Laurie Gere, Mayor

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney

Attachment A Amendments to the Anacortes Municipal Code

[12.18 ACFL Management Section to be drafter and added to AMC.](#)

Chapter 17.70 Critical Areas Regulations are repealed except that

Recodify Article II. – Frequently Flooded Areas (FEMA Approved), AMC 17.70.020 through AMC 17.70.070 to Chapter 19.74 and retitle “Floodplain Management”.

[Table 19.20.030-1 Permit Processes added.](#)

[19.78 Clearing and Grading section reference to Critical Area activities not subject to C&G thresholds.](#)

Chapter 19.70 Critical Areas Regulations

The following chapter and sections in Title 19 are created or amended:

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DIVISION 7 – ENVIRONMENT

CHAPTER 19.70 CRITICAL AREAS

INTRODUCTION: GENERAL PROVISIONS

19.70.010 Purpose.

- A. The purpose of this chapter is to designate critical areas and to establish standards for the protection of their functions and values, in compliance with the provisions of the Washington State Growth Management Act of 1990 (Ch. 36.70A RCW), and consistent with the goals and policies of the Anacortes Comprehensive Plan.
- B. By identifying and regulating development and alterations to critical areas and their buffers, this chapter seeks to accomplish the following goals:
 - 1. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding;
 - 2. Protect, maintain and restore healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including, but not limited to ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;
 - 3. Direct activities not dependent on critical area resources to less environmentally sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;
 - 4. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas;
 - 5. Alert owners, potential purchasers, real estate agents, appraisers, lenders, builders, developers and other members of the public to natural conditions that pose a hazard or may otherwise limit development;
 - 6. Serve as a basis for exercise of the City's substantive authority under the State Environmental Policy Act (SEPA).
- C. The regulations of this Chapter are intended to protect critical areas in accordance with the Growth Management Act, through the application of best available science, as determined according to [WAC 365-195-900](#) through [365-195-925](#), and in consultation with state and federal agencies and other qualified professionals.

- D. This Chapter is intended to be administered with limited flexibility and attention to site-specific characteristics. It is not the intent of this Chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property, or to prevent the provision of public facilities and services necessary to support existing development and that planned for by the community without decreasing current service levels below minimum standards.
- E. The City's enactment or enforcement of this Chapter must not be construed for the benefit of any individual person or group of persons other than the general public.

19.70.015 Applicability.

A. Unless explicitly exempted, the provisions of this chapter apply to all land uses, development activity, and all structures and facilities within the City of Anacortes that are within the critical area, within the maximum buffer distance of, or likely to affect the functions and values of, one or more critical areas.

B. Relationship to other regulations.

1. Shorelines of the state and shorelands as defined in RCW 90.58.030, and critical areas occurring within the jurisdiction of shorelines of the state and shorelands ("shoreline jurisdiction"), are regulated and protected by through the Anacortes Shoreline Master Program, (AMC Title 18.1619.72), Shoreline Master Program, including Appendix A—Shoreline Critical Areas Regulations, as amended. Activities occurring within shoreline jurisdiction are reviewed through the shoreline permit review and issuance process; a separate critical areas permit is not required. The Shoreline Master Program incorporates by reference portions of this Chapter (Ch. 19.70); however, certain provisions of this chapter that are not consistent with the Shoreline Management Act, 90.85 RCW and supporting Washington Administrative Code chapters, do not apply in shoreline jurisdiction.
2. These critical areas regulations apply in addition to zoning and other regulations adopted by the City. Notwithstanding AMC 19.12.040(E), in the event of any conflict between these regulations and any other regulations of the City, the regulations apply that provide greater protection to the critical areas' functions and values, as determined by the Decision Maker/Director.
3. When any provision of this chapter or any existing easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas applies.
4. Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, or local regulations and permit requirements that may be required. The applicant is responsible for complying with other agency requirements, apart from the process established in this Chapter.

Commented [TC1]: Change to:

A. Unless explicitly exempted, the provisions of this chapter apply to all land uses, development activity, and all structures and facilities within the City of Anacortes that are within the critical area, within the maximum buffer distance of, or likely to affect the functions and values of, one or more critical areas.

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19.70.020 Identification, classification, and rating of critical areas.

- A. Critical Areas Maps.** The general locations of many critical areas in Anacortes are displayed on the City of Anacortes' Critical Areas Maps, ~~which are hereby adopted by reference~~. The maps are used to alert the public of the potential location of critical areas in Anacortes. As new environmental information related to critical areas becomes available, the City is authorized to make changes as necessary to the Critical Areas Maps. [The City Geographic Information Systems office must maintain an interactive, publicly available online map containing the location of known and potential critical areas, and must make pdf maps available to the public upon request.](#)
- B. Actual site conditions.** Regardless of whether a critical area is shown on the Critical Areas Map, the actual presence or absence of the features defined in this code as critical areas will govern. ~~The City~~[Prior to acting on any development permit the City](#) may require an applicant to submit technical information to indicate whether critical areas actually exist on or adjacent to the applicant's site based on the definitions of critical areas in this code. [This will be administered as a critical area identification form AMC 19.70.110 included with appropriate permit forms.](#)
- C. Classification and rating.** To promote consistent application of the standards and requirements of this chapter, critical areas within the City will be rated or classified using best available science according to their characteristics, function and value, and/or their sensitivity to disturbance.
1. Classification of critical areas will be determined by the City using the following tools:
 - a. Application of the criteria contained in these regulations;
 - b. Consideration of the critical area reports submitted by qualified professionals in connection with applications subject to these regulations; and
 - [c. Review of maps and other resources adopted pursuant to this chapter.](#)
 - ~~e.~~ [2. Rating categories will not change due to illegal modifications. If the development proposal site contains or is within a critical area suspected of illegal modifications the rating will be based on pre-modification conditions of the critical area. Abatement of the unauthorized modification will be required prior to authorization of the current development proposal being processed for the subject site.](#)

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19.70.025 Protection of critical areas.

- A.** Critical areas and their required buffers may not be altered except as allowed by this Chapter.
- B.** Any action taken pursuant to this chapter must result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science.
- C.** All actions and development must be designed and constructed in accordance with mitigation sequencing per AMC 19.70. ~~135-125~~ to achieve no net loss of critical area functions and values.

- D. Applicants must first demonstrate an actual inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed.
- E. No activity or use may be allowed that results in a net loss of the functions or value of critical areas.
- F. Any individual critical area adjoined by another type of critical area must have the buffer and meet the requirements that provide the most protection to the critical areas involved.
- ~~F.G.~~ Violations of this chapter are subject to AMC 20, Civil Enforcement and Penalties. Where a violation occurs within a suspected protected critical area or as depicted on city mapping, the property owner must provide an appropriate critical areas report to determine impacts. The report may be subject to third party review at the property owner's expense.

19.70.030 ~~General Requirements~~ Project Evaluation

- A. As part of the review, the city will:
 1. Verify the information submitted by the applicant;
 2. Evaluate the project area and vicinity for critical areas;
 3. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
 4. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- B. If the proposed project is within, adjacent to, or is likely to impact a critical area, the city will:
 1. Require a critical area report from the applicant that has been prepared by a qualified professional, to be reviewed and evaluated;
 2. Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the criteria in AMC 19.70.030.035, Review criteria;
 3. Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
 4. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

~~4.5.~~ The City may require third party review of any critical area critical area report, at the expense of the applicant.

19.70.035 Critical Areas Review.

- A. **When required.** A proposal to modify any critical area and/or required buffer including, but not limited to, clearing, grading, draining, removal or alteration of vegetation, construction of

structures, utilities and related infrastructure must require a critical area permit unless it qualifies as an exemption, as provided in AMC 19.70.0350040. Except for within shoreline jurisdiction, administration of this chapter shall be through the SMP and appropriate Shoreline Permit administration process.

- B. Best Management Practices.** All activities, including those allowed without critical areas review, must be conducted using the best management practices appropriate for that activity that result in the least amount of impact to the critical areas. Best management practices must be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The use of best management practices is required to ensure that the activity does not result in degradation to the critical area. Appropriate BMP sources include Ecology's Construction Storm Water General Permit and NRCS Conservation Practices. Any incidental damage to, or alteration of, a critical area and/or buffer must be restored, rehabilitated, or replaced at the responsible party's expense.
- C. Modifications to Existing Nonconforming Structures and Uses.** In these provisions the burden of proof is on the applicant to bring evidence in support of their position. Existing structures, activities, and uses that were established legally but do not meet the current critical area, buffer, or buffer setback requirements may continue in accordance to AMC 19.49.040, and may be modified as follows:
1. Routine maintenance and repairs;
 2. Structural modifications or additions that do not intensify the nonconformity of the structure or increase the area of hardscape lying within the critical area or buffer. The ~~Decision maker~~Director may require an updated critical areas report to confirm location of buffers and that the addition is located entirely outside the critical area or buffer;
 3. Vertical additions above the ground floor that do not encroach further into the critical area or buffer beyond the existing exterior walls, except that critical areas review is required for additions in landslide hazard areas or buffers;
 4. Restoration or replacement of a structure that is damaged by fire, natural disaster or other calamity when:
 - a. A complete application for reconstruction or replacement is submitted within one year of the damage; and
 - b. The restoration or replacement is made to conform to the current critical areas regulations, or if such regulations cannot be physically met without reducing the size of the building, the restoration or replacement may not intensify any nonconformity that existed prior to the damage.
- c. Except that critical areas review is required for restoration and replacement in landslide hazard areas or buffers.

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5. State Ferry Terminal. The existing developed footprint, except for infill between the toll booth area in the lowest parking lot, hillside walking paths, and a hillside side slope along the western side of the main terminal parking lot, and including all associated parking, at the Washington State Ferry Terminal facility, shall not be increased and redevelopment may occur provided there is no net loss of ecological function and value in the adjacent buffer areas for Cannery Pond and Ship Harbor Interpretive Preserve wetlands.

5. State Ferry Terminal. The existing developed footprint, except for infill between the toll booth area in the lowest parking lot, hillside walking paths, and a hillside side slope along the western side of the main terminal parking lot, and including all associated parking, at the Washington State Ferry Terminal facility. Redevelopment may occur within the existing footprint only, provided there is no net loss of ecological function and value in the adjacent buffer areas for Cannery Pond and Ship Harbor Interpretive Preserve wetlands.

- D. Demolition.** Demolition of structures located within critical areas or their buffers is permitted, excluding demolition of structures necessary to support or stabilize landslide hazard areas and will be subject to approval of a stormwater pollution prevention plan consistent with the adopted stormwater management manual and clearing limits that will adequately protect the critical area.

19.70.040 Exempt Activities.

- A. General requirements for all exempt activities.** Activities listed in this section are exempt from the rest of the provisions of this chapter only if they meet the specific terms of this section.
- B.** To be exempt from this chapter does not give permission to degrade a critical area or buffer or to ignore risk from natural hazards. All exempt activities must use reasonable methods to avoid potential impacts to critical areas and buffers. In every case, disturbance to the critical area must be minimized through best management practices and the use of low-impact equipment.
- C.** Any incidental damage to, or alteration of, a critical area or buffer that is not a necessary outcome of the exempted activity must be restored, rehabilitated, or replaced at the responsible party's expense.
- D.** This chapter may not exempt this an activity from the provisions of other City permits such as Clearing and Grading for vegetation removal and ground disturbing activities, or agency permit requirements such as Washington Department of Fish and Wildlife Hydrologic-Hydraulic Permit, or Army Corp of Engineers regulatory requirements.
- E. Burden of proof.** The burden of proof is on the applicant to bring forth evidence that the activity meets the precise description of Exemption.

D.

E.F. Table 19.70.040 Exempt Activities

Table 19.70.040 (A) describes activities that must meet the precise description to be allowed without following a critical area process. Activities are divided into the categories of permitted in the Critical Area and permitted in the Buffer, marked by a yes or no in the appropriate column.

EXEMPT ACTIVITIES:- (No review required, must strictly meet standards)	Critical Area	Buffer
Emergencies. Alterations in response to emergencies which threaten the public health, safety, and welfare or which pose an imminent risk of	Yes	Yes

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EXEMPT ACTIVITIES:- (No review required, must strictly meet standards)	Critical Area	Buffer
damage to private property, and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter, if the following requirements are met: a. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property may be authorized by this exemption. b. The alteration undertaken must be reported to the Decision makerDirector no later than 30 days after the alteration has occurred. Once notified, the Decision makerDirector must confirm that an emergency existed and determine what, if any, additional applications and/or measures are required of the property owner to protect the critical area(s) consistent with the provisions of this chapter, and to repair any damage to a pre-existing resource. c. If the Decision maker determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, the Decision makerDecision maker may take action to enforce this chapter consistent with AMC Title 19 and AMC Title 20. c. A: After the emergency, the person or agency undertaking the action must fully fund and conduct necessary site evaluations and critical area reports, mitigation plans, and restoration for any impacts to the critical area and buffers resulting from the emergency action. The person or agency undertaking the action must meet the review procedures contained herein. Mitigation activities must be initiated within one year of the date of the emergency or as directed by the Department. d. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, or any required mitigation, the Director may take action to enforce this chapter consistent with AMC Title 19 and AMC Title 20.		
Yard and garden activities. Maintenance or repair activities including, but not limited to, cutting, mowing lawns, weeding, hand removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas; provided, that such maintenance or repair activities are limited to legally existing landscaping improvements and do not further expand into critical areas or associated buffers, do not alter topography, do not destroy or	No	Yes

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EXEMPT ACTIVITIES:- (No review required, must strictly meet standards)	Critical Area	Buffer
clear native vegetation, do not remove non-hazard trees in the buffer or critical area, and do not diminish water quality or quantity. a. Native growth protection areas, mitigation sites, or other areas protected via permit conditions, conservation easements or similar restrictive covenants (as defined in AMC 19.70.145135) are not covered by this exemption. b. If an activity has ceased for one year or more any future use of such land, building or structure must thereafter be in conformity with this chapter and in the zone in which it is located.		
Site Investigation. Minimal site investigative work and studies necessary for preparing land use applications, including, but not limited to, surveys, soil logs and borings, percolation tests, water quality studies, scientific research, wildlife studies, and similar tests and investigations; provided that such activities do not require clearing, fill, construction of new roads, or heavy equipment, and only minimal amounts of excavation and disturbed areas must be immediately restored.	Yes	Yes
<u>Passive Outdoor Recreation Activities.</u> When it can be demonstrated that there will be no adverse effect, the following activities are allowed within critical areas and their buffers: educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, public beach access including water-related activities, bicycling, and hiking. This exemption does not include constructing new roads or trails, vegetation clearing, or collection of plants or animals. Provided they do not require structures, grading, fill, draining, or dredging except as provided herein or authorized by a Critical Area Permit: Passive Outdoor Activities, including fishing, birdwatching, hiking, boating, biking, horseback riding, swimming, canoeing, and similar activities with limited environmental impact are exempt activities. <u>Outdoor recreation activities that do not involve modifying the land or vegetation, and that will not adversely affect the functions and values of critical areas.</u>	Yes	Yes

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Table 19.70.040 (B)

EXEMPTIONS That require a letter of exemption be obtained from the decision-maker Director prior to construction or initiation of activities. Subject to conditions by the Director Decision -maker to ensure compliance with this chapter.	Critical Area	Buffer
Utility Operation, Maintenance, Repair, or Replacement. Public water, electric, and natural gas distribution, public stormwater and sewer collection, cable communications, telephone, utility and related activities undertaken pursuant to City-approved best management practices, and best available science with regard to protection of threatened and endangered species, as follows: a. Normal and routine maintenance or repair of existing utility structures or rights-of-way; when the activity does not involve the expansion of facilities or improvements into a previously unimproved portion of critical areas or required buffers; b. Replacement, operation, repair, modification, installation or construction in an improved City road right-of-way or City authorized private roadway of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; to include relocation only when required by the City of Anacortes, which approves the new location of the facilities; c. Relocation of public sewer or stormwater local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by the City of Anacortes, which approves the new location of the facilities; d. Replacement, operation, repair, modification, relocation, installation or construction of public sewer or stormwater local collection, public water local distribution, natural gas, cable communication, or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or City-authorized private roadway; e. Repair and maintenance of existing private connections to public utilities and private stormwater management facilities; f. Regular maintenance of stormwater facilities that are within a segment of a regulated stream, such as conveyance ditches/swales within the right of way or within public drainage easements	Yes	Yes
Transportation Infrastructure Operation, Maintenance, Repair, or Replacement. Maintenance, operation, repair, modification, or	Yes	Yes

EXEMPTIONS That require a letter of exemption be obtained from the decision-maker Director prior to construction or initiation of activities. Subject to conditions by the Director Decision-maker to ensure compliance with this chapter.	Critical Area	Buffer
replacement of publicly improved roadways or City-authorized private roadways, including the road prism and associated stormwater management systems; as long as any such alteration does not involve expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way, and does not alter a critical area or required buffer, or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. Retention and replanting of native vegetation must occur whenever possible along the right-of-way improvement and resulting disturbance		
Recreation Areas Operation, Maintenance, Repair, or Replacement. Maintenance, operation, repair, modification, or replacement of existing Non-Motorized trails, and existing facilities within publicly improved recreation areas, such as the Anacortes Community Forest Lands and public parks, may be performed subject to the following: - The activity does not involve the expansion of facilities and disturbance to adjacent areas is minimized and disturbed areas must be immediately restored; - Work is conducted using best management practices; Flow and circulation patterns and biological characteristics are not impaired and adverse impacts are minimized; e.d. Where trail relocation is the least impactful preferred method of repair, trail relocation further away from the Critical Area is not to be considered a new trail but is included in the exemption for operation, maintenance, repair, or replacement.	Yes	Yes
Vegetation Management, i-Including: - Removal of noxious weeds or invasive vegetation, as identified by the Washington State or Skagit County Noxious Weed Control Board, in a wetland buffer, stream buffer, other fish and wildlife habitat conservation areas and buffers, is allowed when: - Undertaken with hand labor, including handheld mechanical tools, and integrated pest management; - Plants that appear on the Washington State or Skagit County Noxious Weed Control Board lists must be handled and disposed of in accordance with the best management practices appropriate to that species and approved by the City when permit review is applicable;	Yes	Yes

EXEMPTIONS That require a letter of exemption be obtained from the decision-makerDirector prior to construction or initiation of activities. Subject to conditions by the DirectorDecision-maker to ensure compliance with this chapter.	Critical Area	Buffer
c. Areas cleared by removal of noxious and/or invasive plant species must be revegetated with site-appropriate native species at natural densities and the site must be stabilized against erosion in accordance with the stormwater manual adopted by the City; d. All work performed is above the ordinary high water mark and above the top of a stream bank; and e. The following limits may not be exceeded: Within City-owned property, no more than 3,000 square feet of soil may be exposed at any one time; and within private property, not more than 500 square feet of area may be cleared, as calculated cumulatively, over one year, without a permit and critical area report prepared by a qualified professional. 2. Vegetation management consistent with a previously approved critical area mitigation, restoration, remediation, or enhancement plan that requires ongoing maintenance and vegetation management beyond final inspection and the required monitoring period for the permitted project. 3. Hazard Trees. a. The felling of hazard trees may be permitted when necessary to: i. Control fire; or ii. Halt the spread of disease or damaging insects consistent with 76.09 RCW; or iii. Avoid a threat to existing structures, above ground utility lines or other facilities. iv. Remove an actual threat to life or property from slope instability that would be caused by toppling. b. Unless there is an emergency pursuant to Emergency Exemptions above, the landowner must first obtain prior written approval from the Department. A tree risk assessment prepared by an ISA certified Arborist must be submitted by the applicant to the Department that includes the following information:		

EXEMPTIONS That require a letter of exemption be obtained from the decision-maker Director prior to construction or initiation of activities. Subject to conditions by the Director Decision-maker to ensure compliance with this chapter.	Critical Area	Buffer
i. Identification of the tree(s) proposed to be removed; ii. A conclusion that the condition constitutes an actual threat to life or property; iii. An assessment of whether a portion of the tree suitable for a snag for wildlife habitat may be safely retained. iv. If a tree to be removed provides priority habitat, such as an eagle perch or occupied nest, a description of timing and methods of removal that will minimize and mitigate impacts. v. If a tree to be removed is located within a landslide hazard area or buffer, an evaluation of potential impacts on slope stability must be completed by a qualified professional, including recommendations for replanting and other measures to avoid adverse impacts to slope stability. c. All work must be done using handheld implements only, unless the property owner requests and the Decision-makerDecision-maker approves otherwise in writing. d. Any removed tree or vegetation must be replaced in-kind, with similar or appropriate native species, within 1 year in accordance with an approved restoration plan including species, size, and maintenance plan including species, size, and maintenance plan.		
Clearing, grading, and the construction of fences and arbors are allowed within the required 10-foot stream setback for a piped stream segment if no other critical area or buffer is present.	No	Yes

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19.70.045 Permitted Alterations.

- A. Applicability.** An applicant may seek an alteration of a critical area and/or critical area buffer through a permitted alteration when application of the standards in this chapter would result in the denial of all reasonable and economically viable use of the property, renders compliance with these provisions as infeasible and the proposed development meets the specific terms of this section and can be considered a reasonable use.
- B. General requirements.** The actions in the permitted alteration table below, must be considered permitted alterations, unless as otherwise specified under AMC 19.70.240 Specific Wetland Category Development Standards, and provided they are consistent with the general standards for mitigation sequencing and other applicable requirements established in this chapter.

C. Review Process:

1. A critical area permit must be required for all permitted alterations. Requests for such permits must be reviewed using the procedures outlined in chapter 19.20, table 19.20.030. No permit must be issued unless it can be shown that the proposed development is fully consistent with the requirements of this chapter.
2. In addition to other project related documents, all permitted alterations must require a critical area assessment report per section 19.70.115 to evaluate the permitted alteration. The report must include:
 - a. A description of the function and condition of the critical area and or buffer that would be altered;
 - b. An analysis of the effect of the development proposal on the critical area and or buffer;
 - c. A description of actions that can be taken to modify the development proposal to avoid or reduce the alteration of the critical area and/or buffer and a discussion of whether these modifications are practical and reasonable;
 - d. A mitigation plan as required by this chapter.
3. Burden of proof. The burden of proof is on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.
4. Public comment. Consistent with AMC 19.20.030 The City must ensure the opportunity for public comment, including that from appropriate Federal, State, and Tribal natural resource agencies, to ensure the use of best available science before deciding on approval.

D. Decision criteria. A permit for alterations to of a critical areas and/or buffer width requirements of this Chapter may only be issued if the applicant demonstrates that all of the following criteria are met:

1. Special circumstances applicable to the subject property, including size, shape, or topography, and the strict application of this chapter is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, that the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this chapter may not be the sole basis for granting approval;
2. The issuance of a variance to zoning requirements (setback, height, coverage, etc.) by itself will not provide sufficient relief to avoid the need for a permitted alteration to the critical area and/or buffer and other requirements for the critical areas regulated by this Chapter;
3. Mitigation sequencing per AMC 19.70.135125(A) has been applied;
4. The proposed alteration is supported by best available science; and

5. The proposed alteration allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property.

E. Conditions may be required. In granting any approval, conditions and safeguards may be prescribed as are necessary to secure adequate protection of critical areas from adverse impacts, protect adjacent property, and to ensure conformity with this chapter.

F. Table 19.70.040-045 Permitted Activities.

Table 19.70.045 describes activities that must meet the precise description to be allowed ~~with~~ following the prescribed critical area process. Activities are divided into the categories of permitted in the Critical Area and permitted in the Buffer, marked by a yes or no in the appropriate column.

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
Buffer Modifications , including : increased buffer width, buffer averaging, and buffer alterations as described specifically in this chapter.	No	Yes
Public Services Roads and Utilities . To allow development by a public agency <u>public services</u> when the strict application of the standards in this Chapter would otherwise unreasonably prohibit the provision of public <u>services and</u> amenities.	Yes	Yes
1. “Public services” include, but are not limited to, water supply, sewer and stormwater management facility, electric power, telecommunication and natural gas lines, telephone, cable television, gas, and transportation by public road for persons and freight and multimodal transportation corridors (e.g., the Tommy Thompson Trail and Guemes Channel Trail). 1.2. 2.3. Public services may be allowed to alter critical areas and buffers when: - Mitigation sequencing per AMC 19.70.135 125 (A) has been applied; - The application of the critical areas regulations would unreasonably restrict the ability of the public agency to provide public services; - There is no other practical alternative to the proposed development with less impact on the critical area; - The proposed development does not create a health or safety hazard on or off the development site, and will <u>must</u> not be detrimental to the properties or improvements in the vicinity; - Any alterations permitted to the critical area <u>and buffer</u> are mitigated in accordance with AMC 19.70.135 and relevant mitigation standards for the impacted critical areas(s) type; - The proposal is consistent with the Anacortes Comprehensive Plan and other applicable regulations.		

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Public Roads and Utilities. To allow public services, when the strict application of the standards in this Chapter would otherwise unreasonably prohibit the provision of public amenities...

And add #3:

3. It will be a condition of any alteration granted a public agency and services exception that only the portion of the alteration that must be located in a critical area may be so located.

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
g. Conditions authorized. Conditions may be established as necessary to mitigate impacts to critical areas and to conform to the standards required in this Chapter. <u>3. It will be a condition of any alteration granted a public agency and services exception that only the portion of the alteration that must be located in a critical area may be so located.</u>		
Conservation, Restoration, and Fish Habitat Enhancement Projects. Conservation or restoration activities aimed at protecting or enhancing the soil, water, vegetation, or wildlife; including voluntary fish, wildlife, and wetland restoration or enhancement activities not required as project mitigation that have been approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction and/or that meet the criteria of RCW 77.55.181(1) and that are reviewed and approved according to the provisions of RCW 77.55.181. A Biological Evaluation Report is required to determine whether the proposal would conserve, preserve, or enhance critical area functions in the long-term to minimize temporary environmental impacts.	Yes	Yes
Chemical Applications. Chemical applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary for the control of nuisance weeds and algae; except that their use will be restricted in accordance with the State Department of Ecology and State Department of Fish and Wildlife Management recommendations, and regulations of the State Department of Agriculture and the U.S. Environmental Protection Agency.	Yes	Yes
Recreational Areas / Facilities. Low impact activities which are consistent with the purpose and function of the critical area buffer <u>(not to include the ACFL)</u> and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the critical area. <u>A1.</u> Limited public park or public recreational access including trails, viewing platforms, fishing access (no wider than 6 foot), and foot bridges, provided that all of the following are satisfied: - The area/facility is part of a public park that is dependent on its location for recreational function; and - The area/facility is limited to the minimum necessary to accomplish the recreational function; and - The removal of trees and native vegetation is minimized; and - The balance of the development is consistent with other requirements of this chapter; and - The project is identified in the Anacortes Comprehensive Plan or Parks and ACFL Master Plans.	No	Yes

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Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
B2. Private pedestrian walkways and public trails must meet the following standards: a. The trail is generally parallel to the perimeter of the critical area; b. The trail is located in the outer 25% of the buffer area and is designated to avoid removal of s trees and native vegetation; c. The trail does not exceed 6 feet in width, and is limited to native soils or pervious surfaces. Raised boardwalks utilizing non-treated pilings may be acceptable; and d. The trail may be subject to closure during critical spawning, migration or breeding time periods of sensitive species that are present. C3. Informational signs. Construction and placement of informational signs or educational demonstration facilities no more than 9 square feet surface area and 4 feet high, as long as there is no permanent infringement on hydrology or stream flow and non-treated wood is used; D4. Limited excavating and filling necessary for the repair and maintenance of piers, walkways, observation decks, wildlife management shelters, boathouses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the critical area.		
Single family Residences and Normal necessary appurtenances. New single family dwellings on existing legal lots may intrude into critical areas or their buffers when all of the following conditions are met: a. It is demonstrated that it is not feasible to avoid the critical area or buffer through avoidance or buffer averaging, or reconfiguration of lots in the same ownership at the date of adoption of this Ordinance, and the development is the minimum necessary to achieve reasonable use of the lot as determined by the Planning Decision-makerDecision-maker; and b. Alteration of critical areas and their buffers including all clearing, grading, and structures, and appurtenances, has not and will not exceed cumulatively 2800 square feet of disturbance; and c. This action does not allow critical areas or their buffers to be converted to lawn or residential landscaping beyond a minimal area needed to maintain an approved structure; and d. Mitigation sequencing provided in this Chapter under AMC 19.70.125 is applied and the proposal includes on-site mitigation to the extent feasible as determined by the Critical Area Report.	Yes	Yes

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Recreational Areas / Facilities. Low impact activities which are consistent with the purpose and function of the critical area buffer and do not detract from its integrity may be permitted within the buffer (not including the ACFL), depending on the sensitivity of the critical area.

