- 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 or listen to the meeting live by visiting https://us02web.zoom.us/j/84685300609.
- Listen to the meeting by phone (if one number does not work, please try the other number): 1-253-215-8782 and enter Meeting ID 846 8530 0609 or 872-240-3412, Access Code: 261-991-485
- The public is encouraged to comment via email to pced@cityofanacortes.org, via written comment addressed to PCED, P.O. Box 547, Anacortes, WA 98221, or via e-comment (https://www.anacorteswa.gov/700/Watch-Meetings - click on meeting you wish to provide comment and in upper right corner is an option to include Public Comment). Public comments received 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 Planning Commission meetings are available here (page 2). View the quick video example for connecting to the meeting here.

ANACORTES PLANNING COMMISSION

March 16, 2022

Municipal Building Council Chambers
6th Street and "Q" Avenue

AGENDA

6:00 PM

VIEW PACKET MATERIALS HERE

A. Roll Call

1) Notice of Special Meeting

B. Minutes

1) No Minutes Presented

C. EXECUTIVE SESSION

1) Potential Litigation or Litigation per RCW 42.30.110(1)(i) (15 minutes) (Discussion)

D. New Business

1) Critical Areas Regulations Amendments AMC Chapter 19.70

2) 2021 Docket of Comprehensive Plan and Development Regulation Amendment Work Session

E. Old Business

The City of Anacortes encourages people with disabilities to participate in public meetings. For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.

Notice of Public Hearing

Including written comment period and public hearing date

Publish Date:	March 2, 2022
Proposal Name:	Critical areas regulations amendments
Documents Available at:	https://www.anacorteswa.gov/198/Anacortes-Municipal-Code-Updates
Lead Agency:	City of Anacortes Planning, Community & Economic Development Department
Contact Person	Don Measamer, Director
Public Hearing Body:	Anacortes Planning Commission
Public Hearing Date:	Wednesday, March 16, 2022, at 6:00 PM

Proposal Description

The proposal would make amendments to Anacortes Municipal Code Chapter 19.70 Critical Areas, as follows:

1. Amend AMC Table 19.70.235(B) to increase the required buffer widths consistent with Department of Ecology guidelines for Category III wetlands with a high level of function for wildlife habitat.
2. Amend AMC 19.70.330(C) to eliminate the allowance for stream buffer reductions.
3. Amend AMC 19.70.330(F) to eliminate the allowance for stream relocations.
4. Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer width averaging.

The complete text of the proposed changes can be reviewed at the website address above.

SEPA Threshold Determination

The City of Anacortes has determined that this nonproject action is exempt from the requirements of RCW 43.21C pursuant to RCW 43.21C.450(3).

How to Comment

Email comments are preferred and must be sent to don@cityofanacortes.org by Wednesday, March 16, 2022 at 3:00 PM.

Paper comments may be mailed or delivered to:

City of Anacortes
Planning, Community & Economic Development Department
ATTN: Don Measamer
P.O. Box 547 / 904 6th St.
Anacortes, WA 98221

Verbal comments may be made at the Public Hearing. Due to the COVID-19 pandemic, the public hearing will be held remotely. Meeting access information can be found on the Planning Commission agenda, posted Thursday prior to the meeting here: https://www.anacorteswa.gov/700/Meeting-Documents-and-Video

Planning Commission Agenda Bill

Meeting Date: March 16, 2022 **Agenda Item:** D.1.

Subject: Critical Areas Regulations Amendments AMC Chapter 19.70
Staff Contact: DON MEASAMER

Approved for Submittal to Commission by	**Action Type**
DON MEASAMER LIBBY GRAGE DON MEASAMER	Public Hearing

Summary Statement: Critical Areas Regulation amendments to AMC Table 19.70.235(B), increase required buffer widths consistent with Department of Ecology guidelines for Category III wetlands with a high level of function for wildlife habitat. Amend AMC 19.70.330(C) to eliminate the allowance for stream buffer reductions. Amend AMC 19.70.330 (F) to eliminate the allowance for stream relocations. Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer width averaging.

Background: Amendments are consistent with Department of Ecology recomendations.

Previous Action: City Council approved Ordinance 3092 Updated Critical Areas Ordinance July 26, 2021

Competing Viewpoints Considered: Yes

Recommended Motion: Motion to recommend approval of the amendments to City Council as presented

Alternative Actions: Revise as needed

Attachments (listed in order presented):

1. Critical Areas Amendments 2022
2. Critical Areas Amendments Chapter 19.70 PWR PT
3. Ordinance 4015 Critial Areas Amendments
4. SEPA
5. COA Special Meeting Notice

Chapter 19.70
CRITICAL AREAS

Sections:

Article III. Fish and Wildlife Habitat Conservation 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 (Chapter 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. (Ord. 3064 § 2 (Att. A), 2021)

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 through the Anacortes shoreline master program (AMC Chapter 19.72), 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; however, certain provisions of this chapter that are not consistent with the Shoreline Management Act, Chapter 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 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. (Ord. 3064 § 2 (Att. A), 2021)

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. 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. 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.

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. (Ord. 3064 § 2 (Att. A), 2021)

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 19.70.125 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.

G. Violations of this chapter are subject to AMC Title 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 area report to determine impacts. The report may be subject to third party review at the property owner’s expense. (Ord. 3064 § 2 (Att. A), 2021)

19.70.030 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 19.70.035, Critical areas review;

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.

C. The city may require third party review of any critical area report, at the expense of the applicant. (Ord. 3064 § 2 (Att. A), 2021)

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 19.70.040. Except that, for within shoreline jurisdiction, administration of this chapter shall be through the shoreline master program 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 with 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 Director may require an updated critical area 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;

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. (Ord. 3064 § 2 (Att. A), 2021)

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 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 hydraulic permit, or Army Corps 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 the exemption.

F. 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.

Table 19.70.040(A) Exempt Activities

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 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:	Yes	Yes
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 Director no later than 30 days after the alteration has occurred. Once notified, the Director 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. 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 Titles 19 and 20.		
Yard and garden activities. Maintenance or repair activities including, but not limited to, cutting, mowing, 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 clear native vegetation, do	No	Yes

EXEMPT ACTIVITIES: (No review required, must strictly meet standards)	Critical Area	Buffer
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 19.70.135) 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 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
Outdoor Recreation Activities. 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.	Yes	Yes
EXEMPTIONS that require a letter of exemption be obtained from the Director prior to construction or initiation of activities. Subject to conditions by the Director 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:	Yes	Yes
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		

EXEMPT ACTIVITIES: (No review required, must strictly meet standards)	Critical Area	Buffer
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.		
Transportation Infrastructure Operation, Maintenance, Repair, or Replacement. Maintenance, operation, repair, modification, or 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.	Yes	Yes
Recreation Areas Operation, Maintenance, Repair, or Replacement. Maintenance, operation, repair, modification, or replacement of existing 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:	Yes	Yes
a. The activity does not involve the expansion of facilities and disturbance to adjacent areas is minimized and disturbed areas must be immediately restored; b. Work is conducted using best management practices; c. Flow and circulation patterns and biological characteristics are not impaired and adverse impacts are minimized; d. Where trail relocation is the least impactful 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.		
Vegetation Management, including:	Yes	Yes
1. 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:		
a. Undertaken with hand labor, including handheld mechanical tools, and integrated pest management; b. 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; 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;		

EXEMPT ACTIVITIES: (No review required, must strictly meet standards)	Critical Area	Buffer
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 Chapter 76.09 RCW; iii. Avoid a threat to existing structures, above-ground utility lines or other facilities; or 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:		
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 Director approves otherwise in writing. d. Any removed tree or vegetation must be replaced in-kind, with similar or appropriate native species, within one year in accordance with an approved restoration plan including species, size, and maintenance plan.		
Clearing, grading, and the construction of fences and arbors are allowed within the	No	Yes

EXEMPT ACTIVITIES: (No review required, must strictly meet standards)	Critical Area	Buffer
required 10-foot stream setback for a piped stream segment if no other critical area or buffer is present.		

