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ANACORTES PLANNING COMMISSION

September 28, 2022

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

AGENDA

6:00 PM

[VIEW PACKET MATERIALS HERE](#)

A. Roll Call

B. Minutes

- 1) Draft Minutes of 09/14/2022

C. Correspondence

D. New Business

E. Old Business

- 1) Critical Areas Regulation Amendments to address Riparian Management Zones
AMC 19.70.330

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Planning Commission Public Hearing Minutes for September 14, 2022

This is not a verbatim transcript of the meeting and is written to capture the general spirit of the discussion based upon notes and video observation by the author. To view the video recording of this meeting, click [here](https://www.anacorteswa.gov/700/Watch-Meetings), or go to <https://www.anacorteswa.gov/700/Watch-Meetings>.

Commission Chair MacKenzie called the Public Meeting of September 14, 2022, to order at 6pm.

Roll Call:

Members Present: Commissioners Frank Jeretzky, Jeff Graf, Jack Curtis, Ward MacKenzie, Linda Martin & Sarah Ruether

Members Absent: Gary Molyneaux

Staff Present: Don Measamer, Dave Oicles, Libby Grage, Grace Pollard

Minutes: The minutes from August 10, 2022, were accepted as presented.

Correspondence: None

New Business: None

Old Business: **Public Hearing: Ordinance 4024, Day Care II as a permitted use in R4 Zone.**

Don Measamer, PCED Director, introduced Grace Pollard, Senior Planner. Pollard gave a presentation on proposal Ordinance 4024, Day Care II as a permitted use in R4 Zone, providing background information, defining Day Care II, and explained the conditional use process as stated in AMC 19.36.010. Pollard provided an overview of the R4 Zone and covered WA State early learning requirements in the WAC 110-300-0354, 0145, & 0356 as well as WA State Adult Day Care requirements. Pollard also covered current parking standards for Day Care as stated in Table 19.64.040 of the AMC. She concluded her presentation with Staff recommendations for the draft code language.

At 6:24pm Chair MacKenzie opened the public hearing for comments. No public were present. The floor was closed to public comment at 6:25pm. Commissioners asked questions which were answered by Staff. Commissioner Martin made a motion to move the proposal to City Council as stated in the Staff's report with one change to eliminate section B (3)(d) in the draft code language which states: "The maximum building size must not exceed 4,000 square feet". Commissioner Jeretzky seconded the motion. Commissioners voted 6-0 to approve the motion. Motion carried.

With no further discussion, Commissioner Chair MacKenzie concluded the meeting at 7:00pm.



Planning Commission Agenda Bill

Meeting Date: September 28,
2022

Agenda Item: E.1.

Subject: Critical Areas Regulation Amendments to address Riparian Management Zones AMC 19.70.330

Staff Contact: DON MEASAMER

Approved for Submittal to Commission by

DON MEASAMER
LIBBY GRAGE
Grace Pollard
DON MEASAMER

Action Type

Public Hearing

Summary Statement: As a result of the Growth Management Hearings Board findings, the City is required to address Best Available Science (BAS) in determining stream buffers within city limits. Previously, buffers for streams were 50 feet from each side of the stream. The best Available Science report was updated by GeoEngineers on June 29, 2022, which facilitated Version 1 of the draft Riparian Management Zone regulations, as well as using City of Seattle regulations as a guide. The draft regulations were presented to Washington State Department of Commerce, and Washington Department of Fish and Wildlife (WDFW) for review. Staff worked very closely with WDFW and Evergreen Islands on responding to comments and revisions to the proposed regulations. Staff proposes that streams be addressed as Riparian Management Zones, which consist of the Water Course and the Riparian Management Zone, using WDFW Best Available Science as a guideline. For development proposed within a Riparian Corridor, the draft regulations would require a critical areas report to determine function and value of the existing Riparian Management Zone (RMZ) and the proposed RMZ based on WDFW Site Potential Tree Height, in no case less than 100 feet. Standards are proposed for limited development on existing developed lots and plated lots prior to the adoption of the draft regulations within the RMZ, requiring a critical areas report and with improvements to storm water quality, and the applicant carries out a restoration plan with monitoring. Small project waivers include rockeries, fences, and utilities when meeting the criteria listed in Section 19.70.330.C.8. WDFW letter dated September 8, 2022 confirms that the draft regulations are consistent with Best Available Science. Washington State Department of Commerce letter dated September 13, 2022 confirming use of Best Available Science.