A. Limited public park or public recreational access including but not limited to trails, viewing platforms, fishing access (no wider than 6 foot), and foot bridges, provided that all of the following are satisfied:

- a. The area/facility is part of a public park that is dependent on its location for recreational function; and*
- b. The area/facility is limited to the minimum necessary to accomplish the recreational function; and*
- c. The removal of trees and native vegetation is minimized; and*
- d. The balance of the development is consistent with other requirements of this chapter; and*
- e. The project is identified in the Anacortes Comprehensive Plan or Parks Comprehensive Plan .*

B. Private pedestrian walkways and public trails must meet the following standards:

- a. The trail is generally parallel to the perimeter of the critical area;*
- b. The trail is located in the outer 25% of the buffer area and is designated to avoid removal of trees and native vegetation;*
- c. The trail does not exceed 6 feet in width, and is limited to native soils or pervious surfaces. Raised boardwalks utilizing non-treated pilings may be acceptable; and*
- The trail may be subject to closure during critical spawning, migration or breeding time periods of sensitive species that are present.*

C. Informational signs. Construction and placement of informational signs or educational demonstration facilities no more than 9 square feet surface area and 4 feet high, as long as there is no permanent infringement on hydrology or stream flow and non-treated wood is used;

D. Limited excavating and filling necessary for the repair and maintenance of piers, walkways, observation decks, wildlife management shelters, boathouses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the wetland, except as authorized by special permit.

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
d-e. Normal appurtenances included in this provision include garages, decks, and walkways incidental to residential living and that do not constitute a special privilege.		
New to Table <u>Anacortes Community Forest Lands. Given the unique qualities of the community forest, all properties designated as ACFL have been nominated as a regulated critical area. Any and all new uses and development of new facilities within the ACFL must meet the requirements of the Conservation Easements/Deed Restrictions of the land, Anacortes Comprehensive Plan, The ACFL Comprehensive Plan, AMC 19.70 Critical Areas, and AMC 12.18 ACFL.</u>	<u>Yes</u>	<u>Yes</u>
New to Table <u>Critical Area Aquifer Recharge Areas. All regulated activities listed under AMC 19.70.540.</u>	<u>Yes</u>	<u>Yes</u>

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Anacortes Community Forest Lands. Given the unique qualities of the community forest, all properties designated as ACFL have been nominated as a regulated critical area. Any and all new uses and development of new facilities within the ACFL must meet the requirements of the Conservation Easements/Deed Restrictions of the land, Anacortes Comprehensive Plan, The ACFL Comprehensive Plan, AMC 19.70 Critical Areas, and AMC 12.18 ACFL.

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Regulated Activities in Critical Aquifer Recharge Areas. All regulated activities listed under AMC 19.70.540.

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19.70.050 Reasonable ~~use-Use exception-Exception and~~ Critical Area Variance.

- A. **Applicability.** If the application of this Chapter would result in denial of all reasonable and economically viable use of a property, and if such reasonable and economically viable use of the property cannot be obtained by consideration of a permitted alteration pursuant to AMC 19.70.040~~045~~, then a landowner may seek a reasonable use exception from the standards of this Chapter. Reasonable use exceptions are considered a critical area variance and are intended as a last resort and only when a variance can meet the requirements of this Chapter.
- B. **General Requirements.** Reasonable use is a legal concept articulated by federal and state courts in regulatory takings cases. Within the context of these cases and for the purposes of this title, reasonable use means uses allowed by the underlying zoning designation and subdivision of property is not allowed. When no possible alternative exists, a reasonable use exceptions must be considered a critical area variance, provided they are consistent with the general standards for variances under 19.38.040 and other applicable requirements established in this chapter.
- C. **Procedures for Review**~~process:~~:
1. A variance permit must be required for all reasonable use exceptions. Requests for such permits must be reviewed using the procedures applicable to Type 3 Hearing Examiner decisions outlined in chapter AMC 19.20.030. ~~A~~No permit ~~may not-must~~ be issued unless it can be shown that the proposed development is fully consistent with the variance approval criteria enumerated in AMC Section 19.38.040 (variance criteria) as well as all of the requirements of this chapter.

2. In addition to other project related documents, all ~~permitted alterations~~[critical area variances](#) must require a critical area assessment report per section AMC 19.70.~~125-115~~ to evaluate the ~~permitted alteration~~[proposed disturbance](#). The report must include:
 - a. A description of the function and condition of the critical area and or buffer that would be altered;
 - b. An analysis of the effect of the development proposal on the critical area and or buffer;
 - c. A description of actions that can be taken to modify the development proposal to avoid or reduce the alteration of the critical area and/or buffer and a discussion of whether these modifications are practical and reasonable;
 - d. A mitigation plan as required by this chapter.
 3. Burden of proof. The burden of proof is on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.
 4. [Public Comment. Consistent with AMC 19.20.030](#) The City must ensure the opportunity for public comment, including that from appropriate Federal, State, and Tribal natural resource agencies, to ensure the use of best available science before ~~deciding on approval~~[a decision is made](#).
- D. **Variance criteria.** A reasonable use exception may be granted only if the applicant demonstrates that all of the requested action is consistent with all of the variance approval criteria as set forth:
- ~~a-1.~~ 1. The application of this chapter would deny all reasonable economic use of the property and that there is no reasonable economically viable use with a lesser impact on the critical area than that proposed; and
 2. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands subject to the provisions of this chapter; and
 3. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition, after the effective date of the ordinance codified in this Chapter; and
 4. Any proposed modification to a critical area will be evaluated through consideration of a critical areas report and mitigation plan prepared by a qualified professional pursuant to the requirements of this Chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property. The critical areas report and mitigation plan must be prepared utilizing best available science; and

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5. Mitigation sequencing per AMC 19.70.~~435~~¹²⁵(A) has been applied, and the proposal mitigates impacts on the critical area to the maximum extent possible, while still allowing reasonable use of the lot; and
 6. The proposed development does not pose a threat to [adjacent property or to](#) the public health and safety; and
 7. The applicant has demonstrated that the criteria in AMC 19.38.040 (variance criteria) are met; and
 8. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances; and
 9. The granting of the variance is consistent with the general purpose and intent of the Anacortes Comprehensive Plan, and planning policies.
- E. **Conditions.** Conditions of approval may be included as part of the decision, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers and mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible utilizing best available science.
- F. **Variances – Geologically hazardous areas.** A variance must not authorize development within a geologically hazardous area or required setback or buffer from a geologically hazardous area unless a Qualified Professional has determined the development will not pose a threat to public safety [or property](#).

PART 1: CRITICAL AREAS REVIEW PROCEDURES

19.70.110 Critical area identification form.

Prior to the City's consideration of any proposed activity ~~allowed pursuant to Permitted Activities AMC 19.70.040 or~~ found not to be exempt under AMC 19.70.~~035~~⁰⁴⁰, the applicant must submit to the Department a completed form identifying suspected critical areas on, and within 300 feet, of the site.

19.70.115 Critical Area Report.

- A. **Report required.** When the ~~Decision maker determines~~^{Director determines} a proposed development is within, abutting, or is likely to adversely affect a critical area or buffer pursuant to the provisions of this chapter, ~~he/she must have the authority to~~^{to the Director may} require a critical areas assessment report ~~that is,~~ prepared by a Qualified Professional. The assessment of critical areas and analysis of impacts must be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity. This provision is not intended to expand or limit an applicant's other obligations under [WAC 197-11-100](#).

B. Third Party Review of Critical Area Reports. The ~~Decision-maker~~Director may require, at the applicant's expense, a third-party review of a critical area report by a Qualified Professional under contract with or employed by the City in any of the following circumstances:

1. The project requires a critical area permit, or critical area variance; or
2. Third party review is specifically required by the provisions of this chapter for the critical area(s) or critical area buffer(s) potentially being impacted; or
3. When the ~~Decision-maker~~Director determines that such services are necessary to demonstrate compliance with the standards and guidelines of this chapter or other appropriate regulations.

C. Critical Area Report Types or Sections. Critical area report requirements may be met in stages through multiple reports or combined in one report. A critical area report must include one or more of the following sections or report types unless exempted by the ~~Decision-maker~~Director based on the extent of the potential critical area impacts. The scope and location of the proposed project will determine which report(s) alone or combined are sufficient to meet the critical area report requirements for potentially impacted critical area type(s). The typical sequence of required sections or reports that will fulfill the requirements of this section include:

1. **Reconnaissance.** The existence, general location, and type of critical areas on, adjacent to, or likely to be impacted by activities on a project site. Determination of whether the project will adversely impact or be at risk from the potential critical areas based on maximum potential buffers for the particular critical area type. Possible application of exemptions should also be addressed;
2. **Delineation.** The extent, boundaries, rating or classification, and applicable standard buffers of critical areas where the project area could potentially impact the critical area or its buffer including an assessment of the characteristics of or functions and values of the critical area and buffers identified;
3. **Analysis.** The proposal and impact assessment report documenting the potential project impacts to the critical area and buffers including a discussion of the efforts taken to avoid, minimize, and reduce potential impacts to those areas per AMC 19.70.125(A);
4. **Mitigation.** The measures that prevent or compensate for the potential impacts of the project designed to meet the requirements of this chapter, AMC 19.70.125, Mitigation Plan Requirements, and the standards for the specific critical areas impacted. Mitigation includes, but is not limited to, adjustments to required buffer sizes, best practices to minimize impacts, and critical area or buffer enhancement, restoration, or preservation plans. Mitigation plans include but are not limited to habitat management plans, revegetation or replanting plans, and restoration plans;
5. **Maintenance and Monitoring.** The goals of the mitigation proposed, performance standards for success, monitoring methods and reporting schedule, and contingency

actions. Maintenance and monitoring plans must be consistent with the mitigation performance standards and requirements of this chapter, including the specific mitigation plan requirements outlined in each critical area type section.

D. Minimum Report Requirements. At a minimum, critical area reports must contain the following information:

1. The names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
2. A description of the proposal, proposal location including address and parcel number(s), and a vicinity map for the project;
3. Identification and characterization of all critical areas, water bodies, shorelines, and buffers on or within 300 feet of the proposed project area, The [Decision-makerDirector](#) may require critical area and buffer dimensions be accurately surveyed, depending on the scope of the project;
4. Documentation of any fieldwork performed on the site, including field data sheets, for delineations, rating system forms, baseline hydrologic data, site photos, etc.;
5. A statement specifying the accuracy of the report and all assumptions made and relied upon;
6. A description of methodologies used to conduct the critical areas investigation, including references;
7. A scaled drawing of critical areas and buffer identified in the report including buffers for off-site critical areas that extend onto the project site.

E. Existing reports. Critical areas assessment reports must generally be valid for a period of five years. Unless otherwise provided, a critical areas report may incorporate, be supplemented by, or composed of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the [Decision-makerDirector](#). At the discretion of the [Decision-makerDirector](#), reports previously compiled or submitted as part of a proposal for a development may be used as a critical areas report to the extent that the requirements of this section and the requirements for each specific critical area type are met. Supplemental critical area report(s) may be required to provide information or analysis to address changes to the project scope, potential impacts or to changes to applicable regulations that have been made subsequent to existing, valid critical area reports, or other circumstances.

F. Modifications to Report Requirements. The applicant may consult with the [Decision-makerDirector](#), prior to or during preparation of the critical areas report, to obtain approval of modifications to the required contents of the report where, in the judgement of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

~~4.1.1.~~ In some cases, such as when it is determined that no specific critical area is present, a full report may not be necessary to determine compliance with the critical area regulations, and in those cases a letter or reconnaissance only report may be required.

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~~5.2.2.~~ Limitations to study area. The ~~Decision-maker~~ Director may limit the required geographic area of the critical areas report as appropriate if:

- a. The applicant, with assistance from the City of Anacortes, cannot obtain permission to access properties adjacent to the project area; or
- b. The proposed activity will affect only a limited part of the project site.

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19.70.120 Application Requirements.

~~A.~~ ~~A.~~ A complete application for a ~~critical area~~ Permitted Alteration permit or ~~critical area~~ Reasonable Use Exception/~~V~~ Variance permit must include the following information and materials on a form provided by the ~~Decision-maker~~ Director. For the purpose of this section, a complete application includes:

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1. The name and contact information of the applicant;
2. Adequate information to determine compliance with the requirements of the critical area regulations, including a critical area report, impact and hazard assessment, and mitigation requirements specific to each critical area type, as indicated in the corresponding sections of this chapter;
3. Identification of the development permit(s) requested and all other local, State, and/or Federal critical area-related permits required for the project;
4. Site plan, a scaled drawing of the development proposal including:
 - a. Property and project site boundaries.
 - b. An accurate depiction of all critical areas, including off-site critical areas and buffers that extend onto the project site, a desk survey is acceptable when access to the adjacent property has been denied.
 - c. The development proposal, including grading and clearing limits and areas of proposed impacts to critical areas and/or buffers (include square footage estimates).
 - d. A scaled depiction and description of the proposed stormwater pollution prevention plan consistent with the adopted stormwater manual, for the development and consideration of impacts to critical areas due to drainage alterations;
- ~~e.~~ ~~5.~~ An assessment of probable impacts to the critical areas resulting from the proposed development of the site based upon identified findings;
- ~~f.~~ ~~6.~~ A description of reasonable efforts made to apply mitigation sequencing pursuant to AMC 19.70.135, Mitigation requirements, to avoid, minimize, and mitigate impacts to critical areas; and

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~~g.7.~~ Plans for mitigation required to offset any critical areas impacts, in accordance with AMC 19.70.140, Mitigation plan requirements, and the corresponding mitigation performance standards sections of this chapter, including a discussion of the applicable development standards and cost estimates for determination financial guarantee requirements.

B. **Additional Requirements.** The ~~Decision-maker~~Director may require additional information to be included in the critical areas permit submittal when determined to be necessary to the review of the proposed activity in accordance with this chapter. Additional information that may be required includes, but is not limited to:

1. Historical data, including original and subsequent mapping, historical aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
2. Grading and stormwater management plans; and
3. Information specific to the type, location, and nature of the critical area.

19.70.125 Mitigation requirements.

Mitigation must be sufficient to restore impacted functions and values, or compensate for the impacted functions and values of the critical area and to prevent risk from a hazard posed to a critical area by the proposed activity. Mitigation must not be implemented until after the ~~Decision-maker~~Decision-maker has provided approval of a critical areas report that includes a mitigation plan.

A. **Mitigation sequencing.** This section applies to mitigation required with all critical areas reviews, approvals, and enforcement pursuant to this chapter. This section is supplemented with specific measures under ~~parts subchapters~~ for particular critical area types. Mitigation for specific development proposals may include a combination of the measures below and must be designed and constructed in accordance with the provisions of this section. Before impacting any critical areas, an applicant must demonstrate that the following actions have been taken in the following sequential order:

1. Avoiding the impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment or by restoring or stabilizing the critical area through natural, engineering, or other methods;
4. Reducing or eliminating the impacts or hazard 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; and/or

6. Monitoring, measuring and reporting the impact to the ~~Decision-maker~~Decision-maker and taking appropriate corrective measures.
- B. –Applicants must first demonstrate an inability to avoid or reduce impacts before the use of actions to mitigate potential impacts will be allowed. No activity or use may be allowed that results in a net loss of the functions or values of a critical area.
 - C. –**Type, Location and Timing of Mitigation.** Unless it is demonstrated that higher level of ecological functioning or greater reduction of hazard risk would result from an alternative approach or as otherwise allowed in this chapter, mitigation for adverse impacts must be based on best available science and must be in-kind, on-site, and prior to the activities that will disturb the critical area. Mitigation measures that cannot be implemented prior to the critical area impacts must be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects must be timed to reduce impacts to existing fisheries, wildlife, and flora.
 1. The ~~Decision-maker~~Decision-maker may authorize a one-time temporary delay in completing construction or installation of the mitigation when the applicant provides a written explanation from a ~~Qualified professional~~Professional as to the rationale for the delay and satisfactory financial guarantee that the installation will occur. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g. project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay must not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay must not be injurious to the health, safety, or general welfare of the public.
 2. **Alternative mitigation approaches.** If the applicant can demonstrate that off-site concurrent or advance mitigation would provide a higher level of ecological functioning or a greater reduction of hazard risk, off-site mitigation that occurs on Fidalgo Island will be considered by the ~~Decision-maker~~Decision-maker.

19.70.130 Mitigation plan requirements

When mitigation is required, the applicant must submit for approval by the City a mitigation plan as part of the critical area report. The mitigation plan must include:

- A. **Environmental Goals and Objectives.** The mitigation plan must identify environmental goals and objectives of the mitigation proposed and including:
 1. A description of the anticipated impacts to the critical areas, the mitigating actions proposed, and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives must be related to the functions and values of the impacted critical area; and

2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed.

B. Performance Standards. The mitigation plan must include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained at the end of the required monitoring period and whether or not the requirements of this chapter have been met.

C. Detailed Construction Plans. In order to convey proposed construction techniques and anticipated final outcome, the mitigation plan must include written specifications, descriptions, and drawings of the mitigation propose, including:

1. The proposed construction sequence, timing, and duration;
2. Best management practices including erosion and sediment control features to be implemented;
3. Site plans showing grading and excavation details, slope gradient, and final grade elevations with minimum two-foot contour intervals;
4. Cross-sectional drawings;
5. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
6. Measures to protect and maintain plants until established.

D. Monitoring Program and Contingency Plan. A monitoring and contingency plan is required for all projects requiring mitigation.

1. The mitigation plan must include a monitoring program to be implemented by the applicant to determine the success of the mitigation project and any necessary corrective actions. This program must determine if the original goals and objectives of the mitigation plan are being met.
2. A contingency plan must be established for indemnity in the event that the mitigation project is inadequate or fails. Contingency plans include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met. Corrective measures must be taken when the qualified professional indicates, in a monitoring report, that the contingency actions are needed to ensure project success by the end of the monitoring period. A performance and maintenance bond, or other acceptable financial guarantee, is required to ensure the applicant's compliance with the terms of the mitigation agreement consistent with AMC 19.70.160, financial guarantee requirements.
3. Monitoring programs prepared to comply with this section must include the following requirements:

- a. Best available scientific procedures must be used to establish the success or failure of the project. A protocol outlining the schedule for site monitoring (for example, monitoring must occur in years zero (as-built), one, three, and five after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met.
 - b. For vegetation determinations, permanent sampling points must be established.
 - c. The monitoring program must include measurable specific criteria, or performance standards, for evaluating whether or not the goals and objectives of the mitigation plan have been successfully attained.
 - d. A monitoring report must be submitted as needed to document milestones, successes, problems, and contingency actions of the mitigation project. Monitoring reports on the current status of the mitigation project must be submitted, consistent with Subsection (e) of this section, to the City on the schedule identified in the monitoring plan, but not less than every other year. The reports are to be prepared by a qualified professional and reviewed by the City, or a qualified professional retained by the City, and should include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, as applicable.
 - e. Monitoring programs must be established for a period necessary to establish that performance standards have been met, but not for less than a minimum of five years without approval from the ~~Decision-maker~~[Decision-maker](#). A longer monitoring period may be required depending on the mitigation goals.
 - f. If necessary, failures in the mitigation project must be corrected.
 - g. Dead or undesirable vegetation must be replaced with appropriate plantings.
 - h. Damage caused by erosion, settling, or other geomorphological processes must be repaired.
 - i. ~~The~~ mitigation project must be redesigned (if necessary) and the new design must be implemented and monitored, as in subsection (D)(3)(d) of this section.
 - j. Correction procedures must be approved by the ~~Decision-maker~~[Decision-maker](#); the ~~decision-maker~~[Decision-maker](#) may request review by a qualified professional.
 - k. If the mitigation goals are not obtained within the initial monitoring period, the applicant remains responsible for restoration of the impacted values and functions or hazard risk reduction until the mitigation goals agreed to in the mitigation plan are achieved.
- E. **Monitoring Reports.** Monitoring reports must be submitted to the City consistent with the approved monitoring plan.
- 1. The as-built report, required prior to final inspection, must, at a minimum, include documentation of the following:
 - a. Departures from the original approved plans;

- b. Construction supervision provided by the qualified professional;
 - c. Approved project goals and performance standards;
 - d. Baseline data for monitoring per the approved monitoring methods;
 - e. Photos from established photo points; and
 - f. A site plan showing final mitigation as constructed or installed, monitoring points, and photo points.
2. Subsequent monitoring reports must, at a minimum, include:
- a. Monitoring visit observations, documentation, and analysis of monitoring data collected;
 - b. Photos from established photo points;
 - c. Determination whether performance standards are being met; and
 - d. Maintenance and/or contingency action recommendations to ensure success of the project at the end of the monitoring period.
3. The applicant is responsible for reimbursement of the cost of review of monitoring reports and site inspections during the monitoring period which are completed by the City or a qualified professional under contract with or employed by the City.
- F. **Cost Estimates.** The mitigation plan must include cost estimates that will be used by the City to calculate the amounts of financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures must be posted in accordance with AMC 19.70.160, financial guarantee requirements.
- G. **Approved Mitigation Projects – Signature.** On completion of construction, an as-built report for any approved mitigation project must be prepared and signed off by the applicant’s qualified professional and approved by the City. Signature of the qualified professional on the required as-built report and approval by the ~~Decision maker~~[Director](#) indicates that the construction has been completed as planned.

19.70.135 Title Notification.

- A. **Generally.** A critical area notice on title is required, as a condition of permit issuance or project approval, when a permit or development application is submitted for development on any property containing a critical area or buffer. The purpose is to inform subsequent purchasers of real property of the existence of critical areas.
- 1. The title notice requirement can be met through recording of a title notice on forms prepared by the City, establishment of a critical area tract, or recording of a native growth protection area easement, consistent with AMC 19.70.145(B) through (D) below, as applicable.
 - 2. The following must be noted on all critical area title notice documents:

- a. Identification of ownership and long term maintenance responsibility of critical areas, buffers, and permanent field markings (e.g. fencing, signage);
- b. Restrictions on development, vegetation removal, and application of hazardous substances (pesticides, herbicides, fertilizers) within the critical areas and buffers;
- c. The right of the City to enforce the terms of the restrictions.

B. Title Notice. The title notice applicable to the property must be approved by the ~~Decision~~ ~~maker~~[Decision-maker](#) and City Attorney for compliance with this provision and be filed by the property owner, at their expense, with the Skagit County Auditor's Office. The title holder will have the right to challenge this notice and to have it extinguished if the critical area designation no longer applies. However, the titleholder is responsible for completing a critical area report, subject to approval by the ~~Decision-maker~~[Decision-maker](#), before the notice on title can be extinguished. The title notice runs with the land.

C. Critical Area Tract. Subdivisions, short subdivisions, and binding site plans must establish a separate critical areas tract as a permanent protective measure for wetlands, fish and wildlife habitat conservation areas, and [landslide geological](#) hazard areas and their buffers. The plat or binding site plan for the project must note the long-term ownership/maintenance responsibility as well as clearly depict the critical areas tract, including all of the subject critical area, any required buffer, and any additional lands included voluntarily as part of the project. Should the critical area tract include several types of critical areas, separate critical areas tracts must be identified.

D. Native Growth Protection ~~Easements~~Area ([NGPA-NGPE](#)). [NGPA-NGPE](#) easements are required on a property where no subdivision, short subdivision, or binding site plan is proposed or required. Unless otherwise required in this chapter, [NGPA-NGPE](#) easements must be recorded on title for all affected parcels prior to approval of a development application or building permit, when two or more dwelling units and/or nonresidential development are proposed on one parcel, to delineate and protect critical areas and their buffers. The easement to be recorded must clearly depict the critical area(s), required buffer(s) and the limits of the [NGPA-NGPE](#) easement.

19.70.140 Field marking.

A. Temporary field marking during construction. The outer perimeter of the critical area buffer and the clearing limits identified by an approved permit or authorization must be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the ~~Decision-maker~~[Director](#) prior to the commencement of permitted activities. This temporary marking and fencing must be maintained throughout construction and may not be removed until permanent fencing and/or signs, if required, are in place.

B. Permanent field marking. The ~~Decision-maker~~[Decision-maker](#) may require installation of permanent signs, markers, and fencing along the outer perimeter of a critical area or its buffer when

it is determined necessary to protect the critical areas' functions and values. Permanent markings must be installed prior to final project approval or occupancy, as determined by the ~~Decision maker~~[Decision-maker](#).

1. **Signs.** All critical areas tracts, easements, and dedications, should be clearly marked on the site using permanent markings, as follows:

- a. Signs must be placed at least every 50 feet, with a minimum of one per lot, which include the following text, or similar, as approved by the ~~Decision maker~~[Decision-maker](#):

City of Anacortes Designated Critical Area. Activities, including clearing and grading, removal of vegetation, pruning, cutting of trees or shrubs, planting of nonnative species, and other alterations may be prohibited. Help protect and care for this area. Please contact the City of Anacortes with questions or concerns.

- b. Signs must be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability.

2. **Fencing.** Permanent fencing should be designed so as not to interfere with species migration or wildlife movement, unless exclusion fencing is more pertinent, and constructed in a manner that minimizes impacts to the critical areas and buffers. Proposed fencing type and materials will be determined on a case by case basis and must be approved by the ~~Decision maker~~[Decision-maker](#) prior to installation.