(Ord. 3064 § 2 (Att. A), 2021)

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 and the proposed development meets the specific terms of this section.

B. *General Requirements.* The actions in the permitted alteration table below must be considered permitted alterations, unless as otherwise specified under AMC 19.70.230, 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 AMC Chapter 19.20, Table 19.20.030-1, Review classification and process matrix. 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 AMC 19.70.115, Critical area report, 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, Types of review, 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 of a critical area 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 19.70.125(A), Mitigation Sequencing, 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 ensure conformity with this chapter.

F. Table 19.70.045 describes activities that must meet the precise description to be allowed 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.

Table 19.70.045 Permitted Activities

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. 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 public services and 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; and		

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
public road and multimodal transportation corridors (e.g., the Tommy Thompson Trail and Guemes Channel Trail). 2. Public services may be allowed to alter critical areas and buffers when:		
a. Mitigation sequencing per AMC 19.70.125(A) has been applied; b. The application of the critical areas regulations would unreasonably restrict the ability to provide 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 must 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. Any alterations permitted to the critical area and buffer are mitigated in accordance with AMC 19.70.125, Mitigation requirements, and relevant mitigation standards for the impacted critical areas(s) type; i. The proposal is consistent with the Anacortes comprehensive plan and other applicable regulations.		
3. Conditions Authorized. Conditions may be established as necessary to mitigate impacts to critical areas and to conform to the standards required in this chapter. 4. 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.		
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	Yes	Yes

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
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.		
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 (not to include the ACFL) and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the critical area.	No	Yes
1. Limited public park or public recreational access including trails, viewing platforms, fishing access (no wider than six feet), 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 master plan.		
2. 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 percent of the buffer area and is designed to avoid removal of trees and native vegetation; c. The trail does not exceed six feet in width, and is limited to native soils or pervious surfaces. Raised boardwalks utilizing nontreated 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.		
3. Informational Signs. Construction and placement of informational signs or educational demonstration facilities no more than nine square feet surface area and four feet high, as long as there is no permanent infringement on hydrology or stream flow and nontreated wood is used; 4. Limited excavating and filling necessary for the repair and maintenance of piers,		

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
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 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:	Yes	Yes
1. 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 chapter, and the development is the minimum necessary to achieve reasonable use of the lot as determined by the decision-maker; and 2. Alteration of critical areas and their buffers including all clearing, grading, structures, and appurtenances, has not and will not exceed cumulatively 2,800 square feet of disturbance; and 3. 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 4. 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. 5. Normal appurtenances included in this provision include garages, decks, and walkways incidental to residential living and that do not constitute a special privilege.		
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, this chapter, and AMC Chapter 8.10, Parks and the Anacortes Community Forest Lands.	Yes	Yes
Critical Area Aquifer Recharge Areas. All regulated activities listed under AMC 19.70.515, Applicability and hazardous materials questionnaire.	Yes	Yes

(Ord. 3064 § 2 (Att. A), 2021)

19.70.050 Reasonable use 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 19.70.045, 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 exception must be considered a critical area variance, provided they are consistent with the general standards for variances under AMC 19.38.040 and other applicable requirements established in this chapter.

C. *Procedures for Review.*

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 permit may not be issued unless it can be shown that the proposed development is fully consistent with the variance approval criteria enumerated in AMC 19.38.040 (variance criteria) as well as all of the requirements of this chapter.

2. In addition to other project related documents, all critical area variances must require a critical area assessment report per AMC 19.70.115 to evaluate the 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 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:

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 area 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 area report and mitigation plan must be prepared utilizing best available science; and

5. Mitigation sequencing per AMC 19.70.125(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. (Ord. 3064 § 2 (Att. A), 2021)

Article I. Critical Areas Review Procedures

19.70.110 Critical area identification form.

Prior to the city's consideration of any proposed activity found not to be exempt under AMC 19.70.040, the applicant must submit to the Department a completed form identifying suspected critical areas on, and within 300 feet, of the site. (Ord. 3064 § 2 (Att. A), 2021)

19.70.115 Critical area report.

A. *Report Required.* When the 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, 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 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 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 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 19.70.130, 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 Director 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 buffers 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 area 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 Director. At the discretion of the Director, reports previously compiled or submitted as part of a proposal for a development may be used as a critical area 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 to or 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 Director, prior to or during preparation of the critical area 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.

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.

2. *Limitations to Study Area.* The Director may limit the required geographic area of the critical area 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.120 Application requirements.

A. A complete application for a permitted alteration permit or reasonable use exception/variance permit must include the following information and materials on a form provided by the Director. For the purpose of this section, a complete application includes:

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. An assessment of probable impacts to the critical areas resulting from the proposed development of the site based upon identified findings;

   f. A description of reasonable efforts made to apply mitigation sequencing pursuant to AMC 19.70.125, Mitigation requirements, to avoid, minimize, and mitigate impacts to critical areas; and

   g. Plans for mitigation required to offset any critical areas impacts, in accordance with AMC 19.70.130, 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 of financial guarantee requirements.

B. *Additional Requirements.* The 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. (Ord. 3064 § 2 (Att. A), 2021)

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 has provided approval of a critical area 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 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 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 levels 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 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 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 function or a greater reduction of hazard risk, off-site mitigation that occurs on Fidalgo Island will be considered by the decision-maker. (Ord. 3064 § 2 (Att. A), 2021)

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 proposed, 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 19.70.150, 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 (D)(3)(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. 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; the 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 19.70.150, 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 Director indicates that the construction has been completed as planned. (Ord. 3064 § 2 (Att. A), 2021)

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 subsections (B) through (D) of this section, 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 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, 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 area tract as a permanent protective measure for wetlands, fish and wildlife habitat conservation areas, and 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 area 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 area tracts must be identified.

D. *Native Growth Protection Easements (NGPE).* 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, 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 developments 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 NGPE easement. (Ord. 3064 § 2 (Att. A), 2021)

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 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 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.

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:

      > 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 nontreated 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 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.145 Construction plan review, monitoring, and inspection.

A. The Director may require project building and construction plans be reviewed by a qualified professional for confirmation of consistency with the critical area report and recommendations prior to approval of construction plans.

B. The 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 area report, and evaluation of any deviation from the recommendations.