Background: Proposed amendments to Critical Area Regulations to address the Growth Management Boards findings based on WDFW Best Available Science for Riparian Management Zones

Previous Action: Adoption of Amanded Critical Areas Regulations by Cit Council via

Ordinance 3064, July 2021

Competing Viewpoints Considered: All agency and public comments have been addressed, see WDFW letter stating compliance with Best Available Science

Recommended Motion: Motion to recommend approval of the draft CAO amendments to include Riparian Management Zone regulations to City Council

Alternative Actions: Further review

Attachments (listed in order presented):

1. Critical Areas AMC Chapter 19.70 Riparian Management Zones Version III
2. Riparian Management Zones PWR PT
3. RMZ Comments Recieved
4. 9-8-22 WDFW comments on Anacortes revised CAO - Final
5. Anacortes Commerce CAO Letter - 2022-S-4136
6. 9-1-22 WDFW Critical Areas AMC Chapter 19.70 Riparian Corridors Version II (004) - WDFW markup
7. 20220919-EvergreenIslands-combined
8. 20220919-Munce
9. 20220915-Munce-combined

Chapter 19.70 CRITICAL AREAS

Sections:

Introduction – General Provisions

- 19.70.010 Purpose.
- 19.70.015 Applicability.
- 19.70.020 Identification, classification, and rating of critical areas.
- 19.70.025 Protection of critical areas.
- 19.70.030 Project evaluation.
- 19.70.035 Critical areas review.
- 19.70.040 Exempt activities.
- 19.70.045 Permitted alterations.
- 19.70.050 Reasonable use exception and critical area variance.

Article I. Critical Areas Review Procedures

- 19.70.110 Critical area identification form.
- 19.70.115 Critical area report.
- 19.70.120 Application requirements.
- 19.70.125 Mitigation requirements.
- 19.70.130 Mitigation plan requirements.
- 19.70.135 Title notification.
- 19.70.140 Field marking.
- 19.70.145 Construction plan review, monitoring, and inspection.
- 19.70.150 Financial guarantee requirements.
- 19.70.165 Unauthorized critical area alterations.
- 19.70.170 Final decision and appeals.

Article II. Wetlands

- 19.70.210 Description and purpose.
- 19.70.215 Designation and rating.
- 19.70.220 Mapping and delineation.
- 19.70.225 General development standards.
- 19.70.230 Specific wetland category development standards.
- 19.70.235 Required buffer areas.
- 19.70.240 Critical area report additional requirements.
- 19.70.245 Compensatory mitigation performance standards and requirements.

Article III. Fish and Wildlife Habitat Conservation Areas

- 19.70.310 Description and purpose.
- 19.70.315 Designation.
- 19.70.320 Mapping.
- 19.70.325 General development standards for all FWHCAs.
- 19.70.330 Specific standards for streams. Riparian Management Zones
- 19.70.335 Specific standards for other FWHCAs.
- 19.70.340 Stormwater management facilities.
- 19.70.350 Critical area report additional requirements.
- 19.70.355 Mitigation performance standards and requirements.

Definitions

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 [19.49.04](#), 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 **must not be increased**. 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, **harm disturbance** to the critical area's **functions and values** must be **avoided if possible and minimized to the greatest extent possible**. Disturbances 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: 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.	Yes	Yes

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 not remove non-hazard trees in the buffer or critical area, and do not diminish water quality or quantity. Header Exempt Activities removed	No	Yes
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 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: 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.	Yes	Yes
Vegetation Management, including: 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;	Yes	Yes

c. Areas cleared by removal of noxious and/or invasive plant species must be revegetated with site-appropriate native species at natural densities and the site must be stabilized against erosion in accordance with the stormwater manual adopted by the city; d. All work performed is above the ordinary high water mark and above the top of a stream bank; and e. The following limits may not be exceeded: Within city-owned property, no more than 3,000 square feet of soil may be exposed at any one time; and within private property, not more than 500 square feet of area may be cleared, as calculated cumulatively, over one year, without a permit and critical area report prepared by a qualified professional.		
2. Vegetation management consistent with a previously approved critical area mitigation, restoration, remediation, or enhancement plan that requires ongoing maintenance and vegetation management beyond final inspection and the required monitoring period for the permitted project. 3. Hazard Trees.		
a. The felling of hazard trees may be permitted when necessary to:		
i. Control fire; or ii. Halt the spread of disease or damaging insects consistent with 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 required 10-foot stream setback for a piped stream segment if no other critical area or buffer is present.	No	Yes

(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	Yes	Yes

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
would otherwise unreasonably prohibit the provision of public services and amenities.		
1. “Public services” include, but are not limited to, water supply, sewer and stormwater management facility; electric power, telecommunication and natural gas lines; and 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 riparian 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	Yes	Yes