- C. **Maintenance and replacement.** It is the responsibility of the landowner, successors, or as otherwise assigned to maintain in perpetuity and replace, if necessary, all permanent fencing and field markings.

19.70.145 Construction plan review, monitoring, and inspection.

- A. The ~~Decision maker~~[Director](#) may require project building and construction plans be reviewed by a qualified professional for confirmation of consistency with the critical areas report and recommendations prior to approval of construction plans.
- B. The ~~Decision maker~~[Director](#) may require monitoring by a qualified professional during site alteration activities within, or adjacent to, critical areas or buffers, and/or a final inspection report by the qualified professional stating that construction has or has not implemented the design recommendations provided in the project critical areas report, and evaluation of any deviation from the recommendations.
- C. When the ~~Decision maker~~[Director](#) determines that such services are necessary to demonstrate compliance with the standards and guidelines of this chapter, they will be at the applicant's expense.

19.70.150 Financial Guarantee Requirements.

When determined necessary by the ~~Decision maker~~[Director](#), bonds, and other financial guarantees, and associated performance agreements or maintenance/defect/monitoring agreements are required for

projects with required mitigation or restoration of impacts to critical areas or critical area buffers consistent with the following:

- A. A performance agreement and bond, or other acceptable financial guarantees, are required from the applicant when mitigation required pursuant to a development proposal is not completed prior to final permit approval, such as final plat approval or final building inspection. The amount of the performance bond(s) must equal 125 percent of the cost of the mitigation project.
- B. A performance agreement and bond, or other acceptable financial guarantees, are required from the applicant when restoration is required for remediation of a critical area violation. The amount of the performance bond(s) must equal 125 percent of the cost of the mitigation project.
- C. A maintenance/defect/monitoring agreement and bond, or other acceptable financial guarantees, are required to ensure the applicant's compliance with the conditions of the approved mitigation plan pursuant to a development proposal or restoration plan for remediation of a violation. The amount of the maintenance bond(s) must equal 125 percent of the cost of the mitigation project in addition to the cost for monitoring for a minimum of five years. The monitoring portion of the financial guarantee may be reduced in proportion to work successfully completed over the period of the bond. The bonding period must coincide with the monitoring period.

19.70.165 Unauthorized Critical Area Alterations.

- A. When a critical area or its buffer has been altered in violation of this chapter, all ~~development~~ work must stop and the critical area and buffer must be restored. The ~~Decision maker~~Director may issue a stop work order to cease all ~~development work~~, and order restoration measures at the owner's or other responsible party's expense to remediate the impacts of the violation of the provisions of this chapter. The City may take formal enforcement action under AMC 20.10 to ensure the violation is abated.

B. Requirement for Restoration Plan.

- 1. All ~~work~~~~development~~ must remain stopped until a restoration plan is provided ~~prepared~~ by the responsible party and ~~an~~ approved ~~after the fact permit is issued~~ by the City. Such a plan must be prepared by a ~~qualified~~Qualified professional Professional using the best available science and must describe how the actions proposed meet the minimum requirements described in subsection C of this section.
- 2. The ~~Decision maker~~Director may, at the responsible party's expense, seek expert advice, including but not limited to third party review by a qualified professional under contract with or employed by the City, in determining if the plan meets the minimum performance standards for restoration.
- 2.3. Submittal, review, and approval of required restoration plans for remediation of violations of this chapter must be completed through a site development permit

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application process, [either after-the-fact for regulated activities, or as a restoration permit for activities not allowed under these provisions.](#)

C. Minimum Performance Standards for Restoration.

1. For alterations to critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards must be met for the restoration:
 - a. The pre-violation function and values of the affected critical areas and buffers must be restored, including but not limited to hydrologic, water quality and habitat functions;
 - b. The pre-violation soil types and configuration must be replicated;
 - c. The critical area and buffers must be replanted with a native vegetation community that reproduces the structure, species content and condition of the pre-violation vegetation community. Based on the historical or pre-violation vegetation community, native plant species must be replaced at minimum of a 5:1 ratio or installed at a density of 5 foot-on-center unless approved by the ~~Decision-maker~~[Decision-maker](#). The pre-violation functions and values should be replicated at the location of the alteration; and
 - d. Information demonstrating compliance with the requirements in AMC 19.70.~~149125~~, Mitigation plan requirements, and the applicable mitigation sections for the affected type(s) of critical area(s) and their buffer(s) must be submitted to the ~~Decision-maker~~[Decision-maker](#) with a complete site development permit application.
 - e. These standards may be modified by the ~~Decision-maker~~[Decision-maker](#) when it can be demonstrated that greater functional and habitat values can be obtained.
2. For alterations to special flood hazard and geologically hazardous areas, the following minimum performance standards must be met for the restoration of a critical area:
 - a. The hazard must be reduced to a level equal to, or less than, the pre-violation hazard;
 - b. Any risk of personal injury resulting from the alteration must be eliminated or minimized; and
 - c. The hazard area and buffers must be replanted with native vegetation sufficient to minimize the hazard.
 - d. These standards may be modified by the ~~Decision-maker~~[Decision-maker](#) if the violator can demonstrate that greater safety can be obtained.

D. Site Investigation. The ~~Decision-maker~~Director is authorized to take such actions as are necessary to enforce this chapter. The ~~Decision-maker~~Director (or ~~Decision-maker~~Director's authorized representative) must present proper credentials and obtain permission before entering onto private property.

E. Penalties. Any responsible party violating the provisions of this chapter may be subject to applicable penalties per AMC Title 20 Civil Enforcement and Penalties plus the following:

~~3.4.~~ A square footage cost of \$3.00 per square foot of impacted critical area buffer;
and a square footage cost of \$15.00 per square foot of impacted critical area;
and

~~4.5.~~ A per tree penalty in the amount of \$3,000 per non-significant tree and \$9,000 per Significant Tree, for trees removed, or otherwise damaged, within a critical area or buffer in violation of the provisions of this chapter.

19.70.170 Final Decision and Appeals.

- A. **Completion of the critical area review.** The city's determination regarding critical areas pursuant to this chapter is final concurrent with the final decision to approve, condition, or deny the underlying permit for the development proposal or other activity involved.
- B. **Appeals.** Any decision to approve, condition, or deny a development activity proposal or other activity based on the requirements of this chapter may be appealed according to, and as part of, the appeal procedure for the underlying permit or approval involved.

PART 2: WETLANDS

19.70.210 Wetlands – Description and Purpose.

It is the purpose of this Chapter to protect the functions and values of wetlands, which serve many important ecological and environmental functions and help to protect public health, safety, and welfare by providing flood storage and conveyance, and erosion control, while also providing fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research opportunities and other public benefits.

19.70.215 Wetlands - Designation and Rating.

A. Designation. All areas meeting the definition of a wetland and the wetland identification criteria pursuant to this chapter, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

B. Rating. Wetlands must be rated by a qualified professional according to the Washington State Department of Ecology Wetland Rating System for Western Washington - 2014 Update (Ecology Publication #14-06-029, October 2014), or as revised. Wetland rating categories will be applied as the wetland exists on the date of adoption of the rating system by the City, as the wetland naturally changes in accordance with permitted activities.

1. **Category I.** Category I wetlands are those that represent unique or rare wetland types, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or provide a high level of functions. The following types of wetlands are Category I:
 - a. Relatively undisturbed estuarine wetlands larger than one acre;
 - b. Wetlands of high conservation value identified by scientists of the Washington Natural Heritage Program/Department of Natural Resources (DNR);
 - c. Bogs;
 - d. Mature forested wetlands larger than one acre;
 - e. Wetlands in coastal lagoons; and
 - f. Wetlands that perform many functions well and have a total score of 23 points or more in the wetland rating.
2. **Category II.** Category II wetlands are those wetlands that are difficult, though not impossible, to replace, and provide high levels of some functions. The following types of wetlands are Category II:
 - a. Estuarine wetlands smaller than 1 acre or disturbed estuarine wetlands larger than 1 acre;

- b. Wetlands with a moderately high level of functions and a total score of 20 to 22 points in the wetland rating.
 - c. Wetlands in coastal lagoons that are relatively undisturbed and equal to or smaller than 1/10 ac (4350 square feet).
3. **Category III.** Category III wetlands are those with a moderate level of functions, generally have been disturbed in some ways, can often be adequately replaced with a well-planned mitigation project, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. The following types of wetlands are Category III:
- a. Wetlands with a moderate level of functions with a total score of 16 to 19 points in the wetland rating.
4. **Category IV.** Category IV wetlands have the lowest levels of functions and are often heavily disturbed, with a total score of 15 points or less in the wetland rating. The functions provided by Category IV wetlands are generally easier to replace, and in some cases can be improved. However, experience has shown that replacement of functions cannot be guaranteed in any specific case. These wetlands may provide some important functions that need protected.
- B. **Illegal Modifications.** When a violation occurs wetland rating categories do not change due to illegal modifications or alterations. A wetland's category must be based on the pre-violation condition of the wetland.

19.70.220 Wetlands – Mapping and delineation.

- A. **Mapping.** The approximate location and extent of potential wetlands are shown in the wetland data layer maintained in the City of Anacortes geographic information system (GIS). In addition, the following maps and inventories, that depict areas of hydric soils and potential wetland areas, are hereby adopted by reference as amended:
- 1. Soils maps produced by the U.S. Department of Agriculture, National Resources Conservation Service; and
 - 2. The National Wetlands Inventory, produced by the U.S. Fish and Wildlife Service.
- B. **Reference Only.** The maps and resources cited above are to be used as a guide for the Department, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.
- C. **Identification and Delineation.** Identification of wetlands and delineation of their boundaries pursuant to this chapter must be done in accordance with the adopted Federal wetland delineation manual and applicable regional supplements per WAC [173-22-035](#). The exact location of a wetland's boundary must be determined through the performance of a field investigation by a qualified professional. Evidence documenting the results of the

boundary survey, including evidence of a lack of wetland indicators if no wetlands are identified, must be submitted to the City.

19.70.225 Wetlands – General Development Standards.

- A. All development activities and uses are prohibited in wetlands and wetland buffers, except as provided for in this [chapter](#), and only when it is demonstrated that the activity will not result in a loss of the functions and values of the wetland through the application of mitigation sequencing in AMC 19.70.135.
- B. **Exemptions.** Exemptions to this chapter are listed in the provisions established in AMC 19.70.035 Exemption activities.
- C. **Subdivisions.** The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:
 1. Land that is located wholly within a wetland and/or its buffer may not be subdivided; and
 2. Land that is located partially within a wetland and/or its buffer may be subdivided; provided [they each lot will meet all zoning standards in AMC 19.42 without encroaching into the wetland or buffer. the minimum lot size calculations as required in AMC 19.40.](#)

Commented [CT9]: Change chapter to: administered through the permit procedures above, and the performance standards described herein.

19.70.230 Wetlands – Specific Wetland Category Development Standards.

- A. **Category I Wetlands.** Development activities and uses that result in alteration of Category I wetlands and their associated buffers are prohibited, unless the denial will prevent all reasonable economic use of the property. The development may be permitted through a Critical Area Variance if it is determined to be the minimum impact possible and a Reasonable Use as prescribed in AMC 19.70.045.
- B. **Category II, III and IV Wetlands.** Development activities that result in alteration of Category II, III or IV wetlands may be permitted upon demonstration, through a critical areas report meeting the requirements of this Chapter, that:
 1. Mitigation sequencing has been applied per AMC 19.70.135125(A);
 2. The proposed alteration will not degrade the quantitative and qualitative functioning of the wetland, or that any degradation can be adequately mitigated to protect or compensate for the wetland functions that are lost;
 3. [Small, Hydrologically Isolated Category III and IV Wetlands \(less than 1,000 sq. ft.\). The Decision-makerDecision-maker may allow small, hydrologically isolated Category III and IV wetlands to be exempt from the requirement to avoid impacts \(AMC 19.70.135125\(A\)\(1\) Mitigation requirements\) and allow alteration of such wetlands if all of the following conditions are met:](#)

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3. Small, Hydrologically Isolated Category IV Wetlands (less than 1,000 sq. ft.). The Decision-maker may allow small, hydrologically isolated Category IV wetlands to be exempt from the requirement to avoid impacts (AMC 19.70.135(A)(1) Mitigation requirements) and allow alteration of such wetlands if all of the following conditions are met:

- a. The remaining mitigation sequencing actions of AMC 19.70.135125(A) (2)-(6) are followed;
 - b. The wetland is less than 1,000 square feet in area;
 - c. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices.
 - d. The wetland is a low quality Category ~~III~~ or IV wetland with a habitat score of less than 5 points in the adopted rating system;
 - e. The wetland does not provide significant suitable breeding habitat for native amphibian species. Suitable breeding habitat may be indicated by adequate stable and seasonal inundation that is persistent from February to at least through April and presence of thin-stemmed emergent vegetation and/or clean water;
 - f. The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance which are regulated as fish and wildlife habitat conservation areas in ~~Chapter 19.70.300 Part 3~~ (FWHCA section);
 - g. The wetland is not associated with shorelines of the state or their associated buffers;
 - h. The wetland is not associated with riparian areas or buffers;
 - i. The wetland is not part of a wetland mosaic; and
 - j. A mitigation plan to replace lost wetland functions and values is developed, approved, and implemented consistent with AMC 19.70.140125.
 - k. In order to verify that the wetland meets these exemption conditions, a critical area report for wetlands meeting the requirements in this chapter must be submitted.
4. Small, Hydrologically Isolated Category ~~III~~ and Category IV Wetlands (less than 1,000 sq. ft.). Wetlands less than 1,000 square feet that meet the criteria in subsection (B)(3) of this section (above) and that do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter. In order to verify that the wetland meets this exemption, a critical area report for wetlands meeting the requirements in this chapter must be submitted.

19.70.235 Wetlands – Required buffer areas.

- A. **Buffer Requirements.** Wetland buffers must be established to protect the integrity, functions and values of the wetland. The standard buffer widths in Tables 19.70.250 (A) (B) and (C) have been established in accordance with the best available science. The buffer widths must be determined based on the category of wetland, surrounding land use intensity, and the habitat score as assigned by a qualified wetland professional using the most up to date version of the Washington State Wetland Rating System for Western Washington.
1. **Measurement of Wetland Buffers.** All buffers must be measured horizontally from edge of the wetland boundary as surveyed in the field. The width of the wetland buffer must be determined according to Tables 16.55.340(B), (C) and (D).
 2. **Buffer Standards.** The buffer standards required by this chapter presume the existence of a dense vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the ~~decision-maker~~Decision-maker may increase the standard buffer, require buffer planting or other enhancements, and/or deny a proposal for buffer reduction or buffer averaging.
- B. For the purposes of buffer determination below, Land Use Intensity rating is as follows:

Table 19.70.235 (A)

High Land Use Intensity	Land use that includes the following uses or activities: commercial, industrial, institutional, retail sales, nonresidential use in zones where the primary intent is residential, high density all residential zones (R4, R4A, R3, R3A, R2, R2A, R1, OT), high-intensity recreation (such as golf courses, ball fields,), <u>and</u> hobby farms.
Moderate Land Use Intensity	Land use that includes the following uses or activities: medium density residential (R2, R2A, R3, R3A), moderate-intensity open space (parks, <u>paved</u> trails, and logging roads).
Low Land Use Intensity	Land use that includes the following uses or activities: low density residential (R1), forestry (cutting of trees only), low-intensity open space (such as passive <u>outdoor</u> recreation <u>activities</u> and natural resources preservation), unpaved trails.

Commented [CT11]: Change to:

Land use that includes the following uses or activities: commercial, industrial, institutional, retail sales, nonresidential use in zones where the primary intent is residential, high density all residential zones (R4, R4A, R3, R3A, R2, R2A, R1, OT), high-intensity recreation (such as golf courses, ball fields,), hobby farms.

Commented [CT12]: Change to:

Land use that includes the following uses or activities: moderate-intensity open space (parks, trails, and logging roads).

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Commented [CT13]: Change to:

Land use that includes the following uses or activities: forestry (cutting of trees only), low-intensity open space (such as passive recreation and natural resources preservation), unpaved trails.

C. There are three sets of buffer standards, based on these parameters:

1. Buffer Widths for wetlands that have a high level of function for wildlife habitat as indicated by a habitat function score of 8 or 9 points on the wetland rating form:

Table 19.70.235 (B).

Wetland Category	Buffer Width (feet)		
	High Intensity	Moderate Intensity	Low Intensity
Category I	200 300	150 225	150
Category II	200 300	150 225	100 150
Category III	150	110	75
Category IV	50	40	25

Commented [CT14]: The following changes to the table:

2. Buffer Widths for wetlands that have a moderate level of function for wildlife habitat as indicated by a habitat function score of 6 or 7 points on the wetland rating form:

Table 19.70.235 (C).

Wetland Category	Buffer Width (feet)		
	High Intensity	Moderate Intensity	Low Intensity
Category I	150	110	75
Category II	150	110	75
Category III	150	100 110	60 75
Category IV	50	40	25

Commented [CT15]: Add the following section:

Reducing Buffer Widths.

1. For wetlands that score 6 points or more for habitat function, buffer widths for high intensity may be reduced to moderate intensity if both of the following criteria are met:
 - a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other relatively undisturbed area, as defined in the 2014 wetland rating system, or any other Priority Habitat as defined by the Washington State Department of Fish and Wildlife. The latest definitions of Priority Habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>. The corridor must be protected for the entire distance between the wetland and the relatively undisturbed area or Priority Habitat by some type of legal protection such as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist.

b. The measures in Table XX are implemented, where applicable, to minimize the impacts of the adjacent land uses.

2. For wetlands that score 3-5 habitat points, only the measures in Table 17.70.250(E) are required for the use of moderate intensity buffer widths.

3. If an applicant chooses not to apply the mitigation measures in Table 17.70.250(E), or is unable to provide a protected corridor where available, then high intensity buffer widths must be used.

Add Table : 19.70.250 (E)

3. Buffer Widths for wetlands that have a low level of function for wildlife habitat as indicated by a habitat function score of 3 to 5 points on the wetland rating form:

Table 19.70.235 (D).

Wetland Category	Buffer Width (feet)		
	High Intensity	Moderate Intensity	Low Intensity
Category I	100	75	50
Category II	100	75	50
Category III	80	60	50 40
Category IV	50	40	25

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D. Reducing Buffer Widths.

1. For wetlands that score 6 points or more for habitat function, buffer widths for high intensity may be reduced to moderate intensity if both of the following criteria are met:

a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other relatively undisturbed area, as defined in the 2014 wetland rating system, or any other Priority Habitat as defined by the Washington State Department of Fish and Wildlife. The latest definitions of Priority Habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>).

b. The corridor must be protected for the entire distance between the wetland and the relatively undisturbed area or Priority Habitat by some type of legal protection such as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist.

2. The measures in Table 19.70.235(E) are implemented, where applicable, to minimize the impacts of the adjacent land uses.

3. For wetlands that score 3-5 habitat points, only the measures in Table 19.70.250(E) are required for the use of moderate intensity buffer widths.

D. 4. If an applicant chooses not to apply the mitigation measures in Table 19.70.250(E), or is unable to provide a protected corridor where available, then high intensity buffer widths must be used

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Table 19.70.235 (E)

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management

Disturbance	Required Measures to Minimize Impacts
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the stormwater manual)
Change in water regime (increase or decrease in the frequency, duration, timing, extent, depth or variability of water in a wetland)	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust

A. FE. Increasing buffer widths. Buffer widths may be increased, on a case-by-case basis, as determined by the ~~Decision-maker~~Decision-maker. This determination must be supported by appropriate documentation showing that it is necessary to protect wetland functions and values. Documentation must include, but is not limited to, any of the following:

1. The wetland is used by a plant or animal species listed by the Federal government or the State as endangered, threatened, candidate, sensitive, monitored, or documented priority species or habitats, or the wetland is essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
2. The adjacent land has slopes greater than 15 percent and is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
3. The adjacent land has minimal vegetative cover on slopes greater than 30%. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, development and implementation of a wetland buffer restoration/enhancement plan in accordance with AMC 19.70.270 may be substituted.

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a. BGF. Averaging buffer widths. The ~~Decision-maker~~Decision-maker may allow averaging of wetland buffer widths on a case-by-case basis when the critical areas report demonstrates that the following criteria are met:

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~~i-a.~~ There is not a feasible alternative to the site design that could be accomplished without buffer averaging;

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~~ii-b.~~ The buffer averaging ~~does not reduce~~improves the functions or values of the wetland, either through preservation of total buffer area or enhancement of buffer areas including the creation of connectivity and corridors;

~~iii-c.~~ The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer.

~~iv-d.~~ The wetland contains variation in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrow buffer in other places;

~~v-e.~~ The buffer width at its narrowest point is not reduced to less than 75 percent of the standard width, for Category I and II. For Category III and Category IV is no less than 75 percent unless for the purpose of creating connectivity and corridors, in which case A no less than 50 percent, or 35 feet for Category III, and 15 feet for Category IV, whichever is greater.

B. CHG. Measurement of Wetland Buffers. All buffers must be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as a compensation for approved wetland alterations must be the same as the buffer required for the category of the created, restored, or enhanced wetland.

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C. DIH. Buffers on mitigation sites. Buffer widths must be applied to mitigation sites consistent with the wetland ratings and buffer requirements of this chapter for subsequent development proposals based on expected category of the wetland once the mitigation actions are taken. Only fully vegetated buffers with predominantly native plants will be included in the new buffer area. Lawns, walkways, driveways, and other mowed or paved areas will not count towards the required buffer calculations.

D. EJI. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers must be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the mitigation bond.

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E. FKI. Buffer impacts. When buffer impacts occur, compensatory mitigation must be provided at a minimum ratio of 1:1 for the area impacted. The mitigation must occur on the same site when

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feasible or within the same wetland system preferably. The mitigation must ensure that the wetland functions and values are not diminished due to the buffer impacts.

K. Stormwater management facilities. Stormwater management facilities may be allowed in Category III and IV wetland buffers if they meet all of the criteria identified below:

- ~~1.4.~~ The wetland is classified as a Category III or a Category IV wetland with a habitat score of 3-5 points or less, and
- ~~2.5.~~ There will be “no net loss” of functions and values of the wetlands, and
- ~~3.6.~~ The wetland does not contain a breeding population of any native amphibian species, and
- ~~4.7.~~ The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,” (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan;
- ~~5.8.~~ The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing, and
- ~~6.9.~~ All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits, and
- ~~7.10.~~ Modifications will require permits. Existing functions and values that are lost would have to be compensated/replaced through an approved mitigation plan.

G. L. Setbacks from buffers. Buildings, structures, paving, and other hard surfacing must be set back a minimum distance of 10 feet from the edge of the wetland buffer, or edge of the wetland if no buffer is required, unless otherwise determined by the ~~Decision-maker~~ [Decision-maker](#) that a smaller distance would meet the intent of this subsection. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. The following may be allowed in the building setback from the buffer if they do not cause damage to the critical root zone of trees in the buffer:

1. Landscaping;
2. Uncovered decks, roof eaves and overhangs, unroofed stairways and steps;
3. Pervious ground surfaces, such as driveways, patios, and parking may be allowed; provided that it is engineered as a ~~pervious-permeable pavement~~ system as defined in AMC ~~19.12.020~~. Such improvements may be subject to the requirements in AMC ~~19.12.020~~, 19.76, Stormwater Management.

H. M. Functionally Separated and Isolated Buffers. Consistent with the definition of “buffer” AMC 19.12.020, areas that are functionally isolated and physically separated from a wetland due to existing, legally established roadways, railroads or other legally established structures or paved

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areas eight feet or more in width that occur between the area in question and the wetland must be considered physically isolated and functionally separated buffer. Once determined by the ~~Decision maker~~~~Decision-maker~~Director, based on a submitted critical area report, to be a physically separated and functionally isolated wetland buffer, development proposals are allowed in these areas.

19.70.240 Wetlands - Critical areas report additional requirements

A. Additional Report Contents for Wetlands. In addition to the minimum report contents required per AMC 19.70.125 wetland reports must also include;

1. For each wetland identified on site and off site within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per wetland ratings (AMC 19.70.210) required buffers (AMC 19.70.250); hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acres for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site;
2. A discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project;
3. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative;
4. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development;
5. A description of reasonable efforts made to apply mitigation sequencing pursuant to AMC 19.70.130 to avoid, minimize, and mitigate impacts to critical areas and a discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity;
6. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions; and
7. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

B. **Additional Information.** When appropriate due to the proposed impacts or the project area conditions, the ~~Decision-maker~~[Director](#) may also require the critical area report to include:

1. A request for consultation with the Washington State Department of Fish and Wildlife (DFW), Washington State Department of Ecology (Ecology), local Native American ~~Indian~~ tribes, and/or other appropriate agency;
2. Copies of the Joint Aquatic Resource Permit Application (JARPA) and related approvals, such as a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW), when applicable to the project; and
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

19.70.245 Wetlands – Compensatory mitigation performance standards and requirements.

A. **Compensatory Mitigation Plan.** When a project involves wetland and/or buffer impacts, a compensatory mitigation plan must be included as part of the required critical area report. Compensatory wetland mitigation plans must meet the minimum requirements of [AMC 19.70.140](#) and demonstrate compliance with [ACMC 19.70.135](#). Full guidance can be found in *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication No. 06-06-011b, March 2006, or as revised). The mitigation plan must meet the following additional standards:

1. Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on wetland ratings ([AMC 19.70.210\(B\)](#));
2. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession);
3. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, categories of wetlands, and mitigation ratios applied (if ratio approach used);
4. A description of the proposed mitigation construction activities, construction/installation notes, and timing of activities;

5. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands);
6. Proof of establishment of notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas; and
7. The scaled plan sheets for the compensatory mitigation must contain, at a minimum
 - a. An accurate depiction of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions;
 - b. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be impacted and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation;
 - c. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions;
 - d. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes;
 - e. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter;
 - f. A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, typical plant installation details and notes, total number of each species by community type, timing of installation; and
 - g. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring plan, contingency plan, and maintenance schedule, and actions. Standards for success must be established based on the performance standards identified and the functions and values being mitigated based on the guidance in Wetland Mitigation in Washington State – Part 2: Developing Mitigation

Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised).

B. Requirements for Compensatory Mitigation.

1. Compensatory mitigation for alterations to wetlands may be used only for impacts that cannot be avoided or minimized, except as otherwise exempted in this chapter AMC 19.70.240, and must achieve equivalent or greater biologic functions. Compensatory mitigation plans must be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1), (Ecology Publication No. 06-06-011b, March 2006, or as revised).
2. Mitigation ratios must be consistent with subsection I of this section.
3. Mitigation requirements may also be determined using the credit/debit tool described in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report March 2012” (Ecology Publication No. 10-06-011, March 2012, or as revised) consistent with subsection H of this section.

C. Compensating for Lost or Impacted Wetland Functions. Compensatory mitigation must address the functions and values affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions and values. The goal for the compensatory mitigation must be to provide similar wetland functions and values as those lost, except when either:

1. The lost wetland provides minimal functions and values, and the proposed compensatory mitigation action(s) will provide equal or greater functions and values or will provide functions and values shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
2. Out-of-kind replacement of wetland type or functions and values will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.