C. When the 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.150 Financial guarantee requirements.

When determined necessary by the 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.165 Unauthorized critical area alterations.

A. When a critical area or its buffer has been altered in violation of this chapter, all work must stop and the critical area and buffer must be restored. The Director may issue a stop work order to cease all 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 Title 20, Civil Enforcement and Penalties, to ensure the violation is abated.

B. *Requirement for Restoration Plan.*

1. All work must remain stopped until a restoration plan is provided by the responsible party and approved by the city. Such a plan must be prepared by a qualified 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 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.

3. Submittal, review, and approval of required restoration plans for remediation of violations of this chapter must be completed through a site development permit 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 five-to-one ratio or installed at a density of five-feet-on-center unless approved by the 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 19.70.130, 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 with a complete site development permit application.

e. These standards may be modified by the 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 if the violator can demonstrate that greater safety can be obtained.

D. *Site Investigation.* The Director is authorized to take such actions as are necessary to enforce this chapter. The Director (or 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:

1. 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

2. A per-tree penalty in the amount of $3,000 per nonsignificant 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. (Ord. 3064 § 2 (Att. A), 2021)

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. (Ord. 3064 § 2 (Att. A), 2021)

Article II. Wetlands

19.70.210 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.215 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 No. 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 one acre or disturbed estuarine wetlands larger than one 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 one-tenth acre (4,350 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 to be protected.

C. *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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.220 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.225 General development standards.

A. All development activities and uses are prohibited in wetlands and wetland buffers, unless administered through the permit procedures above, and the performance standards described herein, 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 19.70.125, Mitigation requirements.

B. *Exemptions.* Exemptions to this chapter are listed in the provisions established in AMC 19.70.050, Exempt 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 each lot will meet all zoning standards in AMC Chapter 19.42 without encroaching into the wetland or buffer. (Ord. 3064 § 2 (Att. A), 2021)

19.70.230 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 19.70.050, Reasonable use exception and critical area variance.

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 area report meeting the requirements of this chapter, that:

1. Mitigation sequencing has been applied per AMC 19.70.125(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 IV Wetlands (Less Than 1,000 Square Feet).* The decision-maker may allow small, hydrologically isolated Category IV wetlands to be exempt from the requirement to avoid impacts (AMC 19.70.125(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 19.70.125(A)(2) through 19.70.125(A)(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 IV wetland with a habitat score of less than five 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 Part 3 FWHCA;

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 19.70.130, Mitigation plan requirements.

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 IV Wetlands (Less Than 1,000 Square Feet).* Wetlands less than 1,000 square feet that meet the criteria in subsection (B)(3) of this section 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.235 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 19.70.235(B), 19.70.235(C) and 19.70.235(D) 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 the edge of the wetland boundary as surveyed in the field. The width of the wetland buffer must be determined according to Tables 19.70.235(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 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, residential, high-intensity recreation (such as golf courses, ball fields), and hobby farms.
Moderate Land Use Intensity	Land use that includes the following uses or activities: moderate-intensity open space (parks, paved trails, and logging roads).
Low Land Use Intensity	Land use that includes the following uses or activities: forestry (cutting of trees only), low-intensity open space (such as outdoor recreation activities 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 eight or nine points on the wetland rating form:

Table 19.70.235(B)

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

2. Buffer widths for wetlands that have a moderate level of function for wildlife habitat as indicated by a habitat function score of six or seven 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	110	75
Category IV	50	40	25

3. Buffer widths for wetlands that have a low level of function for wildlife habitat as indicated by a habitat function score of three to five 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	40
Category IV	50	40	25

D. *Reducing Buffer Widths.*

1. For wetlands that score six 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 three to five habitat points, only the measures in Table 19.70.250(E) are required for the use of moderate intensity buffer widths.

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.

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-foot 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 feet of wetland • Apply integrated pest management
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

E. *Increasing Buffer Widths.* Buffer widths may be increased, on a case-by-case basis, as determined by the 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 percent. 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 19.70.245, Compensatory mitigation performance standards and requirements, may be substituted.

F. *Averaging Buffer Widths.* The decision-maker may allow averaging of wetland buffer widths on a case-by-case basis when the critical area report demonstrates that the following criteria are met:

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

2. The buffer averaging 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;

3. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;

4. 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;

5. 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 no less than 50 percent.

G. *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.

H. *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.

I. *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.

J. *Buffer Impacts.* When buffer impacts occur, compensatory mitigation must be provided at a minimum ratio of one-to-one for the area impacted. The mitigation must occur on the same site when 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. The wetland is classified as a Category III or a Category IV wetland with a habitat score of three to five points or less; and

2. There will be "no net loss" of functions and values of the wetlands; and

3. The wetland does not contain a breeding population of any native amphibian species; and

4. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, and 5 of Chart 4 and questions 2, 3, and 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; and

5. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and

6. 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. Modifications will require permits. Existing functions and values that are lost would have to be compensated/replaced through an approved mitigation plan.

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 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 permeable pavement system as defined in this chapter. Such improvements may be subject to the requirements in AMC Chapter 19.76, Stormwater.

M. *Functionally Separated and Isolated Buffers.* Consistent with the definition of "buffer" in this chapter, 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 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 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.240 Critical area report additional requirements.

A. *Additional Report Contents for Wetlands.* In addition to the minimum report contents required per AMC 19.70.115, Critical area reports, 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 19.70.215) required buffers (AMC 19.70.235); hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages 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 inlets/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 19.70.125, Mitigation requirements, 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 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 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.245 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 19.70.125, Mitigation requirements, and demonstrate compliance with AMC 19.70.130, Mitigation plan requirements. 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 19.70.215(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 AMC 19.70.230, Specific wetland category development standards, 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 (J) 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 limited 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 reestablishment and rehabilitation.

   a. *Reestablishment.* Returning natural or historic functions to a former wetland. Reestablishment 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 one-to-one 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-to-one. 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 subsection (B) of this section 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;

   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 Chapter 173-700 WAC 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;

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; and

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 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 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 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 No. 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 subsection (D) of this section 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 19.70.130, Mitigation plan requirements.

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 19.70.150, Financial guarantee requirements.

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 Rehab (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 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 one-to-one ratio. Compensatory buffer mitigation must replace those buffer functions lost from development.

L. *Mitigation Performance Standards.* Wetland mitigation plans must be consistent with AMC 19.70.125, Mitigation requirements, and AMC 19.70.130, Mitigation plan requirements, and Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Ecology Publication No. 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 as alternatives to the following standards:

1. Plants native to the region (not introduced, nonnative 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 six percent, unless otherwise approved by the decision-maker.

    d. Slopes within the wetland contributing basin and the buffer zone must not be steeper than three-to-one (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 nonwetland 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 one-half inch 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. (Ord. 3064 § 2 (Att. A), 2021)

Article III. Fish and Wildlife Habitat Conservation Areas

19.70.310 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.315 Designation.

A. Fish and wildlife habitat conservation areas (FWHCAs) are designated as follows:

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

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);

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;

4. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

5. Areas with which anadromous fish species have a primary association;

6. State natural area preserves, natural resource conservation areas, and state wildlife areas as established by Washington State Department of Natural Resources;

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;

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.