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
activities not required as project mitigation that have been approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction and/or that meet the criteria of RCW 77.55.181(1) and that are reviewed and approved according to the provisions of RCW 77.55.181 . A biological evaluation report is required to determine whether the proposal would conserve, preserve, or enhance critical area functions in the long term to minimize temporary environmental impacts.		
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 Washington Department of Ecology and State Washington Department of Fish and Wildlife M m management recommendations, and regulations of the Washington 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		

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
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, 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: 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 and off-site mitigation to the extent necessary, 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.	Yes	Yes
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~~ to the critical area onsite to the maximum extent possible, while still allowing reasonable use of the lot; offsite mitigation may be utilized to the extent necessary to achieve no net loss ecological functions. 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~~ **must** 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

Wetland Category	Buffer Width (feet)		
	High Intensity	Moderate Intensity	Low Intensity
Category I	300	225	150
Category II	300	225	150
Category III	300	225	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

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

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. 4015 § 2 (Att. A), 2022; 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 (**W**D^FW), 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	Case-by-case	Case-by-case	Case-by-case

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
		of an estuarine wetland			
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. [Riparian Management Zones as defined in AMC 19.70.330 and 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~~ **most recently updated edition**. 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 **fish and wildlife** 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~~ Riparian Management Zones.

A. ~~Typing.~~ Stream ~~Riparian Watercourse~~ 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.~~

A. A Riparian Management Zone (RMZ) is a critical area, specifically, it is a type of Fish and Wildlife Habitat Conservation area. A project site's RMZ is associated with each aquatic species upstream and downstream from the project site.

1. The RMZ consists of a watercourse and the area adjacent to the watercourse that has the potential to provide full riparian ecosystem functions for bank stability, shade, pollution removal, contributions of detrital nutrients, recruitment of large woody debris, and wildlife habitat. The width of the RMZ is the height of the tallest 200-year-old-site-potential tree (SPTH-200) or 100 feet, whichever is greater, measured horizontally. The RMZ is measured from whichever of the following features is furthest from the center of the watercourse (a) the ordinary high water mark, (b) the top of bank or (c) the outer edge of the Channel Migration Zone (if one exists). In watercourses with braided channels or alluvial fans, the ordinary high water mark will include the entire stream feature. The RMZ may exceed the 200-year site potential tree height based on section 19.70.330.B.3.

2. When a pipe or culvert that has known or potential fish habitat downstream and upstream from the pipe or culvert is daylighted, the watercourse formerly in the pipe or culvert will be regulated as a riparian watercourse, and the area adjacent to that watercourse will be regulated as a riparian management zone, as defined in subsection 19.70.330 A (1). This subsection 19.70.330 does not apply when the pipe or culvert is removed to provide a publicly owned facility designed primarily for water quality treatment, flow control, or stormwater conveyance.

3. Activities that may impact an RMZ must provide a critical areas report prepared by a qualified professional describing the functions and values of the RMZ. The report must include the 200 year site potential tree height (SPTH) as determined by WDFW at <https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>

If SPTH was also calculated using site-scale data, that information must also be included. The report must describe inner measurement point (e.g, ordinary high water mark) and the extent of

the RMZ with sufficient detail to allow field delineation. The report must demonstrate that the project will result in no net loss of the ecosystem functions for the RMZ and associated species.

B. Development standards for parcels containing an RMZ;

1. Application of standards and regulatory intent

a. The provisions of this subsection 19.70.330 apply to all development on parcels containing an RMZ as defined in subsection 19.70.330.A (1).

b. It is the long term goal of the City to restore the City's RMZs and to protect fish passage where scientifically justified. The City has determined that best available science supports protecting these RMZs as described in this section 19.70.330.

2. Watercourse: Development is prohibited within or over the riparian watercourse, except as provided in this paragraph 19.70.330 B.2 The Director may approve access over the riparian watercourse, if the applicant demonstrates that :

a. no other access is available;

b. the access is provided by a freestanding structure that maintains the natural channel and floodway of the watercourse ;

c. the coverage of the watercourse and disturbance of the RMZ and any other adjacent environmentally critical area or buffer are kept to a minimum; and

d. the material used to construct the access is durable and non-toxic to the maximum extent feasible. If using untreated wood is infeasible, wood treated with pentachlorophenol, creosote, chromate copper arsenate, or comparably toxic compounds is prohibited. Treated wood and other material shall be the least toxic and shall be applied and used according to National Oceanic and Atmospheric Administration Fisheries guidelines for using treated wood in or over aquatic environments.

e. In the watercourse any action detrimental to habitat or actions affecting trees and vegetation, including but not limited to clearing or removal, is prohibited, except as provided in this paragraph 19.70.330. B. 2 (a).