D. Preference of Mitigation Actions. Methods to achieve compensation for wetland functions and values must be approached in the following order of preference:

1. **Restoration.** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. Restoration of wetlands includes re-establishment and rehabilitation.
 - a. **Re-establishment.** Returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
 - b. **Rehabilitation.** Repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain

in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

2. **Creation.** Creation (establishment) of wetlands on disturbed upland sites, such as those with vegetative cover consisting primarily of nonnative species. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.
3. **Enhancement.** Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions and values lost. Enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.
4. **Preservation.** Preservation of high-quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided by reestablishment or creation. Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:
 - a. Proposed wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA-listed species;
 - b. There is no net loss of habitat functions within the watershed or basin;
 - c. Mitigation ratios for preservation as the sole means of mitigation must generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost;
 - d. The impact area is small (generally less than one-half acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland); and
 - e. All preservation sites must include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.
5. **Wetland Bank or Advanced Wetland Mitigation.** For future use since no current banks have a service area in Anacortes.

E. Type and Location of Compensatory Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternative mitigation approach, compensatory mitigation for ecological functions should be either in kind and on site, or in kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions must be conducted within the same sub-basin or on the site of the alteration, except when the following apply:

1. The conditions in AMC 19.70.270(B) are met.
2. There are no reasonable opportunities on site or within the sub-basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include:
 - a. Anticipated replacement ratios for wetland mitigation;
 - b. Buffer conditions and proposed widths;
 - c. Available water to maintain anticipated hydrogeomorphic classes of wetlands when restored; and
 - d. Proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
 - e. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland;
 - f. Off-site locations must be in the same sub-basin, unless watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; and
 - g. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing, seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

F. Wetland Mitigation Banks. Credits from a wetland mitigation bank certified under [WAC 173-700](#) may be used to compensate for impacts located within the service area specified in the mitigation bank instrument, if:

1. The proposal would provide appropriate compensation for the proposed impacts; and
2. The impact site is located in the service area of the bank.
3. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument.

4. Replacement ratios using bank credits are consistent with replacement ratios specified in the certified mitigation bank instrument.

G. In-Lieu Fee Mitigation. Credits from an approved in-lieu fee (ILF) program may be used when all of the following apply:

1. The ~~Decision-maker~~[Decision-maker](#) determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
3. Projects using ILF credits must have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the ILF program.
4. The impacts are located within the service area specified in the approved ILF instrument.

H. Permittee-responsible mitigation. This type of mitigation is defined in 33 CFR 332 as "an aquatic resource restoration, establishment, enhancement and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility." The permittee performs the mitigation either before the project impact occurs and before any project impact permit is issued (Advance Permittee-Responsible Mitigation) or at the same time as the project impact is occurring after the project impact permit is issued (Concurrent Permittee-Responsible Mitigation). The permittee is ultimately responsible for implementation and success of the mitigation. For advance mitigation, the permittee generates mitigation credits that may be used to compensate for future wetland or buffer impacts. Only the permittee may use the advance mitigation credits. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation must be used only if the applicant's qualified wetland professional demonstrates to the ~~Decision-maker's approval authority's~~[Decision-maker's approval](#) satisfaction that the proposed approach is ecologically preferable to use of a bank or ILF program, consistent with the criteria in this section.

I. Alternative Mitigation Plan. The ~~Decision-maker~~[Decision-maker](#) may approve an alternative wetland mitigation plan that is based on best available science. Proposed alternative mitigation plans must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.

1. The following will be considered in the approval of an alternative mitigation plan:
 - a. The plan uses a watershed approach consistent with [Selecting Wetland Mitigation Sites Using a Watershed Approach \(Western Washington\)](#) (Ecology Publication #09-06-032, Olympia, WA, December 2009).
 - b. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual small habitat areas.

- c. Mitigation according to Section D is not feasible due to site constraints including but not limited to parcel size, stream type, wetland category, or geologically hazardous areas.
 - d. There is a clear potential for success of the proposed compensation at the identified site.
 - e. The Plan must contain clear and measurable standards for achieving compliance with the specific provisions of the plan, consistent with AMC 19.70.135.
 - f. The plan must be reviewed and approved as part of the overall approval of the proposed use.
 - g. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
 - h. Mitigation guarantees must meet the minimum requirements as outlined in AMC 19.70.160.
 - i. Qualified professionals in each of the critical areas addressed must prepare the plan.
 - j. The City may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.
- J. **Wetland Mitigation Ratios.** The ratios below are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

Table 19.70.245 – Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation Only	Re-Est or Creation (R/C) and Re-hab (RH)	Re-Est or Creation (R/C) and Enhancement (E)	Enhancement Only
Category I Mature Forested	6:1	12:1	1:1 R/C & 10:1 RH	1:1 R/C & 20:1 E	24:1
Category I – based on score for functions	4:1	8:1	1:1 R/C & 6:1 RH	1:1 R/C & 12:1 E	16:1

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation Only	Re-Est or Creation (R/C) and Re-hab (RH)	Re-Est or Creation (R/C) and Enhancement (E)	Enhancement Only
Category I Natural Heritage Site	Not allowed	6:1 Rehabilitation of a Natural Heritage Site	Not allowed	Not allowed	Case-by-case
Category I Bog	Not allowed	6:1 Rehabilitation of a bog	Not allowed	Not allowed	Case-by-case
Category I Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case
Category II	3:1	6:1	1:1 R/C & 4:1 RH	1:1 R/C & 8:1 E	12:1
Category III	2:1	4:1	1:1 R/C & 2:1 RH	1:1 R/C & 4:1 E	8:1
Category IV	1.5:1	3:1	1:1 R/C & 1:1 RH	1:1 R/C & 2:1 E	6:1

- K. **Buffer Mitigation Ratios.** Impacts to buffers must be mitigated at a 1:1 ratio. Compensatory buffer mitigation must replace those buffer functions lost from development.
- L. **Mitigation Performance Standards.** Wetland mitigation plans must be consistent with AMC 19.70.130 Mitigation requirements and 19.70.135 Mitigation plan requirements and Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Ecology Publication #06-06-011a), or as amended, and best available science.
- M. **Minimum Standards.** The design standards in this section must be incorporated into mitigation plans submitted to the City for impacts to wetlands and/or wetland buffers. The following standards apply to any mitigation proposed within Category I, II, III and IV wetlands and their buffers. Modifications to these design standards consistent with the guidance in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised) may be considered for approval by the ~~Decision-maker~~[Decision-maker](#) as alternatives to the following standards:

1. Plants native to the region (not introduced, non-native or exotic species) must be used.
2. Plant species selection must be consistent with the existing or projected hydrologic regime, including base water levels and stormwater event fluctuations.
3. Plant species selection must be consistent with the site environmental conditions such as slope, aspect, soils and exposure to sun, wind and rain.
4. Plants should be commercially available or available from local sources.
5. Native plant species high in food and cover value for fish and wildlife should be prioritized, as appropriate for the site.
6. Plant selection must be approved by a qualified professional.
7. The following standards apply to wetland design and construction:
 - a. For wetland creation sites, preliminary investigations of existing hydrology at the site must be completed to confirm that the site has adequate source hydrology (e.g., high groundwater, precipitation or riverine flooding) to support wetland conditions.
 - b. Water depth in areas of seasonal or occasional inundation must not exceed three feet (0.914 meters), unless the proposed mitigation is compensating for impacts to unvegetated/open water areas.
 - c. If creating or rehabilitating a slope wetland, the grade or slope within the wetland must not exceed 6 percent, unless otherwise approved by the ~~Decision-maker~~[Decision-maker](#).
 - d. Slopes within the wetland contributing basin and the buffer zone must not be steeper than 3:1 (horizontal to vertical).
 - e. The wetland (excluding the buffer area) should not contain more than 20 percent unvegetated/open water areas as measured at the seasonal high water mark, unless the mitigation is compensating for vegetated.
 - f. Site soils must be free of contamination and/or hazardous materials, and must have adequate organic content and porosity to support the proposed native plant community.
 - g. Planting densities and placement of plants should be determined by a qualified professional and shown on the design plans.
8. The planting plan must be approved by the City.
9. Stockpiling soil and construction materials should be confined to upland areas and contract specifications should limit stockpiling of earthen materials to durations in

accordance with City clearing and grading standards, unless otherwise approved by the City.

10. Planting instructions must be submitted which describe placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock.
11. Controlled release fertilizer (if required) must be used in upland areas only (buffers and other non-wetland areas) and must be installed into the planting hole only at the time of planting. No fertilizer must be applied to the ground surface.
12. An irrigation system must be installed or watering afforded by trucks or hoses to provide water for installed plants and seeded areas to supplement rainfall to ensure that plants receive approximately 0.5 inches of water per week during the dry season of the first two years after plant installation.
13. All construction specifications and methods must be approved by a qualified professional and the City.
14. Construction management provided must be provided by a qualified professional. Ongoing work on site must be inspected by the City.

PART 3: FISH AND WILDLIFE HABITAT CONSERVATION AREAS

19.70.310. Fish and wildlife habitat – Description and Purpose

- A. Fish and wildlife habitat conservation areas are lands managed for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources.
- B. It is the purpose of this Chapter to protect fish and wildlife populations and their associated habitats and provide special consideration to conservation or protection measures necessary to preserve or enhance anadromous species.

19.70.315 Fish and wildlife habitat – Designation.

- A. Fish and Wildlife Habitat Conservation Areas (FWHCAs) are designated as follows:
 1. ~~Areas with which endangered, threatened, and sensitive species listed by the federal government or the State of Washington have a primary association;~~Critical saltwater habitats, which include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance; subsistence, commercial and recreational shellfish beds; mudflats,

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intertidal habitats with vascular plants, and areas with which priority species have a primary association.

- ~~2.~~ Commercial and recreational shellfish areas, including public and private tidelands suitable for shellfish harvest and shellfish protection districts established pursuant to [RCW 90.72](#);
- ~~3.~~ Kelp and eelgrass beds and herring and smelt spawning areas;
- ~~4.~~ 2. Naturally occurring ponds under 20 acres with submerged aquatic beds that provide fish or wildlife habitat as further defined in [WAC 365-190-130](#)(4)(e);
- ~~5.~~ 3. Waters of the State, including streams as classified in WAC [222-16-030](#), including but not limited to Whistle Creek, Happy Valley Stream, Ace of Hearts Creek, Beaver Brook, Cranberry Creek, Clyde Creek, Anaco Bourn, Morrison Run, Cedar Springs, Weaverling Rill, Miller Creek, Aqua Creek, Howard Creek, Summit Creek, and March's Run;
- ~~6.~~ 4. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
- ~~7.~~ 5. Areas with which anadromous fish species have a primary association;
- ~~8.~~ 6. State natural area preserves, natural resource conservation areas, and state wildlife areas as established by WA DNR;
- ~~9.~~ 7. Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program in Chapter [79.70](#) RCW.
- ~~10.~~ 8. State priority habitats and areas associated with State priority species defined and listed by the State Department of Fish and Wildlife in the Priority Habitats and Species List Updated January 2019. Priority habitats and species known to be identified and mapped by WDFW (<http://apps.wdfw.wa.gov/phsontheweb/>) in Anacortes include, but may not be limited to, the following:
 - a. Biodiversity areas;
 - b. Bald eagle habitat protected pursuant to the Federal Bald and Golden Eagle Protection Act;
 - c. Chinook/fall chinook salmon;
 - d. Coho salmon;
 - e. Great blue heron nest sites and breeding areas;
 - f. Osprey nest sites;

- g. Peregrine falcon nest sites and breeding areas;
- h. Purple martin breeding areas;
- i. Resident coastal cutthroat trout;
- j. Winter steelhead trout;
- k. Water fowl concentrations.

11.9. The following Habitats and Species of Local Importance have been designated by the City:

- a. The Anacortes Community Forestlands.
- b. The March Point Heronry.
- c. The one and one-half acre "Park Reserve" at Cap Sante bounded by 3rd Street, East Park Drive, and Curtis Drive.
- d. Ship Harbor Wetland.
- e. Cannery Pond Wetland.
- f. Category II wetlands within the watersheds of Little Cranberry Lake, Whistle Lake, and Hearth Lake and with seasonal surface water connections.
- g. Smiley's Bottom Wetland.

B. In addition to the FWHCAs identified in Subsection (A)(11) of this section, additional habitats and species of local importance may be designated by the City using the following process:

1. Designation process. The city may consider nominations for habitat areas and species to be designated as locally important on an annual basis as part of the annual comprehensive plan and development regulation update process, based on the following criteria:
 - a. Local populations of native species that are in danger of extirpation based on existing trends, likely to become endangered, or are vulnerable or declining;
 - b. The habitat represents either a high quality native habitat, or the habitat has a high potential to recover to a suitable condition and which is of limited availability, is highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape;
 - c. The species or habitat has recreation, commercial, game, tribal, or other intrinsic value;

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Add the following wetland for extra habitat protections, in replace of the regionally/locally significant wetland provision:

- d. Ship Harbor Wetland
- e. Cannery Pond Wetland
- f. Category II wetlands within the watersheds of Little Cranberry Lake, Whistle Lake, and Heart Lake and with seasonal surface water connections.
- g. Smiley's Bottom Wetland

- d. Long-term persistence of a species is dependent on protection, maintenance, and/or restoration of the nominated habitat;
 - e. Protection by other county, state, or federal policies, laws, regulations, or non-regulatory tools is not adequate to prevent degradation of the species or habitat; and
 - f. Without protection, there is a likelihood that the species or habitat will be diminished.
 - 2. The nomination must indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries) or whether the habitat or ecosystem is being nominated in its entirety.
 - 3. The nomination may include management strategies for the species or habitats, which must be supported by best available science. Where restoration of habitat is proposed, a specific plan for restoration must be provided.
- C. All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

19.70.320 Fish and wildlife habitat – Mapping.

- A. **Mapping.** The approximate location and extent of some FWHCA's are shown in the data layers maintained in the City of Anacortes geographic information system (GIS). In addition, the following maps and inventories are hereby adopted by reference, as amended:
- 1. [Washington Department of Fish and Wildlife Priority Habitat and Species maps](#);
 - 2. Washington Department of Natural Resources, [Official Water Type Reference maps](#);
 - 3. Washington Department of Natural Resources [Puget Sound Intertidal Habitat Inventory maps](#);
 - 4. Washington Department of Natural Resources [Shore Zone inventory](#);
 - 5. Washington Department of Natural Resources [Natural Heritage Program mapping data](#);
 - 6. Washington Department of Health Annual [Inventory of Shellfish Harvest Areas](#);
 - 7. Anadromous and resident fish distribution maps contained in the habitat limiting factors reports published by the Washington Conservation Commission and others;
 - 8. Washington Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps; and
 - 9. NOAA Northwest Region Critical Habitat Mapper or equivalent source:
<http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>

- B. **Reference Only.** The maps and resources cited above are to be used as a guide for the City of Anacortes Planning, Community & Economic Development Department, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

19.70.325 Fish and wildlife habitat – General Development Standards for all FWHCAs.

- A. All new development activities and uses are prohibited from habitat conservation areas and their buffers except in accordance with this Chapter unless within shoreline jurisdiction and hereby regulated by the AMC 19.72 Shoreline Regulations and Shoreline Master Program. Alterations of FWHCA's or their buffers is prohibited except as otherwise allowed by this chapter and may occur may be altered only if the proposed alteration of the habitat or the and any associated mitigation proposed does not degrade the functions and values of the habitat.
- B. **Exemptions.** Exemptions to this chapter are listed in the provisions established in AMC 19.70.035 Exemption Activities.
- C. **Approvals and the Best Available Science.** Any approval of alterations or impacts to a FWHCA area must be supported by the best available science as described in the required Critical Area Report.
- D. **Approvals of Activities may be conditioned.** The decision-maker~~Decision-maker~~ may condition approvals of activities allowed within or adjacent to a fish and wildlife habitat conservation area as necessary to minimize or mitigate any potential adverse impacts. Conditions will be based on the best available science and may include, but are not limited to, the following:
1. Establishment of buffers;
 2. Preservation of important vegetation and/or habitat features such as snags and downed wood specific to the priority wildlife species in the fish and wildlife habitat conservation area;
 3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
 4. Seasonal restriction of construction activities;
 5. Establishment of a duration and timetable for periodic review of mitigation activities; and
 6. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
- E. **Seasonal Restrictions.** When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.
- F. **Subdivisions.** The subdivision and short subdivision of land in FWHCA's and associated buffers is subject to the following:

1. Land that is located wholly within a FWHCA or its buffer may not be subdivided;
2. Land that is located partially within a FWHCA may be subdivided only if an accessible and contiguous portion of each new lot that meets the minimum lot size requirements for the zone is located outside of the FWHCA and its buffer.
3. Access roads and utilities serving a proposed subdivision may be permitted within the FWHCA and associated buffers only if the applicant's qualified professional(s) demonstrate, and the ~~Decision-maker~~Decision-maker determines, that no other feasible alternative exists, all unavoidable impacts are fully mitigated, and the use is consistent with this chapter.

~~3-4. This paragraph does not authorize new access roads and utilities in FWHCAs and associated buffers for existing subdivisions.~~

G. Non-indigenous species. No plant, wildlife, or fish species not indigenous to Fidalgo Island may be introduced to a FWHCA unless authorized by a state or federal permit approval.

19.70.330 Fish and wildlife habitat – Specific Standards for Streams

A. Typing. Stream types must be classified according to WAC 222-16-030. Stream classifications must include the following:

1. Type F streams are those that provide fish habitat;
2. Type Np streams are perennial waters that do not contain fish habitat; and
3. Type Ns streams are seasonal waters that do not contain fish habitat, but are physically connected by an above-ground channel system to Type F, or Np waters.
4. In the case that available information on stream typing is unclear, stream typing will be performed by a qualified professional, provided by the applicant, using a site visit, mapping, and all available information.

B. Required Buffer Areas. Protective riparian buffers must be required to preserve stream/riparian functions and values. The purpose of riparian buffers is to protect riparian functions that influence in-stream and near-stream habitat quality

1. **Measurement of Stream Buffers.** Stream buffers are measured from the ordinary high water mark (OHWM), or the top of the bank if the OHWM cannot be determined. Buffers must be measured with rounded ends where streams enter or exit piped segments. Piped stream setbacks should be measured from the centerline of the pipe.
2. **Standard Stream Buffer Widths.** Buffer widths must reflect the sensitivity of the stream type, the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the stream area. The following standard buffers are established for streams:

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Table 19.70.300 Stream Buffers

DNR Water Type (WAC 222-16-030)	Standard Buffer Width
Type F Streams that are known to be used by fish, or meet the physical criteria to be potentially used by fish.	50 feet
Type Np Streams that have year round flow and do not meet the physical criteria of a Type F. This also includes streams that have been proven not to contain fish using methods described in Forest Practices Board Manual Section 13.	50 feet
Type Ns Streams that do not have surface flow during at least some portion of the year, and do not meet the physical criteria of a Type F stream.	50 feet
Piped Streams and Roadside Ditched Segments Those segments of streams, regardless of their type, that are fully enclosed in an underground pipe or culvert, or conveyed through a public roadside ditch as part of the City stormwater infrastructure.	10 feet

3. **Increased Stream Buffer Widths.** The stream buffer widths may be increased by the ~~Decision maker~~[Decision-maker](#) as follows:

- a. When the qualified professional determines that the minimum width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area as a result of a habitat assessment required pursuant to AMC 19.70.360;
- b. When the frequently flooded area exceeds the minimum stream buffer width, the stream buffer must extend to the outer edge of the frequently flooded area;
- c. When a channel migration zone is present, the stream buffer must extend to the outer edge of the channel migration zone;
- d. When the habitat area is in an area of high blowdown potential, the stream buffer width must be expanded an additional 50 feet on the windward side;

- e. When the habitat area is within an erosion or landslide hazard area, or buffer, the stream buffer width must be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

C. Buffer Reduction Standards. The ~~Decision-Maker~~[Decision-maker](#) may allow the reduction of buffer widths on a case-by-case basis when the critical areas report demonstrates the following criteria are met:

1. There is no feasible alternative to the site design that could be accomplished without buffer reduction;
2. The total buffer width is not reduced to less than 35 feet in stretches of natural stream channel with intact native vegetation within the buffer, and the buffer reduction does not reduce the functions or values of the stream or buffer;
3. The total buffer width is not reduced to less than 25 feet in stretches of modified stream channel with little to no intact native vegetation within the buffer, and the buffer reduction plan must include an enhancement plan to increase the functions or values of the stream or buffer.

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~~3.4.~~[A buffer enhancement plan is proposed to improve the overall function of the buffer.](#)

D. Building setbacks from stream buffers. Buildings, structures, paving, and other hard surfacing must be setback a minimum distance of 10 feet from the edge of the stream buffer unless determined by the ~~Decision-maker~~[Decision-maker](#) that a smaller distance would meet the intent of this subsection. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. The following may be allowed in the building setback from the buffer if they do not cause damage to the critical root zone of trees in the buffer:

1. Landscaping;
2. Uncovered decks, roof eaves and overhangs, unroofed stairways and steps;
3. Pervious ground surfaces, such as driveways, patios, and parking may be allowed; provided that they are engineered as a [pervious-permeable pavement](#) system as defined in AMC [19.12.020](#). Such improvements may be subject to the requirements in AMC [19.76](#), Stormwater Management.

E. Functionally Separated and Isolated Stream Buffers. Consistent with the definition of “buffers” in this chapter, areas that are functionally isolated and physically separated from a stream due to existing, legally established public roadways, railroads or other legally established structures or paved areas eight feet or more in width that occur between the area in question and the stream must be considered physically isolated and functionally separated stream buffers. Once determined by the ~~Decision-Maker~~[Decision-maker](#), based on a submitted critical area report, to be a physically separated and functionally isolated stream buffer, development proposals are allowed in these areas.

F. Additional Allowed Activities in streams. Activities, uses and alterations of streams are prohibited unless otherwise listed as exempt or allowed according to the provisions of 19.70.035, 19.70.040, and 19.70.045. No alteration to a stream buffer may be permitted unless consistent with the provisions of this section and the specific standards for development outlined below.

1. ~~Type F and Type Np Streams Relocation~~ When allowed. Relocation of Type F ~~or~~ Np, and Ns streams may be permitted only when the proposed relocation is **part of an approved mitigation or rehabilitation/restoration plan**, and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream. The applicant must demonstrate proper mitigation sequencing.

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2. ~~Type Ns Streams Relocation~~. Relocation of Type Ns streams may be permitted only when the proposed relocation will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream. The applicant must demonstrate proper mitigation sequencing.

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3. **Stream Crossing.** Crossing of streams may be permitted, and are required to be designed to allow fish passage based on state and federal fish passage criteria.

G. Piped Watercourses and Roadside Ditches. It is recognized that within the urban environment many historical streams have been substantially modified to accommodate development. Many of the regulated and mapped streams within the City of Anacortes pass through natural reaches, modified reaches, piped reaches, and sometimes along manmade roadside ditches.

1. Development along piped watercourses and roadside ditched segments of regulated streams are subject to a 10 foot setback from the centerline of the stream course and is subject to the recording of a utility easement granted to the city for access and maintenance of the watercourse infrastructure.
2. The voluntary opening and restoration or rehabilitation of previously channelized, culverted, or piped streams is highly encouraged and may be approved by the ~~Decision Maker~~ Decision-maker, when the following is demonstrated within a critical areas report:
 - a. The restoration will result in a net gain in FWHCA functions, including an improvement in water quality and ecological functioning;
 - b. Opened channels must be designed to support fish and wildlife habitat and uninhibited fish access, unless demonstrated to be infeasible;
 - c. A reduction to the standard buffer is allowed to a minimum of 25 ~~feet~~, or as recommended by a qualified professional in the Critical Area Report. Measured from the Ordinary High Water Mark (OHWM) and which includes habitat improvements, and measures to prevent erosion, landslide and water quality impacts;
 - d. The proposal will not significantly increase the threat of erosion, flooding, slope stability or other hazards on the site or on adjacent properties.

- e. The proposal must demonstrate that there conveyance will maintain the flow capacity and not create flooding elsewhere in the drainage basin.

H. Stream Enhancement Measures. Only those enhancement measures deemed most applicable and/or appropriate for stream channel or buffer enhancement projects will be considered in a buffer modification proposal, and must be supported by best available science and a critical area report. These include, but are not limited to:

1. Removal of fish barriers to restore accessibility to fish.
2. Enhancement of fish habitat using log structures incorporated as part of a fish habitat enhancement plan.
3. Enhancement of fish and wildlife habitat structures that are likely to be used by wildlife, including wood duck houses, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas.
4. Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/recreational value; or
5. Creation of a surface channel where a stream was previously underground, in a culvert or pipe. Surface channels which area “daylighted” must be located within a buffer area and must be designed with energy dissipating functions or channel roughness features such as meanders and rootwads to reduce future bank failures or nearby flooding;
6. Removal or modification of existing stream culverts (such as road crossings) to improve fish passage, stream habitat, and flow capacities; or
7. Upgrading of retention/detention facilities or other stormwater management facilities beyond required levels.

19.70.335 Fish and wildlife habitat – Specific Standards for Other FWHCA's

A. Endangered, Threatened, and Sensitive Species. Fish and wildlife habitat conservation areas or buffers with which species that are State or Federally listed as endangered, threatened, or sensitive species, and anadromous fish species are subject to the following:

1. No development is allowed within a fish and wildlife habitat conservation area or buffer with which State or Federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable State or Federal agency.
2. Whenever activities are proposed adjacent to a fish and wildlife habitat conservation area with which State or Federally endangered, threatened, or sensitive species have a primary association, such area must be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the City. Approval for alteration of the fish and wildlife habitat conservation area or its buffer

may not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate Federal or State agencies.

B. Other Priority Habitats and Species. Fish and wildlife habitat conservation areas or buffers with which species that are not State or Federally listed as endangered, threatened, or sensitive species, and are not anadromous fish species are subject to the following:

1. Development activities and uses that result in unavoidable impacts is prohibited except as otherwise allowed by this chapter and may occur ~~may be permitted~~ in priority species habitat areas and associated buffers only if the proposed alteration of the habitat does not degrade the functions and values of the habitat. in accordance with an approved critical area report with habitat assessment/management plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the loss of acreage and functions of habitat and buffer areas must be provided in compliance with the mitigation performance standards and requirements of these regulations.

C. City-Designated Habitats and Species of Local Importance

1. Anacortes Community Forest Lands:

1- Purpose. The Anacortes Community Forest Lands include three lakes and their watersheds, numerous wetlands, rock bluffs, old growth forests, grassy knolls, windswept hilltops, sheltered caves, and a variety of other habitats and microclimates that provide a unique and irreplaceable habitat for both imperiled and commonplace species. This land has been dedicated by the City for the preservation of forest lands and species, as described in the Conservation Easement documents, the ACFL Comprehensive Plan, and in AMC Title 12.