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 Third 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)(9) 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;

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 nonregulatory 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.320 Mapping.

A. *Mapping.* The approximate location and extent of some FWHCAs 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 and 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.325 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 AMC Chapter 19.72, Shorelines. Alterations of FWHCAs or their buffers is prohibited except as otherwise allowed by this chapter and may occur only if the proposed alteration of the habitat 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 19.70.040, Exempt activities.

C. *Approvals and the Best Available Science.* Any approval of alterations or impacts to an 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 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 FWHCAs and associated buffers is subject to the following:

1. Land that is located wholly within an FWHCA or its buffer may not be subdivided;
2. Land that is located partially within an 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 determines, that no other feasible alternative exists, all unavoidable impacts are fully mitigated, and the use is consistent with this chapter;

4. This subsection does not authorize new access roads and utilities in FWHCAs and associated buffers for existing subdivisions.

G. *Nonindigenous Species.* No plant, wildlife, or fish species not indigenous to Fidalgo Island may be introduced to an FWHCA unless authorized by a state or federal permit approval. (Ord. 3064 § 2 (Att. A), 2021)

19.70.330 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:

Table 19.70.330 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 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 19.70.350, Critical area report additional requirements;

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 may allow the reduction of buffer widths on a case-by-case basis when the critical area 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;~~

~~4. A buffer enhancement plan is proposed to improve the overall function of the buffer.~~

~~D.~~ C *Building Setbacks From Stream Buffers.* Buildings, structures, paving, and other hard surfacing must be set back a minimum distance of 10 feet from the edge of the stream buffer unless determined by the 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 permeable pavement system as defined in AMC 19.12.020, Definitions. Such improvements may be subject to the requirements in AMC Chapter 19.76, Stormwater.

~~E~~ D. *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, 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.~~ E. *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 AMC 19.70.040, 19.70.045, and 19.70.050. 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. *When Allowed.* Relocation of Type F, Np, and Ns streams may be permitted only when the proposed relocation is part of an approved 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.~~

~~2~~ 1. *Stream Crossing.* Crossing of streams may be permitted and is required to be designed to allow fish passage based on state and federal fish passage criteria.

~~G.~~ F. *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 are 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, when the following is demonstrated within a critical area 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 their conveyance will maintain the flow capacity and not create flooding elsewhere in the drainage basin.

~~H.~~ G. *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 are "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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.335 Specific standards for other FWHCAs.

A. *Endangered, Threatened, and Sensitive Species.* Fish and wildlife habitat conservation areas or buffers with state or federally endangered, threatened, or sensitive species or anadromous fish species have a primary association 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 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 are prohibited except as otherwise allowed by this chapter and may occur 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.*

a. *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.

b. *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.

c. Proposed alterations must be consistent with the adopted Anacortes Community Forest Lands comprehensive plan, as amended.

d. *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.

e. *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.

f. *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.

g. *Burning.* No burn piles or outdoor fires must ever be left unattended while ignited and in the event sparks or flames come within 300 feet of the ACFL, the fire must immediately be brought under control or extinguished.

h. *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.

i. *ACFL Buffers.* City staff will work closely with builders to secure 30-foot ACFL buffers using all available incentives.

2. March Point Heronry:

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. Proposed development activities within 1,000 feet, or that are 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. Buffers will be implemented as described in the buffer section below.

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

D. Required buffer for nonstream FWHCAs:

1. *Marine FWHCAs Buffers.* Buffers for all designated fish and wildlife habitats or species within marine shorelines must be regulated by AMC Chapter 19.72 shoreline regulations and the shoreline master program.

2. *All Other Nonstream 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 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 habitats 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:

i. A year-round urban buffer of 197 feet,

ii. For unusually loud activities that occur during breeding season (February through September) a seasonal buffer of 656 feet, and a blasting 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 area, and breeding season foraging habitat,

iv. For the March 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. (Ord. 3064 § 2 (Att. A), 2021)

~~19.70.340 Buffer width averaging.~~

~~A. *Approval Criteria.* The decision-maker may allow the averaging of FWHCA buffer widths for FWHCAs other than those designated by the city as habitats and species of local importance, when the critical area 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 19.70.350(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; and~~

~~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. (Ord. 3064 § 2 (Att. A), 2021)~~

~~19.70.345~~ 19.70.340 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 percent 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 Chapter 19.76. (Ord. 3064 § 2 (Att. A), 2021)

19.70.350 Critical area report additional requirements.

A. *Additional Report Contents for FWHCAs.* In addition to the minimum report contents required per AMC 19.70.115, Critical area report, 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 references;

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:

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 19.70.125, 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 area 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:

a. Stream survey showing the field delineated ordinary high water mark(s);

b. Standard stream buffer boundary as determined by AMC 19.70.330, Specific standards for streams;

c. Boundary for proposed stream buffers averaging, if applicable;

d. Vegetative, faunal, and hydrologic characteristics;

e. Soil and substrate conditions; and

f. Topographic elevations, at two-foot contours;

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;

d. Provisions for monitoring and submission of monitoring reports documenting buffer conditions, as compared to performance standards, for enhancement success; and

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). An HMA consists 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 nonbreeding 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 through 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 one-and-nine-tenths 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 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 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. (Ord. 3064 § 2 (Att. A), 2021)

19.70.355 Mitigation performance standards and requirements.

Compensatory mitigation for FWHCAs must follow the plan requirements described under AMC 19.70.130, Mitigation plan requirements. (Ord. 3064 § 2 (Att. A), 2021)

Proposed Critical Areas Amendments

- Chapter 19.70

1. Amend AMC Table 19.70.235(B) to increase the required buffer widths consistent with Department of Ecology guidelines for a Category III wetlands with a high level of function for wildlife habitat. Page 37

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

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

2. Amend AMC 19.70.330(C) To eliminate the allowance for stream buffer reductions. Renumber as needed. Page 58/59

- ~~C. *Buffer Reduction Standards*. The decision-maker may allow the reduction of buffer widths on a case-by-case basis when the critical area 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;~~
- ~~4. A buffer enhancement plan is proposed to improve the overall function of the buffer.~~

3. Amend AMC 19.70.330 (F) To eliminate the allowance for stream relocations. Renumber as needed. Page 59

- ~~1. *When Allowed.* Relocation of Type F, Np, and Ns streams may be permitted only when the proposed relocation is part of an approved 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.~~

Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer width averaging. Renumber as needed. Page 64/65

- ~~19.70.340 Buffer width averaging.~~
- ~~A. *Approval Criteria.* The decision-maker may allow the averaging of FWHCA buffer widths for FWHCAs other than those designated by the city as habitats and species of local importance, when the critical area 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 19.70.350(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; and~~
- ~~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. (Ord. 3064 § 2 (Att. A), 2021)~~

Ordinance No. 4015

An Ordinance Amending the Critical Area Regulations Contained in Anacortes Municipal Code Chapter 19.70, Table 19.70.235(B), Section 19.70.330(C) Section 19.70.330 (F) and Section 19.70.340

Whereas, on July 18, 2016, the City Council adopted Ordinance 2982 adopting a new Comprehensive Plan pursuant to the City's periodic Growth Management Act Comprehensive Plan amendment and update process; and