3. Riparian Management Zone : The RMZ is defined in subsection 19.70.330.A.(1). Existing improved areas of public or private streets/driveways are excluded from the regulations for the RMZ.

a. Development is prohibited in the RMZ, except as follows:

1) To provide the minimum necessary access if no other access is available to development approved under subsection 19.70.330.B.2.(a)

2) On existing developed lots and platted lots existing prior to adoption of Ordinance 4025 that satisfy one or more of the provisions within AMC Table 19.70.040 (A) and Table 19.70.045 if the applicant demonstrates that:

a. None of the development occurs within or over the watercourse except as provided in subsection 19.330.B.2.

b. The development complies with flow control and water quality requirements, regardless area of land disturbing activity or the size of the addition or replacement of impervious surface.
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c. Any development, including but not limited to coverage by impervious surface, does not exceed 35 percent of the total lot area, and provided further that the maximum lot coverage does not exceed that allowed under Title 19 and.

d. When compliance with storm water flow control and water quality requirements is required solely based on subsection 3 a (2) a, b , the director may approve a restoration plan in lieu of compliance with subsections 3 a (2) a, b if the applicant demonstrates that the plan meets the following criteria:

i. The watercourse and/or RMZ ecological function will be restored so that it prevents harmful erosion, protects water quality, and provides diverse habitat: and

ii. The restoration results in greater protection of the watercourse and RMZ than compliance with 3.a (2) a,b.

3). In the RMZ any action detrimental to habitat and any action affecting trees and vegetation, including but not limited to clearing or removal, are prohibited, except as provided in subsection 19.70.330.B.3.a.1, or 19.70.330.B. 3.a.2

4). If the RMZ is degraded due to the lack of trees and vegetation, the presence of invasive or non-native species, and/or the presence of impervious surface or other development, the applicant shall prepare and carry out a restoration plan that restores the ecological function of the RMZ to the extent commensurate with the impact of the development on the RMZ and according to mitigation standards pursuant to Section 19.70.125 and Section 19.70.130

5). If the development is authorized pursuant to AMC 19.49.040 or AMC Table 19.70.040 (A) and AMC Table 19.70.045 the Director must require that the degraded portion of the RMZ be restored by removing existing nonnative and invasive plant species, and replanting with native trees and vegetation, and providing a five-year monitoring and maintenance plan consistent with the requirements of Section 19.70.130, based on a Critical Area Restoration plan.

6). Small project waiver

a. The Director may approve fences, rockeries, or similar features or temporary disturbance for installation of utility lines in a RMZ if no construction occurs over, in, or within 15 feet of a watercourse or water body, and if the applicant demonstrates that the proposal meets the following criteria:

1) The feature is constructed on a lot that has been in existence as a legal building site consistent with Section 19.49.040 Non-Conforming Structures.

2) The feature:

i) Does not contain floor area;

ii) Does not remove trees or native vegetation;

iii) Does not block wildlife movement through the riparian management zone; and

iiii) Mitigates impacts to ecological functions.

b. The Director's decision requires:

i) The use of fencing with a highly durable protective barrier during the construction to protect the RMZ.

ii) Mitigation pursuant to Section 19.70.125 and 19.70.130 to offset the area of both temporary and permanent development.

iii) Additional measures, as appropriate, to protect the remainder of the RMZ.

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

DNR Water Type (WAC 222-16-030)	Standard Buffer Width
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. *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.

D. *Functionally Separated and Isolated Stream Buffers Riparian Management Zones*. Consistent with the definition of “~~buffers~~” Riparian Management Zone in this chapter, ~~areas~~ RMZs are places that potentially provide riparian ecosystem functions. Portions of the RMZ that are functionally isolated and physically separated from a stream watercourse 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 watercourse ~~must be~~ may be excluded from the RMZ. If such an area provides any of the five primary RMZ functions (bank stability, shade, pollution removal, contributions of detrital nutrients, or recruitment of large woody debris) it will be retained within the RMZ; if it provides none of these functions it may be excluded. ~~considered physically isolated and functionally separated stream buffers~~. After an RMZ is ~~Once~~ determined by the decision-maker, based on a submitted critical area report, to be a physically separated and functionally isolated stream buffer the area is no longer considered an RMZ critical area. ~~Development proposals are allowed in these areas.~~

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. *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.~~

F ~~E~~. *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 watercourses 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 ditches that do not meet the definition of a watercourse roadside ditched segments of regulated streams –are subject to a 10-foot setback from the centerline of the stream course piped watercourse or ditch 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 a previously channelized, culverted, or piped streams watercourse 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 riparian management zone** 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 the** conveyance will maintain the flow capacity and not create flooding elsewhere in the drainage basin.