- a. Recreation and Recreation-Related Facilities. Construction of public recreation-related facilities such as trails, benches, interpretive displays, and viewing platforms, may be allowed in fish and wildlife habitat conservation areas or buffers
- b. Proposed alterations must be consistent with the adopted Anacortes Community Forest Lands Comprehensive Plan, as amended.
- c. Noxious and Invasive Plants. The Skagit County noxious weed ordinance and the ACFL invasive plant control program must be carefully considered in any adjacent development decision. Nonnative plants known to be invasive into the ACFL must be prohibited in landscaping plans of adjacent developments. Where such developments have CC&Rs, reference to this requirement must be included therein.
- d. Right of Way Vacations. In the case of street or alley vacations contiguous with an ACFL boundary, the half of the area vacated which is adjacent to the ACFL must be incorporated into the ACFL and subject to all ACFL related requirements.

Commented [CT17]: Add Purpose Statement:

Purpose. The Anacortes Community Forest Lands include three lakes and their watersheds, numerous wetlands, rock bluffs, old growth forests, grassy knolls, windswept hilltops, sheltered caves, and a variety of other habitats and microclimates that provide a unique and irreplaceable habitat for both imperiled and commonplace species. This land has been dedicated by the City for the preservation of forest lands and species, as described in the Conservation Easement documents, the ACFL Comprehensive Plan, and in the newly created Anacortes Municipal Code Title 12.

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- e. Private Access to ACFL. No new accesses will be established to the ACFL without prior request for such access to the parks and recreation department and the forest advisory board and approval by the city council.
- f. Burning. No burn piles or outdoor fires must ever be left unattended while ignited and in the event sparks or flames come within three hundred feet of the ACFL, the fire must immediately be brought under control or extinguished.
- g. Boundary Identification. City staff will work closely with property owners and developers to ensure that survey lines adjacent to the ACFL boundary are clearly and correctly marked before any timber and/or vegetation is removed from adjacent property. The forest manager will be involved in the final inspection of boundary lines.
- h. ACFL Buffers. City staff will work closely with builders to secure thirty-foot ACFL buffers using all available incentives.

2. March Point Heronry:

2. —

a. Purpose. Because Skagit County is home to the greatest concentration of nesting Great Blue Heron in the Salish Sea, March Point being the largest, the City has identified the March Point Heronry as a habitat of local importance.

b. a. Proposed development activities within 1,000 feet, or that is likely to impact the colony, must provide a critical areas assessment report and habitat management plan that follows at a minimum the guidelines provided by WDFW's Management Recommendations for Washington's Priority Species (March 2012).
https://wdfw.wa.gov/publications/00026/abbreviated_great_blue_heron.pdf.

c. b. Buffers will be implemented as described in the buffer section below.

d. c. Colony protection is required for minimum 10-years after abandonment.

D. Required Buffer for Non-Stream FWHCA's:

1. **Marine FWHCA's Buffers.** Buffer for all designated fish and wildlife habitats or species within marine shorelines must be regulated by [AMC 19.72 Shoreline Regulations and](#) the Shoreline Master Program. ~~incorporated Critical Area regulations.~~
2. **All Other Non-Stream FWHCA Buffers.** Buffers from fish and wildlife habitat conservation areas must be established to protect the functions and values of the critical area from the impacts of proposed adjacent activities.
 - a. Buffer widths for fish and wildlife habitat areas must be based on consideration of the following factors: species-specific recommendations of the Washington State Department of Fish and Wildlife; recommendations contained in a habitat management

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Purpose. Because Skagit County is home to the greatest concentration of nesting Great Blue Heron in the Salish Sea, March Point being the largest, the City has identified the March Point Heronry as a habitat of local importance.

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plan submitted by a qualified professional; and the nature and intensity of land uses and activities occurring on the land adjacent to the site. Buffers must:

- i. Consist of an undisturbed area of native vegetation, or areas identified for restoration, sufficient to protect the integrity, functions, and values of the affected habitat;
 - ii. Reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby;
 - iii. Be consistent with the applicable species-specific management recommendations issued by the Washington Department of Fish and Wildlife.
- b. Nesting bald eagles and bald eagle habitat must be protected consistent with the U.S. Fish and Wildlife Service (USFWS) National bald eagle management guidelines, or the state or federal regulations in place at the time of application. Whenever activities are proposed adjacent to a confirmed nest territory or communal roost, a bald eagle habitat management plan must be developed by a qualified professional. Activities are adjacent to managed bald eagle sites when they are within 660 feet of a nest or within one-half mile (2,640 feet) of a shoreline foraging area. Approval of the activity must not occur prior to consultation with the state or federal agency with authority on bald eagle pairs and their nest.
- c. Great Blue Heron nesting and breeding areas: Development near a verified heron breeding habitat including nesting colony areas, former nesting colonies, ~~pre-nesting staging areas, and breeding season foraging habitat require:~~

- i. A year-round urban buffer of 197 feet,
- ii. For unusually loud activities that occur during breeding season (February – September) a seasonal buffer of 656 feet, and a Blasting buffer of ~~3,280~~ 1,320 feet.
- iii. For properties without an existing and approved management plan; Aa management plan developed by a qualified professional to follow, at a minimum, WDFW's Management Recommendations for Washington's Priority Species (March 2012) and that identifies the nesting and breeding site as well as pre-nesting staging area, and breeding season foraging habitat
- ~~iii.~~iv. For the March's Point Colony, given the observed and documented sensitivity of this mega-colony to human intrusion and the fact that the colony is in a rare, isolated, but tight location, a year-round buffer of 984 feet.

19.70.340 Fish and wildlife habitat – Buffer Width Averaging. ~~for All FWHCA's.~~

- A. Approval Criteria. The ~~Decision-maker~~Decision-maker may allow the averaging of FWHCA buffer widths for FWHCA's other than those designated by the City as habitats and species of local importance, when the critical areas report demonstrates the following:
1. In-stream or buffer habitat functions, will be increased or maintained where native buffer vegetation is generally intact, or increased where existing buffer vegetation is inadequate to protect functions and values; and
 2. The buffer averaging does not reduce the functions or values of the stream or FWHCA buffer; and
 3. The total area contained in the buffer area after averaging on the development proposal site is no less than that which would be contained within the standard buffer, and all increases in buffer dimension for averaging must be parallel to the FWHCA buffer; and
 4. The stream or FWHCA buffer contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation; and
 5. The buffer width is not reduced in any location to less than 50 percent of the standard width or 35 feet, whichever is greater, on a case-by-case basis as a result of a habitat assessment pursuant to AMC 19.70.380 (B)(4); and
 6. The buffer has not been reduced in accordance with this section. Buffer averaging is not allowed if the buffer has been reduced; and
 7. There were no feasible alternatives to the site design without buffer averaging; and
 8. Buffer enhancement will be provided.

Commented [CT19]: Change to read:

Great Blue Heron nesting and breeding areas: Development near a verified heron breeding habitat including nesting colony areas, and former nesting colonies:

- i. A year-round urban buffer of 197 feet,
- ii. For unusually loud activities that occur during breeding season (February – September) a seasonal buffer of 656 feet, and a Blasting/Extreme noise buffer of 1,320 feet.
- iii. For properties without an existing and approved management plan; a management plan developed by a qualified professional to follow, at a minimum, WDFW's Management Recommendations for Washington's Priority Species (March 2012) and that identifies the nesting and breeding site as well as pre-nesting staging areas, and breeding season foraging habitat.
- iv. For the March's Point Colony, given the observed and documented sensitivity of this mega-colony to human intrusion and the fact that the colony is in a rare, isolated but tight location, a year-round buffer of 984 feet.

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9. The buffer width reduction will not be located within another critical area or associated buffer; and
10. Only those portions of the FWHCA buffer within the project area or subject parcel may be considered in the total buffer area for buffer averaging.

19.70.345 Fish and wildlife habitat – Stormwater Management Facilities.

Establishment of low-impact stormwater management facilities, such as stormwater dispersion outfalls and bioswales, may be allowed within fish and wildlife habitat conservation area buffers consistent with the adopted stormwater manual; provided, that:

- A. No other location is feasible; and
- B. There will be “no net loss” of functions and values of the fish and wildlife habitat conservation area; and
- C. The critical area lies in the natural routing of the runoff, and the discharge follows the natural routing; and
- D. Stormwater dispersion outfalls, bioswales, bioretention facilities, and other low-impact facilities consistent with the adopted stormwater manual may be allowed within the outer 25% of the buffer when determined by a qualified professional that the location of the facilities will enhance the buffer area and protect the stream; and
- E. Such facilities are designed consistent with the requirements of AMC 19.76.

19.70.350 Fish and wildlife habitat – Critical area report additional requirements.

- A. **Additional Report Contents for FWHCA’s.** In addition to the minimum report contents required per AMC 19.70.125 FWHCA reports must also include;
 1. Documentation of any fieldwork performed on the site, including field data sheets for delineations, water typing and other habitat conservation area classification, baseline hydrologic data, site photos, etc.;
 2. A description of the methodologies used to conduct the delineations, classifications, or impact analyses, including reference;
 3. A discussion of the potential impacts to the critical area or buffer associated with the proposed development including an assessment of cumulative impacts.
- B. **Habitat Assessment /Management Plan.** A habitat assessment /management plan is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical area report for a fish and wildlife habitat conservation area must contain an assessment of habitats including the following site- and proposal-related information at a minimum:

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1. Detailed description of vegetation on and adjacent to the project area and its associated buffer;
2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
3. A discussion of any Federal, State, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
4. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
5. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with AMC 19.70.135, Mitigation Requirements;
6. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

C. Additional Technical Information Requirements for Streams. If no project impacts are anticipated and standard stream buffer widths are retained, a stream delineation report, general critical areas report or other reports, alone or in combination, may be submitted as consistent with the specific requirements of this section. In addition to the general critical area report requirements for fish and wildlife habitat conservation areas provided in subsections A through D of this section, technical information on streams must include the following information at a minimum:

1. A written assessment and accompanying maps of the stream and associated hydrologic features on and off site within 300 feet of the project area, including the following information at a minimum: Stream survey showing the field delineated ordinary high water mark(s);
 - a. Standard stream buffer boundary as determined by AMC 19.70.340;
 - b. Boundary for proposed stream buffers averaging, if applicable;
 - c. Vegetative, faunal, and hydrologic characteristics;
 - d. Soil and substrate conditions; and
 - e. Topographic elevations, at two-foot contours;

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2. A detailed description and functional assessment of the stream channel and stream buffer under existing conditions pertaining to the protection of stream functions, fish habitat and, in particular, potential anadromous fisheries;
3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and stream functions;
4. Proposed buffer enhancement, if needed, including a written assessment and accompanying maps and planting plans for buffer areas to be enhanced, including the following information at a minimum:
 - a. A description of existing buffer conditions;
 - b. A description of proposed buffer conditions and how proposed conditions will increase buffer functions in terms of stream and fish habitat protection;
 - c. Performance standards for measuring enhancement success through a monitoring period of at least five years; and
 - d. Provisions for monitoring and submission of monitoring reports documenting buffer conditions, as compared to performance standards, for enhancement success;
 - e. A discussion of ongoing management practices that will protect stream functions and habitat value through maintenance of vegetation density within the stream buffer.

D. Additional Technical Information for Heron Habitat.

1. The Report must identify the Heron Management Area (HMA). A HMA consist of the nesting colony, year-round and seasonal buffer, foraging habitat, and when present, a pre-nesting congregation area.
2. All survey activity such as nest tree identification and flagging **should occur in the non-breeding season (mid-September to mid-February)**, and preferably right after breeding season ends.
3. Identify the nesting colony's boundary. To do this flag all nest trees at the colony's outer perimeter. Mark each of these trees on a map. If a nest tree's canopy overlaps the canopy of an adjacent tree, flag the adjacent tree and consider this to be a nest tree. The outermost nest trees will be used to map the nesting colony boundary.
4. Map outer perimeter of the 197 foot year-round buffer. Using the buffer radius, draw a circle around each peripheral nest tree.
5. Map seasonal buffer if any unusually loud activities will occur during breeding season (February – September). Measure the seasonal buffer starting at the outer edge of the year-round buffer.
6. Locate potential foraging habitat by mapping all waterbodies within a 1.9 mile radius of the colony. The perimeter and shallow portions are especially important for foraging.

E. Additional FWHCA information. When appropriate due to the type of habitat or species present, or the project area conditions, the ~~Decision Maker~~[Decision-maker](#) may also require the critical area report to include:

1. A request for consultation with the Washington State Department of Fish and Wildlife (DFW), Washington Department of Ecology (Ecology), local Native American ~~Indian~~ tribes or other appropriate agency;
2. Copies of the Joint Aquatic Resource Permit Application (JARPA) and related approvals, such as a Hydraulic Project Approval (HPA) from the WDFW, when applicable to the project; and
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

19.70.355 Fish and wildlife habitat – Mitigation performance standards and requirements.

- A. Compensatory mitigation for FWHCA's must follow the plan requirements described under AMC 19.70.135.

PART4: GEOLOGICALLY HAZARDOUS AREAS

19.70.410 Geologically Hazardous Areas– Description and Purpose.

- A. Geologically hazardous areas include areas susceptible to the effects of erosion, landslides, earthquake, or other geologic events. They pose a threat to health and safety of citizens when incompatible development is sited in areas of significant hazard.
- B. The primary purpose of these regulations is to avoid and minimize potential impacts to life and property from geologic hazards, conserve soil resources, and minimize structural damage relating to these hazards. The purpose is accomplished through appropriate levels of study and analysis, application of sound engineering principles, and regulation or limitation of land uses, including maintenance of existing vegetation, regulation of clearing and grading activities, and control of stormwater.

19.70.415 Geologically Hazardous Areas - Designation.

- A. Areas susceptible to one or more of the following types of hazards are designated as a geologically hazardous area:
 1. **Erosion Hazard Areas.** Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. The following are considered known or suspected erosion hazards:
 - a. Areas located within the following soil map units: Nos. 46 and 47 Dystric Xerochrepts; No. 90 Lithic Haploxerolls-Rock outcrop complex (LH), or mapped severe erosion hazard, as identified in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, WA (1989).

- b. Coastal, erosion-prone areas such as beaches or marine bluffs.
- c. Areas susceptible to rapid stream incision and stream bank erosion.

2. **Landslide Hazard Areas.** Landslide hazard areas are those areas subject to landslide activity based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. The following are known or suspected landslide hazards:

- a. Areas designated in the Washington State Department of Ecology Coastal Zone Atlas, Washington, Volume Two Skagit County (1978) as U (Unstable), UB, (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide).
- b. Areas of previous failure such as earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other failures as observed in the field or as indicated on maps or in technical reports published by the U.S. Geological Survey, the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies.
- c. Slopes having gradients of 15% or greater:
 - i. That intersect geologic contacts with permeable sediments overlying low-permeability sediment or bedrock and springs or groundwater seepage are present; or
 - ii. That are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.
- d. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch.
- e. Slopes having gradients steeper than 80% subject to rock fall during seismic shaking.
- f. Potentially unstable areas resulting from rapid stream incision, stream bank erosion, and undercutting by wave action.
- g. Slopes with a gradient of 40% or more with a vertical relief of 10 feet or more, including marine bluffs, except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief.

3. **Seismic Hazard Areas.** Seismic hazard areas are lands that, due to a combination of soil and groundwater conditions, are subject to risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, or surface faulting. The following are known or suspected seismic hazards:

- a. Areas having “high” and “moderate to high” risk of liquefaction as mapped on the Liquefaction Susceptibility and Site Class Maps of Western Washington State by County published by the Washington State Department of Natural Resources. These are typically underlain by cohesionless soils of low density typically and must [have a low](#) groundwater table.
 - b. Areas located within ¼ mile of an active fault as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies, or identified during site inspection.
 - c. Those known or suspected landslide hazards referenced in Subsection (2) of this Section.
4. **Mine Hazard Areas.** Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Factors that should be considered include: proximity to development, depth from ground surface to mine working, and geologic material.
 5. **Volcanic Hazard Areas.** Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity. Though there are no significant risks identified for the City and immediate surrounding area, other than airborne particulate impacts from an eruptions
 6. **Tsunami hazard areas.** Tsunami hazard areas include coastal areas and lake shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of coastal wave action generated by seismic events or other geologic events. Suspected tsunami hazard areas are indicated on the Tsunami Hazard Map of the Anacortes-Whidbey Island Area, Washington: Modeled Tsunami Inundation from a Cascadia Subduction Zone Earthquake.
 7. **Other Hazard Areas.** Geologically hazardous areas may also include areas determined by the [Decision-maker](#)~~Director~~ to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.
- B. All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

19.70.420 Geologically Hazardous Areas – Mapping.

- A. The approximate location and extent of geologically hazardous areas are shown on the City of Anacortes geologically hazardous data layers maintained in the City of Anacortes geographic

information system (GIS). In addition, the following maps and resources providing information on the location and extent of geologically hazardous areas are hereby adopted by reference as amended:

1. Skagit County, Skagit County Potential Landslide and Erosion Areas, 2016;
2. Washington Department of Ecology Coastal Zone Atlas (for marine bluffs);
3. U.S. Geological Survey geologic maps, landslide hazard maps, and seismic hazard maps;
4. Washington State Department of Natural Resources seismic hazard maps for Western Washington, including, but not limited to, the Liquefaction Susceptibility and Site Class Maps of Western Washington State by County;
5. Washington State Department of Natural Resources slope stability maps;
6. Soils maps produced by the U.S. Department of Agriculture, National Resources Conservation Service;
7. National Oceanic and Atmospheric Administration tsunami hazard maps;
8. Washington Department of Natural Resources Tsunami Hazard Map, or as updated, of the Anacortes-Whidbey Island Area, Washington: Modeled Tsunami Inundation from a Cascadia Subduction Zone Earthquake.

- B. **Reference Only.** The maps and resources cited above are to be used as a guide for the City of Anacortes Planning, Community & Economic Development Department, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

19.70.425 Geologically Hazardous Areas – General Development Standards.

- A. All development activities and uses are prohibited in geologically hazardous areas and their buffers, except as provided for in this chapter, and only when it is demonstrated that the activity will not create undue risk to life, health, and safety.
- B. **Exemptions and Allowed Activities.** Exemptions are listed in the provisions established in AMC AMC 19.70.035 Exempt Activities.
- C. **Approvals.** Alterations of geologically hazardous areas or associated buffers may only occur pursuant to this chapter, and as determined by a qualified professional with concurrence by a 3rd party review, for activities that:
1. Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;
 2. Will not adversely impact other critical areas;
 3. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and

4. Are determined to be safe as designed and under anticipated conditions by a qualified professional, licensed in the state of Washington.
- D. **Mitigation.** Proposed mitigation techniques are considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may be required to avoid any increase in risk above the preexisting conditions, including following abandonment of the activity.
 - E. **Critical Facilities Prohibited.** Critical facilities may not be sited within geologically hazardous areas unless there is no other practical alternative.
 - F. **International Building Code.** All development must conform to the provisions of the currently adopted International Building Code as amended by the City of Anacortes, including submittal of a critical areas report.

19.70.430 Geologically Hazardous Areas – Specific Development Standards

- A. **Erosion or Landslide Hazard Areas.** Except as otherwise provided in this Chapter, only those activities approved and permitted consistent with an approved critical area report in accordance with this Chapter are allowed in erosion or landslide hazard areas. Activities must meet the standards of AMC 19.70.430, General development standards, in addition to the specific requirements contained in this subsection.
 1. **Standard Buffer.** A standard buffer of 50 feet is required from the closest edge of a landslide hazard area. The buffer must be maintained as undisturbed native vegetation, except when alteration of vegetation is approved by the ~~Decision-maker~~[Decision-maker](#) as part of the project.
 2. **Buffer reduction.** The ~~Decision-Maker~~[Decision-maker](#) may reduce the standard buffer by a ~~minimum-maximum~~ of 25% when the critical area report demonstrates that all of the following criteria are met:
 - a. No reasonable alternative to the buffer reduction exists;
 - b. Modified or reduced buffers, through design and engineering solutions, will provide protection to the proposed development and adjacent properties equal to that of the standard buffer;
 - c. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
 - d. The development will not decrease slope stability on adjacent properties;
 - e. The proposed reduction will not adversely impact other critical areas;
 - f. The critical areas report makes recommendations regarding planting of vegetation or other measures to minimize impacts and resist erosion.

- g. When a buffer reduction is requested the ~~Decision-maker~~Decision-maker may require, at the applicant's expense, a third-party review of a critical area report by a Qualified Professional under contract with or employed by the City.
3. **Increased buffer.** The standard buffer may be increased by the ~~Decision-maker~~Decision-maker based on a critical areas report prepared by a qualified professional that indicates a greater buffer is necessary to protect the proposed development and/or adjacent properties.
4. **Alterations.**
- a. Alterations of a marine bluff or its buffer are prohibited except that minor development to provide public access (e.g. public trails, stairs or view points) may be permitted as regulated in the Shoreline Master Program, provided that impacts are mitigated and the development can be shown to be safe.
 - b. Alterations of an erosion or landslide hazard area and/or buffers may only occur for activities for which a critical areas report that contains a hazards analysis is submitted which determines that:
 - i. The activity will not increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;
 - ii. The activity will not decrease slope stability on adjacent properties;
 - iii. Such alteration will not adversely impact other critical areas or pose a potential threat risk to life, health, and safety.
 - c. Alterations must be designed to meet the following basic requirements:
 - i. The proposed alteration must not decrease the slope stability. The factor of safety against landslide occurrences for residential and commercial developments must be 1.5 for static conditions and 1.2 for dynamic conditions, unless approved by the ~~Decision-maker~~Decision-maker. Analysis of dynamic conditions must be based on a minimum horizontal acceleration as established by the current version of the International Building Code.
 - ii. Structures and improvements must be clustered to avoid geologically hazardous areas and other critical areas,
 - iii. Structures and improvements must minimize alterations to the natural contour of the slope, and foundations must be tiered where possible to conform to existing topography,
 - iv. Structures and improvements must be located to preserve the most critical portion of the site and its natural landforms and vegetation,
 - v. The proposed development must not result in greater risk or a need for increased buffers on neighboring properties;

- vi. Development must be designed to minimize impervious lot coverage;
 - vii. The ~~Decision-maker~~[Decision-maker](#) may accept an alternative design that deviates from one or more of these standards if a report by a qualified professional demonstrates that greater long-term slope stability can be achieved while meeting all other provisions of this title. The requirement for long-term slope stability must exclude designs that require regular and periodic maintenance to maintain their level of function.
- d. **Additional Requirements for Alteration of Landslide hazard areas and buffers.** Prior to permit issuance, the property owner must sign and record a notice on title, at the owner's sole expense, a covenant in a form acceptable to the City, which:
- i. Acknowledges and accepts the risks of development in the landslide hazard area;
 - ii. Waives any rights to claims against the City;
 - iii. Indemnifies and holds harmless the City against claims, losses, and damages;
 - iv. Informs subsequent owners of the property of the risks and the covenant; and
5. **Vegetation Retention and Maintenance.** Removal of vegetation from a landslide hazard area or related buffer is prohibited, except when allowed as follows:
- a. As part of an approved alteration, that follows the criteria and process outlined in AMC 19.70.440(A)(4).
 - b. Normal nondestructive pruning and trimming of vegetation for maintenance purposes or thinning of limbs of individual trees to provide a view corridor when a plan prepared by an ISA-certified arborist is provided and approved by the ~~Decision-maker~~[Decision-maker](#) and there are no other critical areas present.
 - c. All activity proposed on Marine Bluffs must be regulated and reviewed under the SMP and required shoreline permitting.
6. **Seasonal Restriction.** Clearing within an erosion or landslide hazard area or buffer may be allowed only from May 1st to October 1st of each year provided that the ~~Decision-maker~~[Decision-maker](#) may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions and other factors deemed relevant.
7. **Utility Lines and Pipes.** Utility lines and pipes may be permitted in landslide hazard areas and buffers only when the applicant demonstrates that no other practical alternative is available. The line or pipe must be located aboveground and properly anchored and/or designed with the intent to function in the event of an underlying slide.
8. **Stormwater management.** Prior to any development activity, a plan for the collection, transport, treatment, and discharge of stormwater in accordance with the requirements of AMC Chapter 19.76, or as amended, and in accordance with the adopted Stormwater

Management Manual for Western Washington, must be submitted meeting the following requirements:

- a. All infiltration systems, such as stormwater detention and retention facilities, and curtain drains utilizing buried pipe or French drains, are prohibited in landslide hazard areas and their buffers unless the critical areas report determines such facilities or systems will not adversely affect slope stability.
- b. Stormwater may not be directed across the face of a landslide hazard or related buffer (including marine bluffs or ravines) except as follows:
 - i. Stormwater may be discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state;
 - ii. Stormwater may be dispersed upslope of the landslide hazard area onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, if the critical areas report determines such facilities or systems will not adversely affect slope stability;
 - iii. If demonstrated that no other practical alternative is available, stormwater may be discharged from the hazard area into adjacent waters, provided it is collected above the hazard and directed to the water by a tight line drain (constructed of high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior) and provided with an energy dissipating device at the point of discharge.

9. **Prohibited development.** On-site sewage disposal systems, including drain fields, are prohibited within erosion and landslide hazard areas and related buffers.

10. **Subdivisions.**

- a. The division of land in landslide hazard areas and associated buffers is subject to the following:

i. Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer;

ii. Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the ~~Decision-maker~~[Decision-maker](#) determines that no other feasible alternative exists, and if the critical areas report determines such development will not adversely affect slope stability

b. Division of land within erosion hazard areas must comply with the following additional requirements:

i. Except as otherwise provided in this section, existing vegetation must be retained on all lots until building permits are approved for development on individual lots;

ii. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant must implement a revegetation plan in those areas that have been impacted prior to final inspection of the site development permit or the issuance of any building permit for the subject property;

iii. Clearing of vegetation on individual lots may be allowed prior to building permit approval if the ~~Decision-maker~~[Decision-maker](#) determines that:

1. Such clearing is a necessary part of a large-scale grading plan,
2. It is not feasible to perform such grading on an individual lot basis, and
3. Stormwater output from the graded area will meet established water quality standards.