Whereas, the Anacortes Comprehensive Plan provides guidance for amending the Anacortes Municipal Code (AMC) development regulations and official zoning map to implement its land use, housing, economic development, transportation, environment and conservation, and other goals and policies; and

Whereas, the proposed amendments to the development regulations and official zoning map were initiated by the City in accordance with the requirements of the Growth Management Act and AMC 19.16.030(B), subsequent to the adoption of the 2016 Comprehensive Plan; and

Whereas, the City Council adopted Ordinance 3040 adopting new Development Regulations July 22, 2019; and

Whereas, the City Council adopted Ordinance 3064 updating the Critical Areas Regulations July 26, 2021; and

Whereas, the City Council desires to amend certain sections of the Critical Area regulations as depicted in attachment A;

Whereas, the amendments to the Critical Areas regulations are in the best interest of the City Of Anacortes residents; and

Whereas, the amendments to the Critical Area Regulations set forth herein have been processed, reviewed, considered, and adopted in material compliance with all applicable state and local procedural requirements, standards and requirements, standards, and criteria, including but not limited to the requirements of Chapter 36.70A RCW.

Whereas, a public comment opportunity was provided for certain changes to Critical Area Regulations Chapter 19.70 Table 19.70.235(B), Section 19.70.330(C), Section 19.70.330(F) and Section 19.70.340 at the   Planning Commission meeting ; and

Whereas, the City Council considered the Planning Commission recommendation at a meeting on ;

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

<u>Section 1.</u> **<u>Findings.</u>** The above recitals are hereby adopted by reference as legislative findings in support of this ordinance. The City Council further enters the following findings:

<u>Section 2.</u> **<u>Development Regulation Amendments Adopted.</u>** The Anacortes Municipal Code is amended as described in Attachment A.

<u>Section 3.</u> **<u>Transmittal to State.</u>** Pursuant to RCW 36.70A.106, a copy of this ordinance shall be submitted to the State Department of Commerce.

<u>Section 4.</u> **<u>Severability.</u>** If any section, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

<u>Section 5.</u> **<u>Effective Date.</u>** Consistent with RCW 35A.12.130, this ordinance takes effect on
PASSED and APPROVED this ____ day of ________________, 2022.

CITY OF ANACORTES:

____

Matt Miller, Mayor

Attest:

____

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

____

Darcy James Swetnam, City Attorney

Measamer, Don

rom: Grage, Libby
Sent: Thursday, February 24, 2022 4:13 PM
To: Measamer, Don
Subject: sepa exemption?

What do you think of this exemption for the settlement agreement amendments to the CAO:

43.21C.440 << 43.21C.450 >> **43.21C.460**

RCW 43.21C.450

Nonproject actions exempt from requirements of chapter.

The following nonproject actions are categorically exempt from the requirements of this ch

(1) Amendments to development regulations that are required to ensure consistency with

plan was previously subjected to environmental review pursuant to this chapter and the impacts environmental review;

(2) Amendments to development regulations that are required to ensure consistency with

master program was previously subjected to environmental review pursuant to this chapter and

prior environmental review;

(3) Amendments to development regulations that, upon implementation of a project actior

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline juris

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistenc

(a) Building codes required by chapter **19.27** RCW;

(b) Energy codes required by chapter **19.27A** RCW; and

(c) Electrical codes required by chapter **19.28** RCW.

[2012 1st sp.s. c 1 § 307.]

Libby Grage | City of Anacortes
Planning, Community & Economic Development Department
Planning Manager
P.O. Box 547 | 904 6th Street | Anacortes, WA 98221
360.299.1986 (work) | 360-661-3505 (work cell)
libbyb@cityofanacortes.org | www.cityofanacortes.org

Notice of Public Hearing

Including written comment period and public hearing date

Publish Date:	March 2, 2022
Proposal Name:	Critical areas regulations amendments
Documents Available at:	https://www.anacorteswa.gov/198/Anacortes-Municipal-Code-Updates
Lead Agency:	City of Anacortes Planning, Community & Economic Development Department
Contact Person	Don Measamer, Director
Public Hearing Body:	Anacortes Planning Commission
Public Hearing Date:	Wednesday, March 16, 2022, at 6:00 PM

Proposal Description

The proposal would make amendments to Anacortes Municipal Code Chapter 19.70 Critical Areas, as follows:

1. Amend AMC Table 19.70.235(B) to increase the required buffer widths consistent with Department of Ecology guidelines for Category III wetlands with a high level of function for wildlife habitat.
2. Amend AMC 19.70.330(C) to eliminate the allowance for stream buffer reductions.
3. Amend AMC 19.70.330(F) to eliminate the allowance for stream relocations.
4. Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer width averaging.

The complete text of the proposed changes can be reviewed at the website address above.

SEPA Threshold Determination

The City of Anacortes has determined that this nonproject action is exempt from the requirements of RCW 43.21C pursuant to RCW 43.21C.450(3).

How to Comment

Email comments are preferred and must be sent to don@cityofanacortes.org by Wednesday, March 16, 2022 at 3:00 PM.

Paper comments may be mailed or delivered to:

City of Anacortes
Planning, Community & Economic Development Department
ATTN: Don Measamer
P.O. Box 547 / 904 6th St.
Anacortes, WA 98221

Verbal comments may be made at the Public Hearing. Due to the COVID-19 pandemic, the public hearing will be held remotely. Meeting access information can be found on the Planning Commission agenda, posted Thursday prior to the meeting here: https://www.anacorteswa.gov/700/Meeting-Documents-and-Video

Planning Commission Agenda Bill

Meeting Date: March 16, 2022 **Agenda Item:** D.2.

Subject: 2021 Docket of Comprehensive Plan and Development Regulation Amendment Work Session

Staff Contact: LIBBY GRAGE

Approved for Submittal to Commission by	**Action Type**
LIBBY GRAGE DON MEASAMER	Discussion

Summary Statement: Staff will provide a review of the petitions that were docketed for consideration as part of the 2021 Comprehensive Plan and Development Regulations Amendment Docket. The Planning Commission will have the opportunity to ask staff questions about the proposal prior to a public hearing. No public testimony will be taken as part of this agenda item. More information is available at https://www.anacorteswa.gov/1321/Comprehensive-Plan-Amendments.

Background: Citizen initiated petition application materials can be found here: https://www.anacorteswa.gov/1321/Comprehensive-Plan-Amendments

Previous Action: On July 12, 2021, the City Council adopted Resolution 3042 establishing the 2021 Docket of Comprehensive Plan and Development Regulation Amendments.

Competing Viewpoints Considered: A written public comment period and public hearing will be advertised and held in the upcoming weeks.

Recommended Motion: N/A - No action is requested.

Alternative Actions: N/A

Attachments (listed in order presented):

1. Memo to PC, 3/10/21
2. Resolution 3042

Planning, Community, & Economic Development Department

Don Measamer, Director

Memorandum

To:	Anacortes Planning Commission
Date:	March 10, 2022
From:	Libby Grage, Planning Manager Don Measamer, Director, Community & Economic Development
Subject:	2021 Docket of Comprehensive Plan and Development Regulation Amendments Planning Commission Work Session – March 16, 2022

Contents

SUMMARY

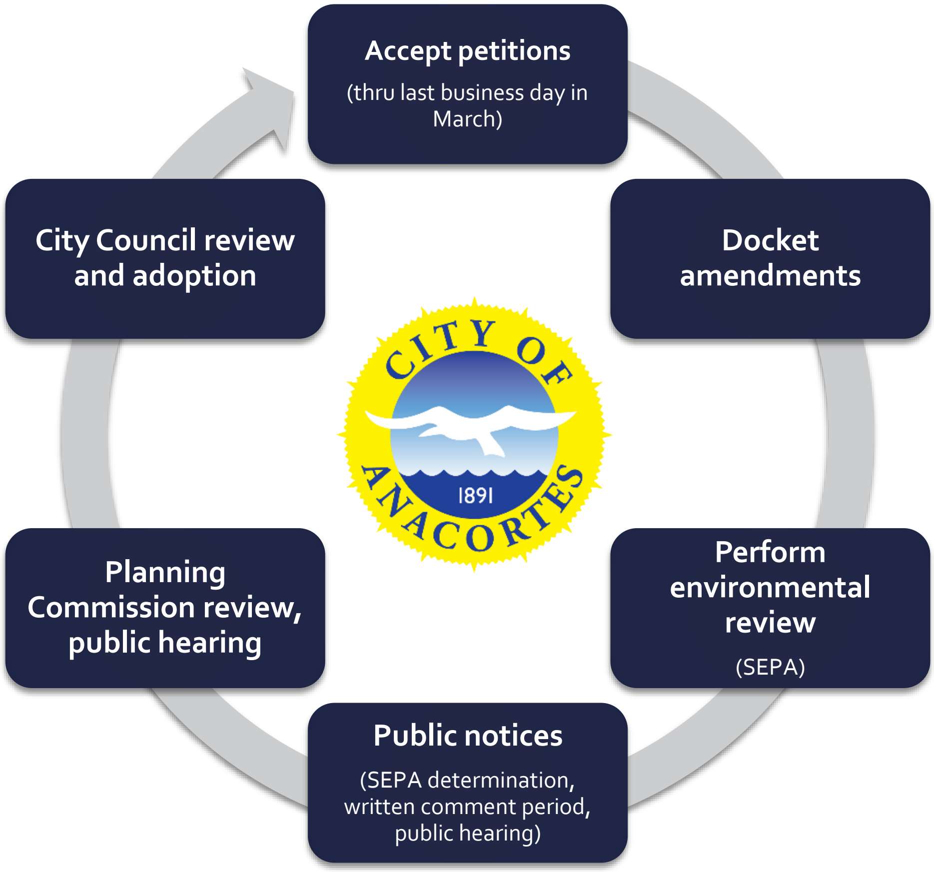
This memo provides information for the upcoming Planning Commission work session to review the 2021 Docket of Comprehensive Plan and Development Regulation Amendment Proposals.

BACKGROUND

The City of Anacortes is conducting its annual process to accept and consider suggested amendments to the Anacortes Comprehensive Plan and Development Regulations. The Growth Management Act requires that "each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation".

Anacortes Municipal Code (AMC) Chapter 19.16 provides the procedures for review of Legislative Actions, including comprehensive plan and development regulation amendments. Below is a summarized overview of the process.

Figure 1. City of Anacortes Annual Comprehensive Plan and Development Regulation amendment process



During the years 2020 and 2021, the city received 3 citizen-initiated petitions for amendments to the Comprehensive Plan. In addition, City staff have proposed 1 Comprehensive Plan amendment and multiple amendments to the development regulations within the Anacortes Municipal Code (AMC) Title 19, Unified Development Code. In July 2021, following a public comment period, petitioner presentations, a public hearing, and consideration of comments received, the City Council established the 2021 docket (Resolution 3042).

2021 Docket - Amendments Overview

Citizen Petitions

The City received the following timely petitions and suggestions to amend the Comprehensive Plan policies, map, or development regulations. For each proposal, the Department has provided a summary of the proposal and analysis. Petition titles contain a hyper link to the petitioner's application. The full text of each petition is available on the Comprehensive Plan Amendment webpage.

P1. “Promoting Neighborhoods & Affordable Housing” – Evergreen Islands

Summary

The proposal seeks to add the following polices to Goal H-1 of the Housing Element of the Comprehensive Plan:

(New) Policy H-1.x.	Regulate Short Term Vacation Rentals (STVRs) to mitigate their adverse impacts on the availability of Affordable Housing.
(New) Policy H-1.x.	Regulate Short Term Vacation Rentals (STVRs) to mitigate their adverse impacts to Residential Neighborhoods such as additional traffic, noise, and their quality of life.

Analysis

The Anacortes Comprehensive Plan is currently silent on the topic of short-term vacation rentals. The Comprehensive Plan does contain general goals and policies supporting provision of a sufficient quantity and variety of housing to meet the community’s needs, and preservation of the character of residential neighborhoods.

The addition of specific policies for short-term vacation rentals would be useful in clarifying and memorializing Council’s intent and would help provide direction for the upcoming review and potential amendment to the City’s short-term rental regulations, which is currently on PCED’s work plan to complete in 2021/2022.

More information about current regulations governing short-term rentals is available in this informational handout.

Public Comments

Seven written comments were received in support of docketing this proposal.

P2. "Skillings Future Land Use Map Amendment" – Thomas Skillings

Summary

The proposal seeks to change the Comprehensive Plan Future Land Use Map designation for portions of parcels P33059 and P33058 from Industrial to Residential Medium Density.

Analysis

The applicants would like to adjust the boundary line between 3 properties under their ownership. The purpose of the BLA would be to create a more generous setback between the existing home on P33062 (designated Residential Medium Density) and the adjacent properties to the west (designated Industrial and Residential Medium Density). The City's code prohibits approval of a BLA when it would result in a lot having more than one zoning or land use designation. Therefore, the owner is requesting a change to the land use designation for portions of P33059 and P33058 so that they are consistent with the designation of the residentially developed parcel to the east, and that, ultimately, the BLA can be accomplished.

If the FLUM amendment were approved, a subsequent rezone of the property from Industrial to R3 would be required to achieve consistency between the FLUM and zoning map. This would create additional land that could be developed with residential uses.

The applicant proposes leaving the remaining 31,486 sq. ft. portion of the property designated as Industrial.

P3. "Towards Zero Waste Policy" – Ryan Walters

Summary

The proposal seeks to add a new goal and policies to the Utilities Element of the Comprehensive Plan:

- New Goal U-9. Toward Zero Waste. Increase recycling and composting to 65% of the municipal solid waste stream.
  - New Policy U-9.1. Provide weekly curbside food waste collection including small containers for residents that do not require yard waste bins.
  - New Policy U-9.2. Facilitate or require multi-family dwellings to offer food waste collection.
  - New Policy U-9.3. Perform a waste characterization study and analyze results to identify waste stream components that can be targeted for reduction through producer responsibility or consumer education.
  - New Policy U-9.4. Construct solid waste rate schedules to incentivize increased diversion or reduced frequency of pickup.
  - New Policy U-9.5. When it becomes feasible, reduce garbage collection frequency to reduce trips, personnel costs, and greenhouse gas emissions.