B. Seismic Hazard Areas.

1. Activities proposed to be located in seismic hazard areas must meet the standards of AMC 19.70.430(B) and (E).

C. Mine Hazard Areas.

1. Activities proposed to be located in mine hazard area must meet the standards of AMC 19.70.430 General development standards, and the specific following requirements:
 - a. **Alterations.** Alterations of a mine hazard area and/or buffer are allowed, as follows:

- i. All alterations are permitted within a mine hazard area with a low potential for subsidence,
 - ii. Within a mine hazard area with a moderate potential for subsidence and at coal mine by-product stockpiles, all alterations are permitted subject to a mitigation plan to minimize risk of structural damage using appropriate criteria to evaluate the proposed use, as recommended in the hazard analysis, and
 - iii. Within a mine hazard area with a severe potential for subsidence only those activities allowed in AMC 19.70.035 **Exempt activities** of this chapter will be allowed.
- b. **Subdivisions.** The division of land in mine hazard areas and associated buffers is subject to the following:
 - i. Land that is located within two hundred feet of a mine hazard area with a severe potential for subsidence may not be subdivided. Land that is located partially within a mine hazard area may be divided provided that each resulting lot has sufficient buildable area that is two hundred feet away from the mine hazard area with a severe potential for subsidence. Land that is located within a mine hazard area with a low or moderate potential for subsidence may be subdivided;
 - ii. Access roads and utilities may be permitted within two hundred feet of a mine hazard area with a moderate or severe potential for subsidence if the city determines that no other feasible alternative exists.
- c. **Reclamation Activities.** Reclamation activities must conform to the provisions in Chapter 332-18 WAC Excavations For all reclamation activities, including grading, filling, and stockpile removal, as-built drawings must be submitted to the city in a format specified by the ~~Decision-maker~~[Decision-maker](#).

D. Tsunami Hazard Areas.

- 1. Non-residential activities on sites containing areas susceptible to inundation due to tsunami hazards must provide an evacuation and emergency management plan
- 2. The construction of structures designated Risk Categories III and IV as specified under currently adopted IBC are prohibited within a tsunami hazard area, except that:
 - a. A vertical evacuation tsunami refuge may be permitted to be located in a tsunami hazard zone provided it is constructed in accordance with FEMA P646;

- b. Community critical facilities may be permitted to be located within a tsunami hazard zone when such a location is necessary to fulfill their function, provided suitable structure and emergency evacuation measures have been incorporated.

19.70.435 Geologically Hazardous Areas - Critical Area Report Additional Requirements

- A. **Additional Report Contents for Geologically Hazardous Areas.** In addition to the minimum report contents required per AMC 19.70.125 reports must also include;
- B. **Third Party Review Required.** Critical areas reports on geologically hazardous areas are subject to third party review at the owner's sole expense as provided in AMC 19.70.125 (B) and in any of the following circumstances:
 - 1. A buffer reduction or alteration of a landslide hazard area is proposed.
- C. **Minimum Report Contents for Geologically Hazardous Areas.** The written critical area report(s) must contain the following information, at minimum:
 - 1. The report must generally follow the Washington State Department of Licensing Guidelines for Preparing Engineering Geology Reports in Washington (2006) and at a minimum report contents required per AMC 19.70.125;
 - 2. A detailed overview of the field investigations, exploration locations, site photos, published data and references; data and conclusions from past assessments of the site; investigations or studies that support the identification of geologically hazardous areas;
 - 3. A description of the methodologies used to conduct the geologically hazardous areas evaluations, classification, hazards assessments, and/or analyses of the proposal impacts, including references.
 - 4. **Assessment of Geological Characteristics.** The assessment must include the following:
 - a. Classification of the type of geologic hazard(s) present in accordance with AMC 19.70.410.
 - b. An assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis must be accomplished in accordance with accepted classification systems in use in the region.
 - c. A description of load intensity, surface and groundwater conditions, public and private sewage disposal systems, fills, excavations, and all structural development; and
 - d. A description of the extent and type of vegetative cover;
 - e. An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;

5. **Analysis of Proposal.** The report must include a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the project, the subject property, and affected adjacent properties.
6. **Minimum Buffer and Building Setback.** The report must make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
7. **Additional Technical Information Requirements for Specific Hazards:**
 - a. **Erosion and Landslide Hazard Areas.** The technical information required in a critical area report for a project within an erosion or landslide hazard area must also include the following:
 - i. An estimate of the present stability of the subject property, the stability of the subject property during construction, the stability of the subject property after all development activities are completed, and a discussion of the relative risks and slide potential relating to adjacent properties during each stage of development, including the effect [of](#) construction and placement of structures, clearing, grading, and removal of vegetation will have on the slope over the estimated life of the structures. Quantitative analysis of static and seismic slope stability, modeling, and/or seismic displacement analysis may be required by the [Decision-makerDecision-maker](#).
 - ii. A trend analysis of prior rates of erosion, if available.
 - iii. Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on downslope properties;
 - iv. Recommendations for stormwater improvements, locations and methods of erosion control, vegetation management, and/or other means for maintaining long-term soil stability;
 - v. Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;
 - vi. Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and
 - vii. Recommendations for mitigation measures to be implemented in order to minimize the risk to the site and adjacent properties, including slope stabilization measures, if appropriate.

b. **Seismic Hazard Areas.** The technical information required in a critical area report for a project within a seismic hazard area must also include the following:

- i. A complete discussion of the potential impacts of seismic activity on the site (for example, liquefaction, lateral spreading, fault rupture);
- ii. An evaluation of the subsurface soil and groundwater profile, physical properties of the subsurface profiles, and the liquefaction potential of the site;
- iii. Recommendations for mitigation measures to be implemented in order to minimize the risk to the project, and adjacent properties if appropriate.

c. **Tsunami Hazard Areas.** The technical information required in a critical area report for a project within a tsunami hazard area must also include:

- i. A discussion of the potential impacts of the tsunami hazard on the site; and
- ii. Recommendations as to structure construction techniques including but not limited to the use of coastal high hazard performance standards.
- iii. For all development other than single lot, single family residences, an emergency management plan including plans for emergency building exits routes, site evacuation routes, emergency training, notification of local emergency management officials, and an emergency warning system.

d. **Marine Bluffs** A geotechnical engineering report will be required when development is proposed within 50 feet (in all directions) of ~~the to or~~ to the crest of a marine bluff, or a distance equal to the height of the slope up to a distance of 100 feet from the crest (measured from the top), whichever is greater.

- i. The report must be based on best available science, existing and proposed uses, risks of slope failure, and coastal erosion rates over the last 75 years, if applicable.
- ii. All proposed development on a marine bluff or in the required buffer must be prohibited, except: as may be allowed in the shoreline-specific Critical Areas Regulations under Subsection A 3.5 of Appendix A of this per AMC 19.72 and DR-6.9.1 of the Shoreline Master Program, or minor development to provide public access (e.g., public trails, stairs or view points), provided that impacts are mitigated and the development can be shown to be safe.

D. **All Geologically Hazardous Areas.** The ~~Decision-Maker~~ Director may require additional information deemed necessary to adequately review the proposal.

1. **Site and Construction Plans.** The critical area submittal for geologically hazardous areas must include a copy of the site plans for the proposal, drawn at an engineering scale, showing:
 - a. The type and extent of geological hazard areas, ~~and~~ any other critical areas, and recommended and required buffers on, adjacent to, off site within 200 feet of, or that are likely to impact or be affected by the proposal;
 - b. Proposed development, including the location of existing and proposed structures, fill, clearing limits, significant trees to be removed, vegetation to be removed, proposed material stock pile locations, and stormwater management facilities;
 - c. The topography, in two-foot contours, of the project area and all hazard areas addressed in the report;
 - d. Height of slope, slope gradient, and cross-section of the project area indicating the stratigraphy of the site;
 - e. The location of springs, seeps, or other surface expressions of ground-water on or off site within 200 feet of the project area or that have the potential to affect or be affected by the proposal;
 - f. The location and description of surface water on or off site within 200 feet of the project area or that has the potential to be affected by the proposal.

PART 5: CRITICAL AQUIFER RECHARGE AREAS

19.70.510 Critical Aquifer Recharge Areas – Description and Purpose.

- A. Critical aquifer recharge areas provide the public with clean, safe, and available drinking water and contribute base flows to protect aquatic resources. Once groundwater is contaminated or depleted, it is difficult, costly, and sometimes impossible to clean up or to recharge.
- B. The purpose of this section is to protect critical aquifer recharge areas from degradation or depletion resulting from new and redeveloping land use activities. Due to the potential vulnerability of groundwater underlying certain aquifer recharge areas to contamination and the importance of such groundwater as sources of public water supply, it is the intent of this section to safeguard groundwater resources by mitigating or precluding future discharges of contaminants from new development activities and redevelopment activities.

19.70.515 Critical aquifer recharge areas - Applicability and hazardous materials questionnaire.

- A. **Applicability.** The provisions of this section apply to regulated facilities that are within or adjacent to those portions of the City of Anacortes designated as critical aquifer recharge

areas on the City of Anacortes Critical Areas Map. Regulated activities/facilities are defined as those commercial, industrial and home occupation uses that:

1. Process or handle hazardous materials in regulated quantities; and
2. Treat or store regulated quantities of hazardous materials.

B. Hazardous materials questionnaire required. Applications for development or redevelopment of regulated facilities within the boundaries of critical aquifer recharge areas must be accompanied by a completed hazardous materials questionnaire to determine the regulatory status of the applicant facility. The ~~Decision-maker~~[Decision-maker](#) must review the questionnaire to determine whether the facility is regulated under this chapter. If it is determined that the proposal includes a regulated facility that processes, handles, treats, and/or stores hazardous substances as defined by this chapter, the applicant must submit a critical areas report pursuant to this Chapter.

19.70.520 Critical Aquifer recharge areas – Designation.

A. Critical aquifer recharge areas include:

1. Areas served by groundwater which have been designated as a “Sole Source Aquifer Area” under the Federal Safe Drinking Water Act;
 - a. Areas within a “closed” or “low-flow” stream watershed designated by the Department of Ecology pursuant to RCW 90.22;
 - b. Areas designated as “Wellhead Protection Areas” pursuant to [WAC 246-290](#) and the groundwater contribution area pursuant to [WAC 246-291-125\(3\)\(d\)\(iii\)](#) or otherwise recognized by the ~~Decision-maker~~[Director](#) as needing wellhead protection. Wellhead protection areas include, for the purpose of this regulation, the identified recharge areas associated with:

- i. The 10-year groundwater time-of-travel for all Group A public water supply wells; or
 - i. The 5-year groundwater time-of-travel for all Group B public water supply wells with a wellhead protection plan filed with the Skagit County Health Department; or
 - ii. Plats serviced by five or more individual wells where the average lot size is equal to or less than two acres for which a wellhead protection plan has been completed and filed with the Skagit County Health Department; or
 - iii. The 1,000-foot radius for individual private drinking water supply wells, as identified by map criterion in section 10.70.530.
- B. All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

19.70.525 Critical Aquifer Recharge Areas – Mapping.

- A. The approximate location and extent of critical aquifer recharge areas are shown on the City of Anacortes critical aquifer recharge area data layers maintained in the City of Anacortes geographic information system (GIS). In addition, the following maps and resources providing information on the location and extent of critical aquifer recharge areas are hereby adopted by reference as amended:
1. Areas with soils that have moderate to rapid permeability (>2 inches per hour) as listed in Table 14 of the Soil Survey of Skagit County.
 2. Source for identifying drinking water supply wells identified by Agencies such as Washington Department of Ecology and Skagit County Health Department.
- B. **Reference Only.** The maps and resources cited above are to be used as a guide for the City of Anacortes Planning, Community & Economic Development Department, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

19.70.530 Critical Aquifer Recharge Areas – General Development Standards

- A. Regulated activities/facilities may be permitted in a critical aquifer recharge area only if the applicant can demonstrate that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.
- B. The proposed regulated activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, State Department of Health, and the Skagit County Health Department.

- C. **Storage tank permits.** The City of Anacortes specifically regulates and authorizes permits for underground storage tanks pursuant to the International Fire Code and this chapter. The Washington Department of Ecology also regulates and authorizes permits for underground storage tanks (WAC 173-360). The Anacortes Fire Department regulates and authorizes permits for the removal of underground storage tanks.
- D. Owners and operators of facilities with existing underground storage tanks that are located within a critical aquifer recharge area must comply with all release detection requirements as specified in WAC 173-360.
- E. **Spreading or injection of reclaimed water.** Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the Washington Department of Ecology and Skagit County Health Department.
 - 1. Surface spreading must meet the groundwater recharge criteria given in RCW 90.46.080 and 90.46.010(10).
 - 2. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.
- F. **Prohibited activities and land uses.** The following land uses and activities for new development or redevelopment are prohibited within or adjacent to critical aquifer recharge areas:
 - 1. Landfill activities as defined in WAC 173-304 and WAC 173-351;
 - 2. All underground injection wells as defined in Chapter 173-218 WAC;
 - 3. Disposal of hazardous or dangerous wastes;
 - 4. Mining, including:
 - a. Metals and hard rock mining;
 - b. Sand and gravel mining are prohibited in critical aquifer recharge areas determined to be highly susceptible or vulnerable unless a stormwater quality management plan is approved and followed by the applicant;
 - 5. Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
 - 6. Storage, processing, or disposal of radioactive substances;
 - 7. Dry cleaning establishments using the solvent perchlorethylene; and
 - 8. Other:
 - a. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

- b. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream;
- c. Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers.

19.70.535 Critical Aquifer Recharge Areas – Specific Development Standards for Regulated Facilities

- A. The following mitigation measures, as applicable, are required for development of regulated facilities within a critical aquifer recharge area:
 - 1. Floor drains must not be allowed to drain to the stormwater system and must be designed and installed to meet the Uniform Plumbing Code (UPC) Section 303.
 - 2. If any roof venting carries contaminants, then the portion of the roof draining this area must go through pretreatment pursuant to UPC Section 304(b).
 - 3. All nonresidential vehicle washing must be self-contained or be discharged to a sanitary sewer system, if approved by the sewer utility, and is subject to UPC Sections 708 and 711.
 - 4. Utilize Integrated Pest Management (IPM) practices for pest control and Best Management Practices (BMPs) for the use of fertilizers as described by the Skagit County Local Hazardous Waste Management Program.
 - 5. Facilities installing new underground tanks. All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes must meet the requirements of WAC 173-360 and be designed and constructed so as to:
 - a. Prevent releases due to corrosion or structural failure for the operational life of the tank;
 - b. Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substance; and
 - c. Use material in the construction or lining of the tank which is compatible with the substance to be stored.
 - 6. Aboveground tanks. All new aboveground storage facilities/tanks containing hazardous substances within a critical aquifer recharge area must be constructed, installed, used and maintained to:
 - a. Prevent the release of a hazardous substance to the ground, or groundwater;
 - b. Include an impervious containment area enclosing or underlying the tank or part thereof;
 - c. Include a secondary containment system either built into the tank structure or a dike system built outside the tank. The secondary containment system or dike system must

have a capacity of at least 110 percent of the primary tank and conform to the requirements of UFC Chapter 7902.2.

7. Vehicle repair and servicing.
 - a. Commercial vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
 - b. Dry wells are not allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.
8. Additional protective measures may be required if deemed necessary by the City of Anacortes.
9. State and federal regulations – The uses listed below will be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Statutes, Regulations and Guidance Pertaining to Groundwater Impacting Activities

Activity	Statute – Regulation – Guidance
Above Ground Storage Tanks	Chapter 173-303-640 WAC
Animal Feedlots	Chapter 173-216 WAC , Chapter 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303 WAC
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC
Injection wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC

Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicle Recycler Facilities (WDOE 94—146)
Oil and Gas Drilling	WAC 332-12-450, Chapter 173-218 WAC
Wastewater Facilities	Chapter 173-240 WAC
On-Site Sewage Systems (<3,500 gal/day)	Chapter 246-272A WAC, Local Health Ordinances
Large On-Site Sewage Systems (3,500 to 1000,000 gal/day)	Chapter 246-272B WAC, State Health Ordinances
Pesticide Storage and Use	Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter 332-18 WAC
Wastewater Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture

19.70.540 Critical Aquifer Recharge Areas – Critical area report additional requirements.

- A. Additional Report Contents for CARA's.** In addition to the minimum report contents required per AMC 19.70.125 CARA reports must also include;
- B. Minimum Report Contents.** A critical areas report must include a hydrogeologic assessment including, but not limited to, the following:
1. Information sources;
 2. Geologic and hydrologic setting including available recharge, permeability/transmissivity information;
 3. Available well logs, borings, seeps/springs within 1,000 feet of the project area;
 4. Available water quality information;
 5. Groundwater depth, flow direction and gradient based on available information;
 6. Surface water location and recharge potential;
 7. Water source supply to the site;
 8. Any sampling schedules necessary;
 9. Discussion of the effects of the proposed project on the groundwater resources;

10. Description of potential mitigation measures, should it be determined that the proposed project may have an adverse impact on groundwater resources; and

11. Other information as required by the City.

- C. If the hydrogeologic assessment determines that the facility will have no effect on groundwater resources, the facility is exempt from the development standards requirements in section 19.70.540 of this Chapter.
- D. If the hydrogeologic assessment determines that the facility could have an effect on groundwater resources, the ~~Decision-maker~~ Decision-maker will require implementation of applicable development standards in sections 19.70.540.

PART 6: FREQUENTLY FLOODED AREAS

19.70.610 Frequently Flooded Areas – Description and Purpose.

- A. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property.
- B. It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas caused by flooding, while protecting the functions and values of floodplains, including special consideration for anadromous fish habitat in combination with the provisions for Fish and Wildlife Habitat Conservation Areas in this chapter.

19.70.615 Frequently Flooded Areas – Designation.

- A. Frequently flooded areas include those areas established as special flood hazard areas under AMC 19.74 Floodplain Management, including those areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for the City of Anacortes” dated March 17, 2003, and any revisions thereto, with accompanying flood insurance rate maps (FIRM), and any revisions thereto. The best available information for flood hazard area identification as outlined in AMC 19.74 Use of Other Base Flood Data in A and V zones is the basis for regulation until a new FIRM is issued that incorporates the data utilities under AMC 19.74 Use of Other Base Flood Data in A and V zones.
- B. Tsunami hazard areas are designated as geologically hazardous areas per AMC 19.70.410 and are subject to applicable development regulations outlined in AMC 19.70.430.
- C. Climate change and sea level rise are affecting many coastal communities and some within Puget Sound. Applicants are urged to become familiar with potential impacts of climate change and sea level rise if development is proposed near the marine shoreline or associated low-lying areas.

19.70.620 Frequently Flooded Areas – Mapping.

- A. **Reference Only.** The maps and resources cited above are to be used as a guide for the City of Anacortes Planning, Community & Economic Development Department, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

19.70.625 Frequently flooded areas – General Development Standards

- A. All development proposals must comply with AMC 19.74 Floodplain Management for general and specific flood hazard protection.

- B. Development may not reduce the base flood water storage ability. Construction, grading or other regulated activities that would reduce the flood water storage ability must be mitigated by creating compensatory storage on or off site.
- C. Alteration of Watercourses.
 - 1. Projects that will relocate a watercourse must also submit a request for Conditional Letter of Map Revision, where required by FEMA. The project may not be approved unless FEMA issues the CLOMR (which requires ESA consultation) and the provisions of the letter are made part of the permit requirements.
 - 2. The ~~Decision-maker~~[Decision-maker](#) must notify adjacent communities (if applicable) and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
 - 3. Maintenance must be provided within the altered or relocated portion of said watercourse so that flood carrying capacity is not diminished. If the maintenance program does not call for cutting of native vegetation, the system must be oversized at the time of construction to compensate for said vegetation growth or any other natural factor that may need future maintenance.
- D. Base flood data and flood hazard notes must be shown on the face of any recorded plat or binding site plan, including, but not limited to, base flood elevations, flood protection elevation, boundary of floodplain, and zero rise floodway.
- E. All development must conform to the provisions of the currently adopted International Building Code, including submittal of a critical areas report.

19.70.630 Frequently Flooded Areas – Critical Areas Report Additional Requirements

- A. Additional Report Contents for FFA's. In addition to the minimum report contents required per AMC 19.70.125 FFA reports must also include;
- B. Minimum Report Contents. A critical areas report must include a habitat assessment prepared in accordance with [Regional Guidance for Floodplain Habitat Assessment and Mitigation](#) (FEMA Region X, 2013), or as hereafter amended. The assessment must determine if the project would adversely affect:
 - 1. The primary constituent elements identified when a species is listed as threatened or endangered;
 - 2. Essential fish habitat designated by the National Marine Fisheries Service;
 - 3. Fish and wildlife habitat conservation areas;
 - 4. Vegetation communities and habitat structures;
 - 5. Water quality;

6. Water quantity, including flood and low flow depths, volumes and velocities;
 7. The channel's natural planform pattern and migration processes;
 8. Spawning substrate, if applicable; and/or
 9. Floodplain refugia, if applicable.
- C. If the assessment concludes that the activity is expected to have an adverse effect on water quality and/or aquatic or riparian habitat or habitat functions, the project must be designed in a way to off-set those impacts. Project mitigation will is not be permitted in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region X, 2013.
- D. The following activities do not require completion of a habitat assessment:
1. Repair of existing building in its existing footprint, including damage by fire or other casualties unless the repair constitutes substantial improvement or is necessitated by substantial damage;
 2. Removal of noxious weeds;
 3. Replacement of nonnative vegetation with native vegetation;
 4. Ongoing activities such as lawn and garden maintenance;
 5. Removal of hazard trees;
 6. Normal maintenance of public utilities and facilities;
 7. Restoration or enhancement of floodplains, riparian areas and streams that meets federal and state standards.

DEFINITIONS

“Adjacent” means areas adjacent to critical areas must be considered to be within the jurisdiction of these requirements and regulations to support the intent of this title and ensure protection of the functions and values of critical areas. Adjacent must include lands within a distance equal to the required buffer for the critical area as determined by the provisions of this chapter.

“Anadromous fish” means fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of saltwater and spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life history of salmon, for example, contains the following stages: upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

“Aquifer” means a body of soil or rock that contains sufficient saturated material to conduct groundwater and yield usable quantities of groundwater to wells or springs.

“Averaging” means establishing the required buffer setback from a critical area, within the permitted parcel of land only, so that areas within the parcel determined to be more environmentally sensitive than others will have a larger buffer than the less sensitive areas. For every increase in setback for one area of the parcel, there will be an equal corresponding decrease in another area of the parcel. The total land area within the buffer must remain the same as if the buffer were a uniform width. “Aquifer” means a body of soil or rock that contains sufficient saturated material to conduct groundwater and yield usable quantities of groundwater to wells or springs.

“Base flood” means a flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the “100-year flood”.

“Base flood elevation” means the water surface elevation of the base flood in relation to the North American Vertical Datum of 1988. The Anacortes FIRMs still make reference to the 1929 National Geodetic Vertical Datum (NGVD). While using NAVD is acceptable, please recognize that surveyors and designers will need to convert the datum when preparing plans. FEMA Elevation Certificates require the use of the datum utilized on the FIRMs.

“Best available science” means 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 365-195-900 through 925. Sources of best available science are included in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the Washington State Department of Commerce.

“Best management practices (BMPs), critical areas” means physical or structural tools and/or management practices which, when used singularly or in combination, prevent or reduce adverse impacts to critical areas or their buffers.

“Buffer” is an area contiguous to a critical area that is required to protect the critical area and provide for the continued maintenance, functioning, and/or structural stability of a critical area.

“Critical aquifer recharge areas” are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

“Critical areas” means critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, streams, and wetlands, as defined in this Chapter.

“Development” means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Ditches” are artificial drainage features created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. Purposeful creation from uplands must be demonstrated through documentation, photographs, statements, and/or other evidence in order to be unregulated by this chapter.

“Enhancement” means an action which increases the functions and values of a stream, wetland, or other critical area or buffer.

“Erosion” means the process by which soil particles are mobilized and transported by natural agents such as wind, rain-splash, frost action or surface water flow.

“Erosion hazard areas” are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

“Federal Emergency Management Agency (FEMA) floodway” means the channel of the stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without increasing the base flood elevation more than one foot.

“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. As defined in AMC 19.70.310.

“Floodway, zero rise” means the channel of a stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without any measurable increase in flood height. A measurable increase in base flood height means a calculated upward rise in the base flood elevation, equal to or greater than .01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to development in the floodplain. This definition is broader than that of the FEMA floodway, but always includes the FEMA floodway. The boundaries of the 100-year floodplain, as shown on the Flood Insurance Study for _____, are considered the boundaries of the zero-rise floodway unless otherwise delineated by a critical area study.

“Floodplain” means the total area subject to inundation by the base flood.

“Frequently flooded areas” are lands in the floodplain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater, high tides, with strong winds, sea level rise, and extreme weather events resulting from global climate change. These areas include, but are not limited to streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

“Functions and values” means the beneficial services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation. These beneficial roles are not listed in order of priority.

“Geologically hazardous areas” means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

“Groundwater” means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

“Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by the City of Anacortes.

“Hazard tree” means any tree determined by an International Society of Arboriculture (ISA)-certified arborist to be a hazard to people or property as a result of a risk assessment conducted according to ISA guiding principles.

“In-lieu-fee program” means an agreement between a regulatory agency (state, federal or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the mitigation sponsor collects funds from an individual or a number of individuals who are required to conduct compensatory mitigation required under a wetland regulatory program. The sponsor may use the funds pooled from multiple permittees to create one or a number of sites under the authority of the agreement to satisfy the permittees’ required mitigation.

“Landslide” means an episodic downslope movement of a mass including, but not limited to, soil, rock or snow.

“Landslide hazard areas” are areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

“Mine hazard areas” are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or airshafts, and those areas probable to sink holes, gas releases, or subsidence due to mine workings.

“Mitigation” means the use of any or all of the following actions listed in descending order of preference:

1. Avoiding the impact by not taking a certain action;
2. Minimizing the impact by limiting the degree or magnitude of the action by using appropriate technology or by taking affirmative steps to avoid or reduce the impact;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area or buffer;
4. Reducing or eliminating the impact over time by preserving or maintenance operations during the life of the development proposal;
5. Compensating for the impact by replacing, enhancing or providing substitute critical areas and environments;
6. Monitoring the impact and taking appropriate corrective measures.

“Mitigation” means avoiding, minimizing, or compensating for adverse critical areas impacts, using the sequential order of preference listed in 19.70.130, Mitigation requirements.

“Monitoring” means evaluating the impacts of development proposals on biologic, hydrologic and geologic systems and assessing the performance of required mitigation through the collection and analysis of data for the purpose of understanding and documenting changes in natural ecosystems, functions and features including, but not limited to, gathering baseline data.

“Native Growth Protection Area/ Easement” (NGPA/E) means.....

“Native vegetation” means plant species that occur naturally in a particular region or environment and were present before European colonization.

“Normal Appurtenances” means those structures secondary to a primary use that are common to and do not constitute a special privilege. Examples for residential uses include garages, deck, driveways, utilities, and fences.

“Noxious weed” means any plant which is highly destructive, competitive, or difficult to control by cultural or chemical practices, limited to those plants on the state noxious weed list contained in Chapter [16-750 WAC](#) and those regulated by Skagit County.

Piped stream means.....

“Primary association” means the fundamental link between a species and land or aquatic area where anadromous fish, endangered, threatened or sensitive species breed or feed.

“Prior Notification”

“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 critical areas are not included in this definition.

“Replacement” means.....

“Restoration” means measures taken to restore an altered or damaged natural feature, including: (a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and (b) Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

“Seismic hazard areas” are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

“Shoreline jurisdiction” means.....

“Significant tree” means a deciduous or evergreen tree greater than six inches in diameter at five feet above grade.