Analysis

The City of Anacortes is included under Skagit County's Solid Waste Management Plan, which sets a goal for recycling and composting of 65%. The petition states that the new goal and policies would help the City move toward that goal.

City Initiated Amendments

The following amendments recommended by the PCED Department are included in this year's docket.

C1. Comprehensive Plan Technical Updates

Summary

The proposal is to amend the "Other Plans" paragraph on Page I-12 of the Comprehensive Plan as follows:

Other Plans

Each of the following plans is incorporated by reference into the Comprehensive Plan:

- 6-Year Capital Facilities Financing Plan ~~2015-2020~~
- Wastewater Comprehensive Plan ~~2015~~
- ~~2011~~ Water System Plan
- ~~2007~~ Stormwater ~~Management~~ Comprehensive Plan
- Anacortes Parks & Recreation ~~Comprehensive~~ Plan ~~2009~~
- ~~Anacortes Community Forest Lands Comprehensive Plan 2009~~
- Shoreline Master Program ~~2010~~
- ~~Fidalgo Bay-Wide Plan (2000)~~
- ~~Anacortes Airport Subarea Plan (2005)~~

Other plans may be incorporated into the Comprehensive Plan after its adoption by the adopting document for the individual plan.

Analysis

The purpose of the proposed amendment is to improve clarity by removing the names of city plans that are not necessary to be a part of the Comprehensive Plan, correcting and updating remaining plan titles, and removing specific dates so that updates to this section are not needed every time a referenced plan is updated in the future.

Title 19 Unified Development Code Clean-Up

Summary

Over the past 5 years, the City's land use procedures and development regulations have undergone significant reorganization and updates. In use of the code over time, City staff, members of the public, and applicants have identified areas that would benefit from revision to improve consistency in application, enhance clarity, and better implement the Comprehensive Plan's goals and policies. They are as follows:

C2. AMC Ch. 19.20 Application Procedures

- **AMC 19.20.070** - **Vesting** – Revise vesting language to clarify that approval of certain application types (that are not building permits or land divisions) does not provide vested rights for subsequent building permit applications.

C3. AMC Ch. 19.22 Concurrency

- **New section** - Re-insert language (omitted in 2019 update) regarding Director establishment of a concurrency facilities review program to monitor capacity on concurrency facilities and assess the cumulative impact of forecasts of approved development upon capacity and anticipated levels of service.
- **AMC 19.22.050 - Concurrency Test** – Add application requirements and review fee language.

C4. AMC 19.43.020.B -Adult Family Home Definition

- Update to reflect recent changes to RCW 70.128.010, which allows provision of services to up to 8 adults upon approval by DSHS.

C5. AMC Ch. 19.52 – Public Street Design

- Generally – consider changing terminology for 'parking lane' to 'parking pocket', where appropriate, to better convey comprehensive plan policies for new street design that minimizes impervious surfaces. The new street parking philosophy is less linear (lane) and more sectional (pockets).

C6. AMC 19.52.040.A.2 – Modified and Special Standards.

- There are several areas in the city for which the Public Works Department has developed special design standards for a street or neighborhood; however, some of these have not been formally adopted by Council. These standards should be adopted formally by council and added to the Public Works Engineering Design Standards.

C7. AMC Table 19.52.040.E – Lane Design Standards.

- Add note about integration of guest parking to the "Lane" street standard, similar to the note in the Local Access standard (Table 19.52.040.A).

C8. AMC Ch. 19.52.080 – Street Names and Signage.

- Add provision allowing the Fire Marshal or PW Director to require installation of No-Parking signage or other curb/pavement markings when a development contains a street with insufficient pavement width to allow for simultaneous on-street parking and emergency vehicle access.

C9. AMC 19.53.030.B Driveway location.

- Subsection B.2. "Lowest volume street" needs to be defined or consider changing to "Lowest order functional classification" or similar.
- Subsection B.3. The conditions identified in (a) and (b) need further clarification to assist in application, including defining the 'functional capacity' for an alley.
- In this section or elsewhere, provide better guidance for determining when development /redevelopment will require relocation to the alley of an existing driveway/access onto a city street.

C10. AMC Ch. 19.66 Fences

- Clarify when a fence permit is required.
- Identify parameters for what constitutes repair and maintenance of existing nonconforming fences.

C11. AMC Ch. 19.67 Signs

- Table 19.67.060, Projecting Sign maximum sign area - Update incorrect cross reference - The reference to 19.67.080(B)(1) should be 19.67.**090**(B)(1).
- Fix potentially conflicting provisions for commercial and noncommercial temporary signs located in the public right-of-way (AMC 19.67.110.C.2 and Table 19.67.110.F) and clarify placement standards.

NEXT STEPS

An additional Planning Commission work session to consider the docketed petitions will be held on March 23, 2022, if needed. Subsequently, staff will provide a staff report with PCED Department recommendations on specific amendment requests.

The proposal will be reviewed under the State Environmental Policy Act (SEPA) and State review through the WA State Department of Commerce.

Public Comment opportunity on the proposed amendments and a SEPA determination of environmental impacts are expected in April/May of 2022.

Resolution No. 3042

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

Whereas under RCW 36.70A.130(2)(a), updates, proposed amendments, or revisions to the Comprehensive Plan are considered by the City no more frequently than once every year;

Whereas, under AMC 19.16.030(B), the City of Anacortes may accept petitions for development regulation amendments as part of the annual docketing process, or may itself initiate the process of adopting or amending development regulations at any time;

Whereas under AMC 19.16.040(B), the City of Anacortes accepted proposals for amendments to the Comprehensive Plan and/or development regulations through the last business day in March;

Whereas petitions received for the 2020 Docket that were not previously considered for docketing are included for consideration in the 2021 Docket;

Whereas the Planning, Community & Economic Development Department published notice of the public hearing on June 9, 2021 and accepted written comment through June 30, 2021;

Whereas the City Council held a public hearing on the proposals on June 28, 2021;

Whereas amendment proposals placed on the docket will undergo further public, agency, and environmental review, consideration by the Planning Commission, and final consideration by the City Council; however, placing a proposal on the docket does not imply its ultimate approval;

Whereas on July 12, 2021, the City Council deliberated on the proposals, including public comments received, and made a motion to include all the proposals for amendments to the Comprehensive Plan and Development Regulations.

Now, therefore it is hereby resolved by the Anacortes City Council that the 2021 Docket of Comprehensive Plan and Development Regulation Amendments is hereby adopted and attached as Exhibit A.

PASSED and **APPROVED** on this 12th day of July 2021.