“Slope” means an inclined ground surface, the inclination of which is expressed as a ratio or percentage of vertical distance to horizontal distance by the following formula: $\text{Slope} = \frac{\text{vertical distance}}{\text{horizontal distance}} \times 100 = \% \text{ Slope}$

“Special Flood Hazard Area” means the land in the floodplain that is subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

“Species of local importance” are those species that are of local concern designated by the City due to their population status or their sensitivity to habitat manipulation.

“Stream” means an area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

“Unavoidable impacts” means adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

“Volcanic hazard areas” include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding from volcanic activity.

“Wetland” or “wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 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. Wetlands include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands.

“Wetland Mitigation Bank” means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources that typically are unknown at the time of certification to compensate for future, permitted impacts to similar resources.

“Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.

Chapter 19.20

APPLICATION PROCEDURES

Sections:

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19.20.010 Policy.

This chapter establishes standard procedures for review of development permit applications and appeals. These procedures are designed to promote timely and informed public participation, eliminate redundancy in the process, minimize delay and expense, and result in approvals that further the goals and policies of the Anacortes comprehensive plan. These procedures are intended to be consistent with the provisions of Chapter [36.70B](#) RCW and integrate the land use permit process with the environmental review process. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016)

19.20.020 Applicability.

A. This chapter applies to all applications and all development permits issued per AMC Titles [16](#), [17](#), and this title.

B. *Exemptions.* Consistent with RCW [36.70B.140](#), the following permits are exempt from the procedural requirements of this chapter:

1. Sidewalk use permits.
2. Development agreements.
3. Final approval of short subdivisions and subdivisions.
4. Landmark designations and street vacations. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016)

19.20.030 Types of review.

A. Decisions on applications are governed by several types of review processes, described and distinguished in this section. The types of review are generally organized in ascending order of significance, amount of public process, and level of discretion exercised by the decision-maker.

B. The Director must determine the proper review type for all permit applications. If there is a question as to the required type of process, the Director must resolve it in favor of the higher type number. A Type 3-PC review is considered a higher level than a Type 3-HE review.

C. Table 19.20.030-1 identifies the types of review for all applications, and describes the process for each type of review.

1. The types of applications that are subject to each type of review are listed in the column immediately beneath the heading for each type.
2. The processes required for each type of review are further described by the remainder of the column beneath the heading for each type.
3. The remainder of this chapter describes the required processes for each type of review.

Table 19.20.030-1

Review classification and process matrix.

Types of Review	Type 1 Administrative Ministerial Actions	Type 2 Administrative Decisions	Type 3-HE Hearing Examiner Decisions	Type 3-PC Planning Commission Decisions	Type 4 City Council Decisions
Types of Applications	• Accessory dwelling units • Assessment of impact fees per AMC Chapter 3.93 • Boundary line adjustments • Building, mechanical, and plumbing permits • Clearing and grading permits • Extension of time for approval • Fence permits • Minor permit revisions • Shoreline exemptions • Sign permits • Site plan review, less than 10 dwelling units, less than 12,000 sq. ft. of nonresidential gross floor area, or less than 20,000 sq. ft. of nonresidential site improvements • Critical Area Letter of Exemption	• Administrative conditional use permits, including home occupation permits • Binding site plans, less than 10 lots • Level 1 variances • Preliminary short subdivisions • SEPA threshold determinations • Site plan review, 10 or more dwelling units, 12,000 sq. ft. or more of nonresidential gross floor area, or 20,000 sq. ft. or more of nonresidential site improvements • Stormwater Management Manual exceptions • Critical Area Permit - Permitted Alteration	• Level 2 variances • Zone boundary determination • Critical Area Variance – Reasonable Use	• Shoreline conditional use and variance permits • Shoreline substantial development permits (SSDP) for projects valued less than \$1,000,000 on site less than three acres • Special/conditional use and reasonable use permits per AMC Chapter 17.70	• Binding site plans, 10 or more lots • Conditional use permits, except administrative CUPs • Essential public facilities, Types 1 and 2 • Framework development plans • Preliminary long subdivisions • Site-specific rezones authorized by the comprehensive plan • Shoreline substantial development permits (SSDP) for projects valued at \$1,000,000 or more or on site of three acres or more
Pre-Application Conference	At discretion of Director	At discretion of Director	Yes	Yes	Yes
Pre-Application Neighborhood Meeting	No	No, except may be required for short subdivisions, binding site plans, and site plan review at	Yes	Yes	Yes

Types of Review	Type 1 Administrative Ministerial Actions	Type 2 Administrative Decisions	Type 3-HE Hearing Examiner Decisions	Type 3-PC Planning Commission Decisions	Type 4 City Council Decisions
		discretion of Director			
Notice of Application	No	Yes	Yes	Yes	Yes
Comment Period	None	14 days	21 days	21 days (30 for shoreline permits)	21 days (30 for shoreline permits)
Recommendation By	None	None	Director	Director	Planning Commission
Pre-Decision Open Record Public Hearing	No	No	Yes, before Hearing Examiner	Yes, before Planning Commission	Yes, before Planning Commission
Closed Record Decision Hearing	No	No	No	No	Yes, before City Council
Decision By	Director	Director	Hearing Examiner	Planning Commission	City Council
Notice of Decision	No	Yes	Yes	Yes	Yes
Local Appeal Available To	Hearing Examiner	Hearing Examiner	City Council	City Council	None
Appeal Hearing Type	Open record	Open record	Closed record	Closed record	N/A

(Ord. 3040 § 2 (Att. A), 2019; Ord. 3022 § 5 (Att. A), 2018; Ord. 3017 § 1 (Att. A), 2018; Ord. 2992 § 1 (Att. A), 2016)

19.20.040 Consolidated review.

A. *Optional Consolidated Application Processing.* All projects that involve two or more application processes may, at the applicant's written request, be processed collectively under the highest numbered type procedure required for any part of the application or may be processed individually under each of the review procedures. If the application is processed under the individual procedures option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure.

B. *Integration of Environmental Review.* An application for a development permit that is subject to the State Environmental Policy Act (SEPA) must be reviewed per AMC Chapter [18.04](#), State Environmental Policy Act, concurrently with review of the development permit application except where exempted by that chapter.

C. Per RCW [36.70B.050](#), review of an application is allowed only one open record hearing and one closed record appeal hearing.

D. The appeal of a SEPA procedural determination is not subject to this section. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016)

19.20.050 Eligibility for permits.

A. All development permits require a lot of record as described in AMC [19.20.060](#).

B. The Department may not issue any development permit for a lot created through a division, conveyance, or segregation that was illegal or contrary to city subdivision laws or Chapter [58.17](#) RCW. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016)

19.20.060 Lots of record.

A. In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this title, a single-family dwelling and customary accessory buildings may be erected on any single substandard lot of record at the effective date of adoption of the 1978 zoning ordinance. Such lot must have been in separate ownership and not of continuous frontage with other lots in the same ownership continuously since April 19, 1978. This provision applies even when such lot fails to meet the requirements for area or width, or both, that are generally applicable in the zone; provided, that setback dimensions and other requirements not involving area or width, or both, of the lot conform to the current regulations for the zone in which such lot is located.

B. If two or more contiguous substandard lots, or combination of contiguous substandard lots and portions of lots, were in single ownership of record as of April 19, 1978, or at any time since that date, they must be aggregated and considered a single parcel for purposes of meeting current area and dimensional standards for lots in the zone in which they are located. If all such contiguous land under single ownership still constitutes a substandard lot once aggregated, a single-family dwelling and customary accessory buildings may be erected thereon (or other uses generally permitted in the zone), provided setback, lot coverage, and other requirements are met. No portion of land or lots thus aggregated may be used or sold in a manner which creates or leaves remaining a substandard lot.

C. Any residential lot or lots, which were used as residential prior to April 19, 1978, and have been in continual residential use since April 19, 1978, in a zone that is now zoned light manufacturing must be considered a conforming, permitted residential use within the nonresidential designation. Other requirements of the nonresidential designation, such as lot size, setbacks, density, land coverage, building height, and parking, apply to such residential lots. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016)

19.20.070 Vesting.

A. An application for a building permit or land division vests at the time a complete application is filed with the Department and all application fees are paid, consistent with RCW [19.27.095\(1\)](#) and [58.17.033\(1\)](#).

Applications for site plans do not vest at the time a complete application is filed.

1. An application is complete on the date a complete application is filed, as subsequently determined in the letter of completeness.
2. An application vested under this section is not subject to laws or regulations that become effective after the date of vesting, except as provided below.

B. This section may not be construed to restrict the city from imposing conditions on development permits pursuant to the State Environmental Policy Act, Chapter [43.21C](#) RCW, or Chapter [197-11](#) WAC, as long as such conditions do not change any of the requirements of the underlying code section pertinent to the particular development permit.

C. This section may not be construed to prevent the city from imposing new regulations necessary to protect the public health and safety, including, but not limited to, the requirements of the building, health, and fire codes, as now adopted or as subsequently amended. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016)

19.20.080 Requirement for public notices.

A. *Applicability.* This section applies whenever one of the following is required by this chapter:

1. Notice of application.
2. Notice of public hearing.
3. Notice of decision, including any revised notice of decision.

B. *Distribution.* The Department must timely distribute the notice by:

1. Publication in the city's official newspaper.
2. Electronic mail or first class mail to:
 - a. The applicant.
 - b. Any appellant.
 - c. Any parties of record.
 - d. Any person who, prior to rendering the decision, has requested a copy of the notice of decision.

e. Any agencies with jurisdiction over the application or any agencies that commented on the application.

f. Washington State Department of Transportation, if the project is located adjacent to the right-of-way of a state highway.

g. Skagit County, if the project is located adjacent to a city boundary.

3. For a notice of application, via first class mail to owners of property within 300 feet of the subject property.

4. For a notice of decision, to the county assessor.

5. Posting on at least two notice boards on or near the subject property, and on the notice board at City Hall and the public library. The Director may establish standards for size, color, layout, design, wording, and placement of the signs and notice boards.

C. *Errors.* Errors in precise compliance with the rules contained in this section do not require repeating the public notice if the notice was reasonable and adequate. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.090)

19.20.090 Pre-application conference.

A. *Purpose.* The pre-application conference is intended to:

1. Provide the city and other agency staff with information about the proposed development.
2. Enable staff to advise the applicant of applicable approvals and requirements.
3. Acquaint the applicant with the applicable requirements of the AMC and other laws.
4. Identify issues and concerns in advance of a formal application.

B. *When Required.*

1. *Generally.* A pre-application conference is required when shown in AMC [19.20.030](#).
2. *Exception.* The Director may waive the pre-application conference if the proposal has few development-related issues, involves subsequent phases of an approved development, or is substantially similar to a prior proposal affecting substantially the same property.

C. To schedule a pre-application conference, the applicant must submit a request on forms provided by the Department and pay any applicable fees.

D. The advice the city provides at pre-application meetings is not binding upon the city and does not prevent the city from enforcing all applicable regulations. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.110)

19.20.100 Pre-application neighborhood meeting.

A. *Purpose.* The purpose of the neighborhood meeting is to:

1. Inform citizens about the potential project at an early stage.
2. Foster communication between the applicant and the public regarding potential issues and opportunities for solutions related to the project.

B. *When Required.*

1. A pre-application neighborhood meeting is required when shown in AMC [19.20.030](#).
2. The applicant must hold a neighborhood meeting before submitting an application and after any required pre-application conference.
3. The Director may require the applicant to hold another neighborhood meeting if the applicant's plans change significantly from those described at the neighborhood meeting.

C. *Meeting.*

1. The meeting must be held in a public meeting place, such as the public library meeting room, Depot Arts Center, or City Hall or similar room as approved by the Director.
2. The meeting may be facilitated by a third-party facilitator approved by the Director.
3. The meeting must be held Tuesday, Wednesday, or Thursday at six or seven p.m. and may not overlap with any other city meeting or city holiday.

D. *Notices.*

1. The Director may provide standard notice formats and guidelines for conducting the meeting.
2. The notice must include:
 - a. A brief description of the project;
 - b. Date, time, and location of the neighborhood meeting;
 - c. Name and phone number of the applicant or their representative.

3. The notice must be mailed at least 10 days prior to the meeting to all of the following:
 - a. The Department.
 - b. The list of property owners that must receive the notice of application.
 4. The notice must be published in the local newspaper at least 10 days prior to the meeting.
 5. The applicant must also post the notice on the project site at least 10 days prior to the meeting.
- E. The applicant is responsible for all fees and costs associated with the pre-application neighborhood meeting. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.120)

19.20.110 Application—Contents and completeness—Revisions.

A. *Contents of Applications.*

1. *Application Requirements.*
 - a. Applications must be submitted on forms provided by the Department.
 - b. Applications must be signed by the owners of the property subject to the application, or include the owner's notarized authorization for the applicant to submit the application.
 - c. Applications must include fees, as calculated by the Director following the adopted fee schedule.
 - d. Applications must include all the information specified in any applicable code section as well as the application checklist provided by the Department.
2. The applicant must apply for all permits identified in the pre-application meeting and required by law.

B. *Complete Applications.*

1. A permit application is complete for the purposes of this section when it meets the requirements of subsection [A](#) of this section.
2. When the Director makes a determination on completeness of an application, the Director must provide to the applicant either:
 - a. A written determination that the application is complete; or
 - b. A written determination that the application is incomplete, a request for information necessary to make the application complete, and a notice that the requested information must be submitted within 90 days.

3. A determination of completeness is not required if the Director issues the permit prior to the deadlines in subsection [C](#) of this section.
4. A determination of completeness does not preclude the Director from requesting additional information or studies either at the time of the determination of completeness or later, if the information is required to complete review of the application or substantial changes in the permit application are proposed.

C. *Timing.*

1. *Initial Receipt of Application.* Upon initial receipt of an application, the Director must provide the applicant a determination of completeness within 28 days. If the Director does not provide a written determination within 28 days, the application is deemed complete at the end of the twenty-eighth day.
2. *Receipt of Additional Information.* When the applicant submits the requested information, the Director must evaluate the application for completeness within 14 days. If the Director does not provide a written determination within 14 days, the application is deemed complete at the end of the fourteenth day.
3. *Incomplete Applications.*
 - a. The applicant may submit a written request for extension of the deadline to submit the requested information for an additional 90 days. The Director may grant up to two such extensions.
 - b. If the applicant has not provided the requested information by the deadline, the Director must reject and return the application along with any unspent application fees.

D. *Revisions to Applications.*

1. The applicant may make minor revisions to the application after the determination of completeness and before the closure of an open public hearing.
2. A “minor revision” to an application is one that does not:
 - a. Involve more than a 10 percent increase in area or intensity of the use.
 - b. Increase the number of lots, dwelling units, or density.
 - c. Decrease the quality or amount of open space.
 - d. Result in any significant environmental impact not adequately reviewed or mitigated by previous documents.
 - e. Expand onto property not included in the original proposal.
3. Any revision other than a minor revision requires a new application. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.130)

19.20.120 Application—Notice.

- A. *When Required.* A notice of application is required when shown in AMC [19.20.030](#), Types of review.
- B. *Contents.* The notice of application must include all of the following:
1. The application number.
 2. The name of the applicant.
 3. The date of application, the date of the notice of completion for the application, and the date of the notice of application.
 4. Identification of the location of the project, by address if available.
 5. A description of the proposed application, a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW [36.70B.070](#).
 6. The identification of other permits not included in the application, to the extent known by the city.
 7. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed.
 8. A statement of the public comment period, which lasts the number of days specified for the application type in AMC [19.20.030](#), Types of review; except all shoreline permits subject to the comment period as outlined in WAC [173-27-110\(2\)\(e\)](#), which allows for a 30-day comment period.
 9. A statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights.
 10. The date, time, place and type of hearing, if applicable, and scheduled at the date of notice of the application.
 11. A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and consistency.
 12. If the city is using the optional DNS process (WAC [197-11-355](#)), additional information will be added to the notice as required by WAC [197-11-355\(2\)](#).
 13. Any other information determined necessary by the city, such as the city's likely threshold determination, if complete at the time of issuance of the notice of application.
- C. *Timing.*

1. The Department must distribute a notice of application within 14 days of determination that an application is complete and at least 15 days prior to any open record hearing.
2. Within seven days after the end of the public comment period, the Department must transmit to the applicant a copy of public comments timely received in response to the notice of application, together with a statement that the applicant may submit a written response to these comments within seven days from the date the comments are transmitted. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.140)

19.20.130 Application—Department review.

A. The Department has a duty to review each application for compliance with applicable city codes and to deny, or recommend denial of, or approve, or recommend approval of, an application based on its compliance with applicable city codes.

B. If the Department is required to provide a recommendation to the decision-maker or body making a recommendation on an application, the Department's recommendation must include all of the following:

1. The date of determination of completeness.
2. Identification of city codes relevant to evaluation of the application.
3. A statement of facts necessary for the decision-maker to evaluate the application's compliance with applicable city codes.
4. The Department's evaluation of whether the application complies with applicable city codes.
5. A description of the public process the application is subject to.
6. A description of any environmental review related to the application.
7. Draft findings of fact for the decision-maker.
8. Any other information that is necessary to make a decision regarding the application.

C. *Requirement to Consider Comments.*

1. In making its recommendation or decision, the Department must consider written comments, and applicant's responses, that are timely received.
2. Except for a determination of significance, the Department may not issue its SEPA threshold determination or issue a decision or recommendation on the application until the expiration of the public comment period on the notice of application. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.150)

19.20.140 Public hearings and meetings.

A. All hearings and meetings conducted as part of processing a permit application must be conducted consistent with this section.

Table 19.20.140

Types of hearings and meetings.

	Open Record Pre-decision	Closed Record Decision	Open Record Appeal	Closed Record Appeal
Participation	Any interested party	Applicant and any party of record	The applicant, any appellant, and any party of record	The applicant, any appellant
Facts allowed outside the record	Yes	No	Yes	No
Standard of review	Compliance with AMC Titles 16 , 17 , 18 , 19	De novo	Clearly erroneous	Clearly erroneous
Burden of proof	Applicant	Applicant	Appellant	Appellant

B. *Swearing-In Required.* Before testifying, any witness, including city staff, must be required to declare that he or she will testify truthfully, by oath or affirmation.

C. *Continuations.* If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a specified date and no further notice under this section is required. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.160)

19.20.150 Public hearing—Notice.

A. *When Required.* A notice of public hearing is required for any public hearing held on a permit application pursuant to this chapter.

B. *Contents.* The public notice must include all of the following:

1. The application number.
2. Project summary/description of each project permit application.
3. The designation of the hearing body.

4. The date, time, and place of the hearing and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the hearing body.
5. General project location, vicinity, address, and parcel number(s), if applicable.
6. The name of the applicant or applicant's authorized representative and the name, address and telephone number of a contact person for the applicant, if any.
7. The SEPA threshold determination, or description thereof, will be contained in the notice, along with any appropriate statement regarding any shared or divided lead agency status and phased review and stating the end of any final comment period.
8. A statement regarding the appeal process.
9. The date when the staff report will be available and the place and times where it can be reviewed.

C. *Timing.* The Department must distribute, including by publishing in the city's official newspaper, a notice of public hearing at least 15 days prior to the date of public hearing. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.170)

19.20.160 Decision—Timing.

A. *Time Limits.*

1. The decision-maker may not issue its decision on an application until the expiration of the public comment period on the notice of application.
2. The final decision on an application for a development permit must be made within the time limits from determination of completeness listed in Table 19.20.160.

Table 19.20.160

Decision timing.

Type of Application	Time Limit
Preliminary subdivisions and binding site plans (RCW 58.17.140)	90 days
Final subdivisions (RCW 58.17.140)	30 days
All other development permits (RCW 36.70B.080)	120 days

3. The following time periods are excluded from the calculation of the time limits:
 - a. Any time required to correct plans, perform studies, or provide additional information.

- b. Any time during which substantial project revisions are made or requested by an applicant, in which case the 120 days will be calculated from the time that the city determines the revised application to be complete.
- c. Any time required for the preparation and review of an environmental impact statement.
- d. Any time required to complete the process for the siting of an essential public facility.
- e. Any time required to obtain any necessary variance.
- f. Any time required for any administrative appeals.
- g. Any time required for any administrative appeal of SEPA threshold determination, if applicable.
- h. Any time required for any remand to the hearing body.
- i. Any extension of time mutually agreed upon by the city and the applicant.
- j. Any specific amount of additional time that the city determines is necessary for the processing of a specific complete project permit application.

4. *Extension of Time.* If the city is unable to issue its final decision on an application within the time limits provided for in this section, it must provide written notice to the applicant. The notice must include a statement of the reasons why the time limits cannot be met and an estimated date for issuance of the notice of decision.

B. *Effective Date.* The decision is effective on the date stated in the decision, resolution, or ordinance. The date from which appeal periods may be calculated is the date of issuance of the decision. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.180)

19.20.170 Decision—Notice.

A. *When Required.* When a final decision is made that requires a notice of decision per AMC [19.20.030](#) or a decision is made on appeal, the Department must issue a notice of decision.

B. *Contents.* The notice of decision must include all of the following:

1. The application number.
2. The name of the applicant.
3. The name of the project.
4. The street address of the project site.

5. A description of the application.
6. The date of final decision on the application.
7. The date the notice of decision was issued.
8. The decision on the application.
9. Any threshold determination made pursuant to Chapter [43.21C](#) RCW.
10. A notice that affected property owners may request a change in valuation from the county assessor for property tax purposes notwithstanding any program of revaluation.
11. The procedure for appeal and the deadline for filing an appeal. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.190)

19.20.180 Appeals.

A. *Standing*. The following parties have standing to appeal final decisions:

1. The Director.
2. The applicant.
3. Any owner of the property subject to the application.
4. Any party of record.

B. *Necessary Parties*. The following are parties to any appeal:

1. The Director.
2. The applicant.
3. Any owner of the property subject to the application.

C. *Permissive Joinder*. The hearing body may add a party with standing to the appeal, after the appeal deadline has passed, upon the request of the party.

D. *Time to File*. An appeal is timely only if it is:

1. Filed with the City Clerk within 14 calendar days after written notice of the decision is mailed; and
2. Accompanied by the required appeal fee.

E. *Method of Service.* Appeals must be delivered to the City Clerk by mail or personal delivery before five p.m. on the last business day of the appeal period. Appeals received by mail after five p.m. on the last day of the appeal period will not be accepted, regardless of when such appeals were mailed or postmarked.

F. *Contents.* Appeals must be submitted on forms provided by the Department and contain the following:

1. Appellant's name, address, and phone number.
2. A description of the appellant's standing to appeal.
3. Identification of the application or decision that is the subject of the appeal.
4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based, with specific references to the facts in the record.
5. The specific relief sought.
6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature or the signature of the appellant's agent, provided such agent's authorization is in writing and accompanies the appeal.

G. *Automatic Stay.* Except for administrative appeals of SEPA threshold determinations, the timely filing of an appeal will stay the decision until such time as the appeal is concluded or withdrawn.

H. *Procedures.* The appellate body may provide in its procedures for a decision on the appeal after a hearing where the parties present argument, or new evidence when allowed by this chapter; or after the parties submit written arguments.

I. *Decision on Appeal.* The appellate body must issue a written decision on the appeal supported by written findings and conclusions, and the Department must distribute a revised notice of decision incorporating the decision on appeal. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.210)

19.20.190 Remand.

A. In the event that the appellate body determines that the public hearing record is insufficient or otherwise flawed, the appellate body may remand the matter back to the original decision-maker to correct the deficiencies.

1. The appellate body must specify the items or issues to be considered and the time frame for the additional work.
2. The original public hearing may be reopened if necessary for the limited purpose of addressing specific questions articulated by the appellate body.

3. Only the parties of record to the open record hearing or, in the case of an appeal, the parties to the appeal may participate in the remand.

B. The original decision-maker must affirm, modify, or reverse its original action based on the revised public record. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.220)

19.20.200 Reconsideration.

A. A party to the underlying decision may seek reconsideration only of a final decision by filing a written request alleging specific errors on a form provided by the Department within 10 days of the date of decision.

B. The decision-maker must consider the request without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

1. If the request is denied, the previous action will become final.

2. If the request is granted, the decision-maker may revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. If the decision is revised and the decision requires a notice of decision, the Department must distribute the revised notice. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.230)

19.20.210 Exhaustion of administrative remedies.

A. No further administrative appeals are available when the final appeal shown in AMC [19.20.030](#) has been heard.

B. A request for reconsideration is not required to exhaust administrative remedies. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.240)

19.20.220 Departures.

A. *Overview and Purpose.* This title provides for a number of specific departure opportunities to development standards. The purpose is to provide applicants with the option of proposing alternative design treatments, provided such departures meet the purpose of the particular standard and any additional departure criteria established for the particular departure opportunity.

B. *Departures Are Voluntary.* This provision allows the flexibility for applicants to propose alternative designs on a voluntary basis, provided they meet the purpose of the standard and applicable departure criteria as noted above.

C. *Applicability.* Departure opportunities are available only where noted for specific standards.

D. *Procedures.* Permit applications that include departure requests go through the standard review procedures in this chapter, depending on the application type.

E. *Approval Criteria.* Project applicants must successfully demonstrate to the decision-maker how the proposed departure meets the purpose(s) of the standard and other applicable departure criteria that apply to the specific standard.

F. *Documentation.* The decision-maker must document the reasons for approving all departures (to be maintained with project application records) for the purpose of providing consistency in decision-making by the city. The Department must provide a report on departures, which include departure applications and decisions, at a minimum interval of every two years. (Ord. 3040 § 2 (Att. A), 2019)

19.20.230 Framework development plans.

A. *Purpose and Applicability.* Framework development plans apply to proposals for any of the following:

1. Establishing block frontage designations as established in AMC [19.61.180](#).
2. Obtaining preliminary approval for a large or phased development proposal that depicts its major development and design parameters (i.e., major circulation and infrastructure systems, open spaces, block frontage designations, allocation of categories of land uses and development intensities among portions of the development site, and phasing of development over time).
3. Adjusting the list of permitted uses in the MMU zone east of Q Avenue, as provided in the following sections:
 - a. Townhomes: AMC [19.43.010\(G\)\(3\)\(c\)](#).
 - b. Multifamily: AMC [19.43.010\(H\)\(3\)\(b\)](#).
 - c. Assisted living facility: AMC [19.43.020\(C\)\(3\)](#).

B. *Procedures.* Framework development plan applications are subject to review procedures as established in this chapter. A framework development plan may be submitted and reviewed concurrently with other applications.

C. *Application Requirements.* An application must be submitted on forms provided by the Department and must demonstrate compliance with the approval criteria described in this section.

D. *Changes to Approved Framework Development Plan.* Subsequent development applications may incorporate minor changes to locations of circulation routes, provided they meet the purposes of the plan, the Anacortes comprehensive plan, and applicable code sections. This also means that the changes would not significantly alter the development's general function, form, intensity, character, demand on public facilities, and impact on adjacent properties.

E. *Review Criteria.*

1. Plans must meet the goals and policies of the Anacortes comprehensive plan.
2. Plans must meet the purposes and standards in AMC [19.61.180](#).
3. Proposed layouts and circulation routes are consistent with the purposes and standards of AMC [19.54.020](#) (Block design and connectivity standards), AMC [19.62.050](#) (Internal pedestrian access and design), and AMC [19.62.060](#) (Vehicular circulation and parking).

F. *Conditions Authorized.* In approving a framework development plan, the decision-maker may impose, in addition to regulations and standards expressly specified in this code, other conditions necessary to ensure compatibility with the review criteria associated with the specific proposal(s). These conditions must be associated with the specific land use, site planning, or building design element proposed to be altered through the framework development plan. These conditions may include, but are not limited to:

1. Placing restrictions on permitted uses.
2. Integrating design parameters on circulation and streetscape design elements.
3. Integrating supplemental building massing standards.
4. Integrating supplemental screening and landscaping standards.

G. *Recording.* The framework development plan must be recorded with the Skagit County Auditor's office prior to the issuance of a building permit for any development on the site. The recorded framework development plan must be a covenant running with the land and shall be binding on the assigns, heirs and successors of the applicant. The framework development plan must be in a form approved by the Director and the City Attorney.

H. *Expiration.* The decision-maker must develop an appropriate expiration date for an approved framework development plan. (Ord. 3040 § 2 (Att. A), 2019)

The Anacortes Municipal Code is current through Ordinance 3090, passed June 9, 2021.

Disclaimer: The city attorney's office has the official version of the Anacortes Municipal Code. Users should contact the city attorney's office for ordinances passed subsequent to the ordinance cited here.

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Chapter 19.78

CLEARING AND GRADING

Sections:

- 19.78.010 Policy.
- 19.78.020 Applicability.
- 19.78.030 Application requirements.
- 19.78.040 Development standards.
- 19.78.050 Subdivision prohibited after clearing.

19.78.010 Policy.

These regulations are adopted for the following purposes:

- A. To promote the public health, safety, and general welfare of the citizens of the city;
- B. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;
- C. To promote building and site planning practices that are consistent with the city's natural topographical and vegetation features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;
- D. To minimize surface water and groundwater runoff and diversion, to reduce siltation of lakes and streams and to deter erosion due to removal of trees and ground cover and reduce the risk of slides;
- E. To minimize the need for additional storm drainage facilities;
- F. To retain clusters of trees for the abatement of noise and wind protection;
- G. To ensure prompt development, restoration, and replanting, and effective erosion control of property after land clearing;
- H. To implement the goals and objectives of the State Environmental Policy Act. (Ord. 2991 § 1 (Att. A), 2016)

19.78.020 Applicability.

- A. This chapter applies to all clearing, grubbing, and grading.
- B. *Exemptions.* This chapter does not apply to the following actions, unless in the vicinity of a Critical Area:
1. The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the city or its contractors;
 2. Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;
 3. Removal of dead or diseased trees or ground cover;
 4. Removal of six thousand square feet or less of trees or groundcover on a lot that contains an existing permitted building and is capable of being divided into two or more lots, for purposes of general property and utility maintenance or landscaping except that:
 - a. Any land clearing that includes the use of a bulldozer or similar mechanical earthmoving equipment is not exempt; and
 - b. Land clearing for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities or buildings is not exempt. (Ord. 2991 § 1 (Att. A), 2016)
 5. Clearing, grubbing, and grading activities described herein including any level of vegetation or ground disturbing action within a Critical Area or Buffer is subject to AMC Chapter 19.20 Critical Area Regulations. If a proposed activity is Exempt from Critical Area permit requirements, the Director has the discretion to require a Clearing and Grading permit even if the proposed activity is exempted in this section.

19.78.030 Application requirements.

- A. All activity to which this chapter applies requires an application and permit consistent with this chapter. A separate permit is not required if an application has been approved for a building permit, preliminary plat, or a final planned unit development.
- B. Applications must be on forms provided by the department and must include:
1. A site plan showing location, type, and size of existing significant trees and native vegetation; designation of clearing limits; and other requirements identified by the director;

2. If excavated material is to be wasted off-site, a description of the location and the route to the disposal site;
3. Demonstration of compliance with AMC Chapter [19.76](#), Stormwater Management;
4. A construction site sediment transport potential worksheet which will guide city staff on the need for a site inspection prior to permit issuance. (Ord. 2991 § 1 (Att. A), 2016)

19.78.040 Development standards.

A. All activity to which this chapter applies must comply, and the director may condition a permit issued per this chapter to ensure compliance, with all of the following:

1. AMC Chapter [17.70](#), Critical Areas Regulations;
2. AMC Chapter [18.04](#), State Environmental Policy Act;
3. AMC Chapter [19.76](#), Stormwater;
4. The Anacortes Shoreline Master Program;
5. The International Building Code provisions for “Excavation and Grading.”

B. *Performance Bond.* The director may require, as a condition to the granting of a permit, that the applicant furnish a performance bond to the city to secure the applicant’s obligation, after the approved land clearing has been accomplished, to complete the restoration and replanting of the property in accordance with the terms of the permit. The bond may be in an amount equal to two hundred percent of the estimated cost of such restoration and replanting and with surety and conditions satisfactory to the director.

C. When grading a site, whether a single lot or a larger tract, the owner of the site being graded must protect adjacent property from the effects of the grading. If a cut or excavation is made near a property line, it must be supported by a retaining wall, or sloped or terraced away from the property line sufficiently to prevent the adjacent property from sliding toward the cut. If fill such as soil, gravel, rock, or other material is placed near a property line, it must be supported by a retaining wall, or sloped or terraced away from the property line sufficiently to prevent the fill material from sliding onto the adjacent property.

D. The director may require cuts, fill, and retaining walls to be designed by a licensed structural engineer, due to slope steepness, soil types, geological stability, or other factors.

E. If there are structures on the adjacent property at the time a cut is made, or if a building permit has been issued to build such structures, the effect of the weight of these structures must be taken into account when determining the support required for the cut, in order to avoid undermining or damaging the structures. If a structure is built after a permit for cut or fill has been issued, the structure must be designed so that it does not

create additional stresses on a properly designed cut or fill or retaining wall which would be likely to cause it to fail, based on standard structural engineering principles. (Ord. 2991 § 1 (Att. A), 2016)

19.78.050 Subdivision prohibited after clearing.

No land division for a property may be approved within five years after clearing. (Ord. 2991 § 1 (Att. A), 2016)

The Anacortes Municipal Code is current through Ordinance 3090, passed June 9, 2021.

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Critical Areas Regulations Update

Summary Draft 3 Additional Public Comment – Addition of Multimodal

Updated 07/14/2021

Below is a brief summary of public comments received up until July 14, 2021, and staff responses. Complete written public comment letters can be viewed [here](https://www.anacorteswa.gov/DocumentCenter/Index/1267) (<https://www.anacorteswa.gov/DocumentCenter/Index/1267>) or linked in each comment; and should be consulted for full details and context.

Since comment was solicited ONLY for the change to the wording of telecommunications and natural gas lines, and the addition of multimodal transportation corridors, staff has highlighted and responded to only sections of comments relevant to the solicitation.

Issue / Key Words	Comments summary	Draft 3 reference	Staff Comments
General Comments not associated with a specific section			
Public Services	Comment is concerned there is no definition of multimodal and offers some.	Table 19.70.045 Public Roads and Utilities	Noted, wording was only changed to be more inclusive and clean and does not propose to add new uses except for multimodal transportation corridors. We will add a definition.
Public Services	Comment wants the provision to make reference to making sure native conditions and ecological benefits are the focus and prohibit unintended decline from heavy use as is currently evident with the TTP. Also thinks the CAO should be better align with the Comp Plan and WAC 365-196-800.	Table 19.70.045 Public Roads and Utilities	Noted, this is all good perspective, thank you for your comment. These trails are also within shoreline jurisdiction which the SMP integrates the restoration aspect.
Public Services	The commenter is concerned with the lack of clarification of multimodal, and believes it should be limited to pedestrians.	Table 19.70.045 Public Roads and Utilities	Thank you for your feedback, your comment is noted.
Public Services	The comment is in full favor of reduction reliance on and use of roads and increasing more friendly and less consumptive forms of transportation such as walking and bicycling but does not support the proposed change to include multimodal in the critical area provision.	Table 19.70.045 Public Roads and Utilities	Noted, thank you for your comment. Adding multimodal in this provision is what will require these types of projects to meet critical area standards of avoidance, minimization, and restoration.
Public Services	The commenter in general does not support development in critical areas or regulations that create exceptions, but provides suggestions to improve the language and functionality of the proposed change.	Table 19.70.045 Public Roads and Utilities	Noted, thank you for your comment, staff supports integrating many of these suggested improvements to the proposed section.

From: [Shawn Bell](#)
To: [Cooper, Tess](#)
Subject: Comment for "proposal; pg 18 in CAO 3.2 draft"
Date: Wednesday, July 14, 2021 3:49:18 PM
Attachments: [CAOdraft 3.2 pg. 18.docx](#)

Tess Cooper, Senior Planner
Planning, Community & Economic Development Dept.
City of Anacortes - PO Box 547 – 904 6th St. – Anacortes, WA 98221

Hello please find the attached Word document for the Critical Areas Ordinance draft proposal listed in the subject line.

Shawn Bell
1511 38th Street Anacortes WA 98221

July 14, 2021

In regards to “proposal; pg 18 in CAO 3.2 draft” comment period ending July 14, 2021.

To Whom It May Concern

As a concerned citizen of Anacortes I would like to offer my opinion about the Critical Area Ordinance exceptions that are on the table for discussion “pg 18 in CAO 3.2 draft”. You are attempting to address the services that are provided to the public that might need to pass through critical areas. Including, but not limiting, government supplied services such as water, sewer, stormwater management seems wise, however private sector distributed services such as gas, electricity, telecommunications may not. As an example, I copied this from the web site: <https://energylaw.uslegal.com/duties-and-liabilities-of-electric-companies/> that states the following “The duty owed by electric companies with respect to their transmission lines is determined according to the negligence test of foreseeability. A failure to anticipate and guard against a happening which would not have arisen unless under some exceptional circumstances shall not be deemed negligence.” Please think on this decision to allow exceptions very carefully. “Failing to anticipate” in critical areas sometimes is a onetime opportunity, especially with endangered or threatened species, as their habitat may be irreplaceable. Almost always the private sector will find a way to distribute their product and can do so without going through critical areas.

In relation to “multimodal transportation” I would consider defining this term. I could not find one searching the original draft document or any document that is searchable on the city of Anacortes website. Currently the accepted definition by the UN:

Multimodal Transportation Concept and Framework Somsak Wisetruangrot – AFFA Logistics Institute Chairman

- What is Multimodal Transport definition by UNESCAP “A transport system operated by One carrier with more than one mode of transport under the control or ownership of One Operator.”
- What is Multimodal Transport definition by UNCTAD sic[UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT] (MT Convention 1980) “International multimodal transport’ means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country”

United Nations Economic and Social Commission for Asia and the Pacific copyright 2021

Thank you for your time in the consideration of this input.

Shawn Bell

1511 38th Street

Anacortes WA

From: [Evergreen Islands](#)
To: [Cooper, Tess](#); [Gere, Laurie](#); [Young, Anthony](#); [Walters, Ryan \(Anacortes City Council\)](#); [Moulton, Carolyn](#); [Cleland-McGrath, Christine](#); [Miller, Matt](#); [McDougall, Bruce](#); [Carter, Jeremy](#)
Cc: [Measmer, Don](#); [Kyle Loring \(LoringAdvising\)](#); evergreen.island@outlook.com
Subject: Comments on CAO Public Services Exception language PLN-2019-0010
Date: Wednesday, July 14, 2021 10:07:41 AM
Attachments: [image.png](#)



Date: July 14, 2021

To: Tess Cooper, Senior Planner, Anacortes Planning, Community and Economic Development Dept

Anacortes City Council

Cc: Evergreen Islands Board of Directors, Kyle Loring, Don Measmer

Re: Comments on proposed CAO Public Service Exception language, PLN-2019-0010

Dear Ms. Cooper, Mayor Gere and Anacortes City Council Members,

Evergreen Islands respectfully submits the following recommendations to improve the proposed language for the Critical Areas Ordinance (CAO) regarding the exception for essential public services. We appreciate this opportunity for public comment. While Evergreen Islands does not support development in sensitive critical areas and does not support exceptions that create opportunities for such development, we provide the following language to further strengthen this exception by offering specific standards, or sideboards which we have borrowed from other CAO examples and adapted to fit local conditions.

Evergreen Islands offers this language which we believe reflects Council discussions at your recent City Council meeting on this subject.

In addition to the section below, we recommend the City provide definitions for terms such as "multimodal transportation" in the CAO definitions section.

(Please note that suggested language is in [blue](#) and that the sections have been re-ordered to incorporate the revisions.)

Public Services. [To protect wetlands, streams, wildlife habitat and other sensitive critical areas while allowing services](#) when the strict application of the standards in this Chapter would otherwise unreasonably prohibit the provision of [essential public services](#) and amenities.

1. "Public services" include, but are not limited to, water supply, sewer and stormwater management facility, electric power, telecommunication and natural gas lines; public road [segments](#), and multimodal transportation [segments](#).

2. [Essential](#) public services may be allowed to alter critical areas and buffers only when:
- a. Mitigation sequencing per AMC 19.70.135125(A) has been applied;
 - b. The application of the critical areas regulations would unreasonably restrict the ability of the public agency to provide [essential](#) public services;
 - c. There is no other practical alternative to the proposed development with less impact on the critical area;
 - d. The proposed development does not create a health or safety hazard on or off the development site, and will not be detrimental to the properties or improvements in the vicinity;
 - e. [Where feasible, development is located on existing road grades, utility corridors, or previously disturbed areas.](#)
 - f. [Designs for crossings, boardwalks, bridges, and culverts are consistent with Washington Department of Fish and Wildlife and National Marine Fisheries Service best available science for the protection of fish and wildlife habitat. These structures shall not interfere with fish passage, the flow and circulation of water, or other wetland or stream processes, and shall be located at a 90-degree angle, or as close as possible thereto, to the stream, wetland, or buffer. In streams with salmonid habitat, bridges, bottomless culverts, or other alternatives that will allow for fish passage are required. Bridge piers or abutments may not be placed within wetlands, streams, or stream banks unless there is no feasible alternative.](#)
 - g. [Construction of crossings will occur during work windows and time limits established by state and federal agencies with jurisdiction to decrease impacts to protected species.](#)
 - h. [When expanding stream crossings that do not meet these standards, the crossing shall be upgraded as necessary to reduce stream or wetland impacts and meet the requirements of this subsection.](#)
 - i. Any impacts resulting from the alterations permitted to the critical area and buffer are mitigated in accordance with AMC 19.70.135 and relevant mitigation standards for the impacted critical areas(s) type.
 - j. The proposal is consistent with the Anacortes Comprehensive Plan and other applicable regulations.
 - k. Conditions authorized. Conditions may be established as necessary to mitigate impacts to critical areas and to conform to the standards required in this Chapter.
3. It will be a condition of any alteration granted a public agency [for essential public services exception](#) that only the portion of the alteration that must be located in a critical area may be so located.

Thank you for this opportunity to contribute and for your attention.

Yours respectfully,

Marlene Finley

President, Evergreen Islands

From: sara@saraholahan.com
To: [Cooper, Tess](#)
Subject: Critical Areas Update
Date: Thursday, July 15, 2021 10:11:36 AM

Tess, here is a comment on Draft 3 of Critical Areas Ordinance. Could you please reply that you received this, as some of my email has not gone through correctly.

July 14, 2021

Dear City Council,

As you are considering updates to the Critical Areas Ordinance, I request that you eliminate the language allowing installation of telecommunications, gas and intermodal transportation (Draft 3.2, 19.70.045). This legislation is about protecting critical areas. They would be seriously impacted with this kind of infrastructure and there are options to place them outside of critical areas. It is not clear what is included in "multimodal transportation", but we should not have anything more than pedestrian access. Installation of gas lines is especially troubling. In Bellingham, a gas line exploded, killing children and decimating streams and wetlands. We don't want that to happen here.

Thank you for listening to my concerns.

Sara Holahan

From: [Catherine Houck](#)
To: [Cooper, Tess](#)
Subject: proposal; pg 18 in CAO 3.2 draft Table 19.70.045 comment
Date: Wednesday, July 14, 2021 4:26:08 PM

Hello Tess,

Thank you for the opportunity to comment on this small update to Anacortes' Critical Areas Ordinance.

Although I am in full favor of reducing our reliance on and use of roads and increasing more friendly and less consumptive forms of transportation such as walking and bicycling, I do **not** support the proposed change to Table 19.70.045.

I think that **entire section 19.70.045** Permitted Alterations in the Critical Areas Ordinance should be removed. Section 19.70.045 Permitted Alterations is a huge loop hole for roads, utility lines (water, sewer, storm-water, electricity, telecommunications), and single family residences to quickly skim through the mitigation sequencing requirement to avoid, reduce, and at last resort compensate for impacts to critical areas and their buffers. Why can't these projects just follow the regular mitigation sequence provisions in the Critical Areas Ordinance? Why is this special, stream-lined "Permitted Alteration" section needed? If "denial of all reasonable and economically viable use of the property" results after going through mitigation sequencing, an applicant can apply for a Reasonable Use or Critical Areas Variance (19.70.050). Section 19.70.045 seems to greatly reduce the Critical Area Ordinance's purpose of protecting Anacortes' critical areas.

Multimodal transportation should be on equal or elevated footing to roads. Walking and bicycling builds community, makes for more livable communities, and improves mental and physical health. I am wholly in support of walking, skating, bicycling, dog-walking, stroller-pushing routes and corridors in Anacortes, Fidalgo Island, Skagit County and beyond. I think that we can create these transportation corridors and routes with good environmental stewardship; avoiding and reducing impacts to critical areas should be fore front in designing these routes.

Thank you for your diligence in this long process.

Sincerely,

Catherine Houck
2318 20th Street
Anacortes, WA 98221

From: [Ian Munce](#)
To: [Cooper, Tess](#)
Cc: tom.glade@comcast.net; [Brian Wetcher](#)
Subject: CAO Public Comment-Public Services Definition
Date: Thursday, July 8, 2021 2:27:35 PM

Dear Mayor and City Councilmembers

Thank you for this opportunity to comment on the expanded “public services” definition.

I suggest that after the reference to the Tommy Thompson and Guemes Channel trails you add “... provided that all City owned or easement property be restored as much as practicable to native conditions that will have the greatest ecological benefits.”

I am a regular user of the Tommy Thompson Parkway (TTP) and just can’t help seeing the dearth of native plants, shrubs, and trees on both sides of the City easement. Surely a carefully thought out landscaping plan can be prepared and implemented for the TTP? Such a step, and a similar approach to the Guemes Channel trail might somewhat relieve concerns relative to the Guemes Channel trail.

Frankly, the draft CAO appears to skip over, or in one particular case delete, the City Comprehensive Plan mandate that critical areas not only be protected but restored. And the GMA Washington Administrative Code 365-196-800 supports the need for the City to add information in the CAO as to what the City will be doing to implement a restoration program(s). For, instance, in your recent stream chart there is no column for illegal incursions since 1994 and no reference to the City working with property owners on restoration.

Best regards

Ian Munce, AICP

Hunt, Marcia

From: Cooper, Tess
Sent: Friday, July 16, 2021 9:56 AM
To: Hunt, Marcia
Cc: Measamer, Don
Subject: additional packet material
Attachments: CC Additional Comment Packet.pdf

I am not sure if I can add this at this point or if you need to, but here is my additional packet information for the comment period that ended at 5:00 PM on the 14th.

Thanks,

Tess Cooper, Senior Planner
Planning, Community & Economic Development Dept.
City of Anacortes - PO Box 547 - 904 6th St. - Anacortes, WA 98221
360.588.8234 - tessc@cityofanacortes.org - www.cityofanacortes.org

My incoming and outgoing email messages are subject to public disclosure requirements per RCW 42.56



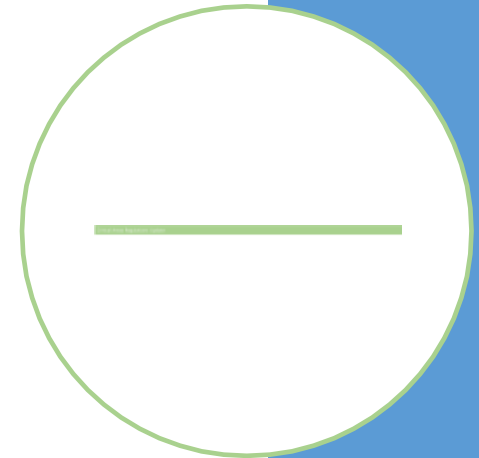
ANACORTES

Critical Areas Regulations Update

Draft 3 Final Discussion— July 19, 2021

Tonight:

- Review Public Comment
- Discussion
- Council Final Thoughts





Discuss public comment on changes



Review final draft and supporting docs



Approve Draft



Adopt Ordinance

Critical Areas Regulations Update

Summary Draft 3 Additional Public Comment – Addition of Multimodal

Updated 07/14/2021

Below is a brief summary of public comments received up until July 14, 2021, and staff responses. Complete written public comment letters can be viewed [here](https://www.anacorteswa.gov/DocumentCenter/Index/1267) (<https://www.anacorteswa.gov/DocumentCenter/Index/1267>) or linked in each comment; and should be consulted for full details and context.

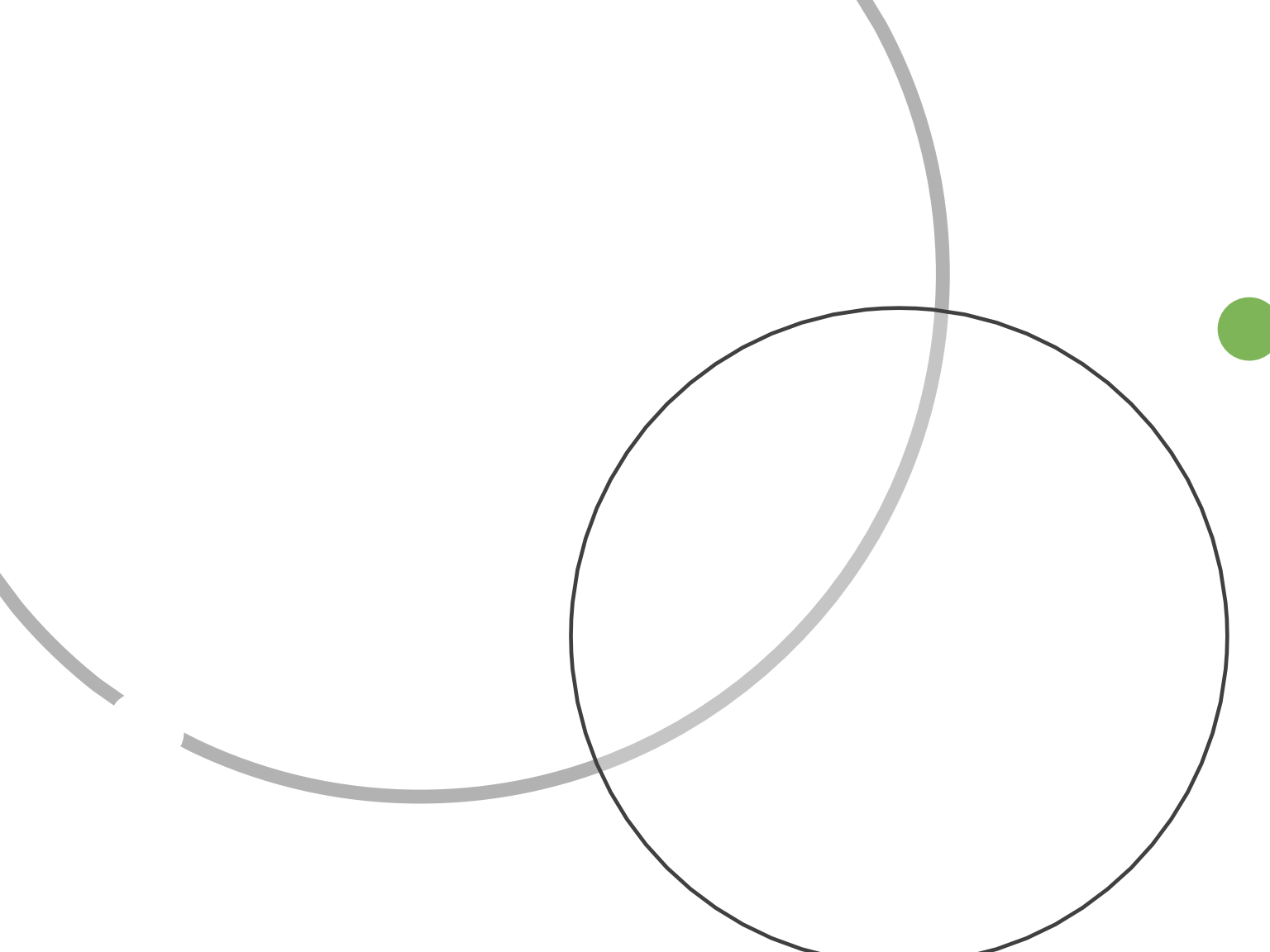
Since comment was solicited ONLY for the change to the wording of telecommunications and natural gas lines, and the addition of multimodal transportation corridors, staff has highlighted and responded to only sections of comments relevant to the solicitation.

Issue / Key Words	Comments summary	Draft 3 reference	Staff Comments
General Comments not associated with a specific section			
Public Services	Comment is concerned there is no definition of multimodal and offers some.	Table 19.70.045 Public Roads and Utilities	Noted, wording was only changed to be more inclusive and clean and does not propose to add new uses except for multimodal transportation corridors. We will add a definition.
Public Services	Comment wants the provision to make reference to making sure native conditions and ecological benefits are the focus and prohibit unintended decline from heavy use as is currently evident with the TTP. Also thinks the CAO should be better align with the Comp Plan and WAC 365-196-800.	Table 19.70.045 Public Roads and Utilities	Noted, this is all good perspective, thank you for your comment. These trails are also within shoreline jurisdiction which the SMP integrates the restoration aspect.
Public Services	The commenter is concerned with the lack of clarification of multimodal, and believes it should be limited to pedestrians.	Table 19.70.045 Public Roads and Utilities	Thank you for your feedback, your comment is noted.
Public Services	The comment is in full favor of reduction reliance on and use of roads and increasing more friendly and less consumptive forms of transportation such as walking and bicycling but does not support the proposed change to include multimodal in the critical area provision.	Table 19.70.045 Public Roads and Utilities	Noted, thank you for your comment. Adding multimodal in this provision is what will require these types of projects to meet critical area standards of avoidance, minimization, and restoration.
Public Services	The commenter in general does not support development in critical areas or regulations that create exceptions, but provides suggestions to improve the language and functionality of the proposed change.	Table 19.70.045 Public Roads and Utilities	Noted, thank you for your comment, staff supports integrating many of these suggested improvements to the proposed section.



Suggestions:

- Multimodal Definition
- Incorporate EI suggested language



Additional Discussion