CITY OF ANACORTES

By Laurie Gere
Laurie Gere, Mayor

ATTEST:

Steven D. Hoglund, City Clerk

APPROVED AS TO FORM:

Darcy Swetnam

Darcy Swetnam, WSBA #40530
City Attorney

Resolution No. 3042
July 12, 2021

Exhibit A

2021 Docket of Proposed Comprehensive Plan and Development Regulation Amendments

Public Proposals			
Number	**Title/Applicant**	**Summary**	**Action Taken**
Comprehensive Plan			
P1	**Promoting Neighborhoods & Affordable Housing,** Evergreen Islands	Add 2 new policies to the Goal H-1 of the Housing Element relating to regulation of short-term rentals.	Include
P2	**Skillings Future Land Use Map Amendment**, Thomas Skillings	Change the future land use map designation of a portion of P33058 & P33059 (southeast corner of 35th & V intersection) from Industrial to Residential Medium Density	Include
P3	**Toward Zero Waste Policy,** Ryan Walters	Adds a new goal and related policies to increase recycling and composting to 65% of the municipal solid waste stream	Include

City Initiated Proposals			
Number	**Section**	**Summary**	**Action Taken**
Comprehensive Plan			
C1	**Introduction Section; Page I-12, "Other Plans"**	Remove plan titles that are not required to be incorporated by reference, update remaining plan titles and dates	Include
Development Regulations			
C2	**AMC 19.20.070 - Vesting**	Revise vesting language to clarify that approval of certain application types (that are not building permits or land divisions) does not provide vested rights for subsequent building permit applications.	Include
C3	**AMC Ch. 19.22 Concurrency**	New section - Re-insert language (omitted in 2019 update) regarding Director establishment of a concurrency facilities review program to monitor capacity on concurrency facilities and assess the cumulative impact of forecasts of approved development upon capacity and anticipated levels of service. AMC 19.22.050 - Concurrency Test – Add application requirements and review fee language.	Include
C4	**AMC 19.43.020.B -Adult Family Home Definition**	Update to reflect recent changes to RCW 70.128.010, which allows provision of services to up to 8 adults upon approval by DSHS	Include

C5	**AMC Ch. 19.52 – Public Street Design**	Generally – consider changing terminology for 'parking lane' to 'parking pocket', where appropriate, to better convey comprehensive plan policies for new street design that minimizes impervious surfaces. The new street parking philosophy is less linear (lane) and more sectional (pockets).	Include
C6	**AMC 19.52.040.A.2 – Modified and Special Standards**	There are several areas in the city for which the Public Works Department has developed special design standards for a street or neighborhood; however, some of these have not been formally adopted by Council. These standards should be adopted formally by council and added to the Public Works Engineering Design Standards	Include
C7	**AMC Table 19.52.040.E – Lane Design Standards**	Add note about integration of guest parking to the Lane street standard, similar to the note in the Local Access standard (Table 19.52.040.A).	Include
C8	**AMC Ch. 19.52.080 – Street Names and Signage**	Add provision allowing the Fire Marshal or PW Director to require installation of No-Parking signage or other curb/pavement markings when a development contains a street with insufficient pavement width to allow for simultaneous on-street parking and emergency vehicle access.	Include
C9	**AMC 19.53.030.B Driveway location**	Subsection B.2. "Lowest volume street" needs to be defined or consider changing to "Lowest order functional classification" or similar. Subsection B.3. The conditions identified in (a) and (b) need further clarification to assist in application, including defining the 'functional capacity' for an alley. In this section or elsewhere, provide better guidance for determining when development /redevelopment will require relocation to the alley of an existing driveway/access onto a city street.	Include
C10	**AMC 19.66 Fences**	Clarify when a fence permit is required Identify parameters for what constitutes repair and maintenance of existing nonconforming fences.	Include
C11	**AMC Ch. 19.67 Signs**	Table 19.67.060, Projecting Sign maximum sign area - Update incorrect cross reference - The reference to 19.67.080(B)(1) should be 19.67.090(B)(1). Fix potentially conflicting provisions for commercial and noncommercial temporary signs located in the public right-of-way (AMC 19.67.110.C.2 and Table 19.67.110.F) and clarify placement standards.	Include

DocuSign

Certificate Of Completion

Envelope Id: 91E55AB27CE14424A6BC4ABE28939164		Status: Completed
Subject: SIGNATURE REQUIRED: Approved Resolution 3042		
Source Envelope:		
Document Pages: 3	Signatures: 3	Envelope Originator:
Certificate Pages: 5	Initials: 0	City Clerk
AutoNav: Enabled		PO Box 547
EnvelopeId Stamping: Enabled		904 6th St
Time Zone: (UTC-08:00) Pacific Time (US & Canada)		Anacortes, WA 98221
		cityclerk@cityofanacortes.org
		IP Address: 23.90.91.2

Record Tracking

Status: Original 7/12/2021 7:38:13 PM	Holder: City Clerk cityclerk@cityofanacortes.org	Location: DocuSign

Signer Events	Signature	Timestamp
Darcy Swetnam darcys@cityofanacortes.org Security Level: Email, Account Authentication (None)	Darcy Swetnam Signature Adoption: Pre-selected Style Using IP Address: 23.90.89.124	Sent: 7/12/2021 7:39:09 PM Viewed: 7/13/2021 9:15:21 AM Signed: 7/13/2021 9:15:35 AM
Electronic Record and Signature Disclosure: Accepted: 7/13/2021 9:15:21 AM ID: 36d25b09-16b3-4e8a-9777-7c772bd808ba		
Steve Hoglund steveh@cityofanacortes.org City Clerk/Treasurer City of Anacortes Security Level: Email, Account Authentication (None)	Signature Adoption: Drawn on Device Using IP Address: 23.90.91.2	Sent: 7/12/2021 7:39:09 PM Viewed: 7/13/2021 8:45:25 AM Signed: 7/13/2021 8:45:31 AM
Electronic Record and Signature Disclosure: Accepted: 1/8/2019 2:26:27 PM ID: 9b1630a8-aa5f-4ac5-93eb-5700d104d979		
Laurie Gere laurieg@cityofanacortes.org Security Level: Email, Account Authentication (None)	Laurie Gere Signature Adoption: Pre-selected Style Using IP Address: 23.90.91.2	Sent: 7/12/2021 7:39:09 PM Viewed: 7/13/2021 8:37:15 AM Signed: 7/13/2021 8:37:23 AM
Electronic Record and Signature Disclosure: Accepted: 7/13/2021 8:37:15 AM ID: 98fa0baa-986e-48c6-8a5e-7278a415f718		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/12/2021 7:39:09 PM
Certified Delivered	Security Checked	7/13/2021 8:37:15 AM
Signing Complete	Security Checked	7/13/2021 8:37:23 AM
Completed	Security Checked	7/13/2021 9:15:35 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

CONSUMER DISCLOSURE

From time to time, Ingram Micro OBO Cities Digital Inc OBO City of Anacortes (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Ingram Micro OBO Cities Digital Inc OBO City of Anacortes:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: orders@citiesdigital.com

To advise Ingram Micro OBO Cities Digital Inc OBO City of Anacortes of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at orders@citiesdigital.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from Ingram Micro OBO Cities Digital Inc OBO City of Anacortes
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to orders@citiesdigital.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.
To withdraw your consent with Ingram Micro OBO Cities Digital Inc OBO City of Anacortes

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

> i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
>
> ii. send us an e-mail to orders@citiesdigital.com and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)

PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Ingram Micro OBO Cities Digital Inc OBO City of Anacortes as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Ingram Micro OBO Cities Digital Inc OBO City of Anacortes during the course of my relationship with you.