G F. ~~Stream Enhancement Measures~~ Riparian Management Zone Enhancement Measures. Only those enhancement measures deemed most applicable and/or appropriate for **stream channel or buffer RMZ** enhancement projects will be considered in a **buffer RMZ** 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 watercourse** was previously underground, in a culvert or pipe. Surface channels which are “daylighted” must be located within a **buffer** riparian management zone-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. 4015 § 2 (Att. A), 2022; 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~~ **Non-RMZ** 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~~ **Non-RMZ** -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 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 riparian management zone** when determined by a qualified professional that the location of the facilities will enhance the **buffer area riparian management zone** and protect the **stream watercourse**; and
- E. Such facilities are designed consistent with the requirements of AMC Chapter [19.76](#). (Ord. 4015 § 2 (Att. A), 2022; Ord. 3064 § 2 (Att. A), 2021. Formerly 19.70.345)

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 RMZs.* If no project impacts are anticipated and standard ~~stream buffer~~ [riparian management zone](#) widths are retained, a [stream RMZ](#) 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 RMZs](#) 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 RMZ](#) survey showing the field delineated ordinary high water mark(s);

- b. Standard ~~stream-buffer~~ RMZ boundary as determined by AMC [19.70.330](#), Specific standards for riparian management zones;
 - ~~c.~~ Boundary for proposed stream buffers—averaging, if applicable;
 - ~~d.~~ c. Vegetative, faunal, and hydrologic characteristics;
 - ~~e.~~ d. Soil and substrate conditions; and
 - ~~f.~~ e. Topographic elevations, at two-foot contours;
2. A detailed description and functional assessment of the ~~stream~~ watercourse channel and ~~stream-buffer~~ riparian management zone under existing conditions pertaining to the protection of ~~stream~~—the RMZ 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~~ RMZ functions;
4. Proposed ~~buffer~~ RMZ enhancement, if needed, including a written assessment and accompanying maps and planting plans for ~~buffer~~ RMZ areas to be enhanced, including the following information at a minimum:
 - a. A description of existing ~~buffer~~ RMZ conditions;
 - b. A description of proposed ~~buffer~~ RMZ conditions and how proposed conditions will increase ~~buffer~~ RMZ functions in terms of ~~stream~~ RMZ 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~~ RMZ conditions, as compared to performance standards, for enhancement success; and
 - e. A discussion of ongoing management practices that will protect ~~stream~~ RMZ functions and habitat value through maintenance of vegetation density within the ~~stream~~ RMZ ~~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 (WDFW), 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)

Definitions

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

“Anadromous fish” means fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of saltwater and spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life

history of salmon, for example, contains the following stages: upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

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

“Averaging” means establishing the required buffer setback from a critical area, within the permitted parcel of land only, so that areas within the parcel determined to be more environmentally sensitive than others will have a larger buffer than the less sensitive areas. For every increase in setback for one area of the parcel, there will be an equal corresponding decrease in another area of the parcel. The total land area within the buffer must remain the same as if the buffer were a uniform width.

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

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

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC [365-195-900](#) through [365-195-925](#). Sources of best available science are included in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the Washington State Department of Commerce.

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

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

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

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

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

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

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

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

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

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

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

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

“Floodway, zero rise” means the channel of a stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without any measurable increase in flood height. A measurable increase in base flood height means a calculated upward rise in the base flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to development in the floodplain. This definition is broader than that of the FEMA floodway, but always includes the FEMA floodway. The boundaries of the 100-year floodplain, as shown on the current flood insurance study for the city of Anacortes, are considered the boundaries of the zero rise floodway unless otherwise delineated by a critical area study.

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

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

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

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

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

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

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

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

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

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

“Mitigation” means avoiding, minimizing, or compensating for adverse critical areas impacts, using the sequential order of preference listed in AMC [19.70.125](#), Mitigation requirements.

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

“Native growth protection area/easement” (NGPA/E) means an easement granted for the protection of native vegetation within a sensitive area or its associated buffer. The easement should be recorded on the appropriate documents of title and filed with the county records division.

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

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

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

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

“Repair” or “maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

Riparian Management Zone means the area that has the potential to provide full riparian functions. This area occurs within one 200-year site potential tree height measured from the edge of the stream channel. In situations where a channel migration zone is present, the RMZ occurs within one SPTH 200 measured from the outer edge of the CMZ. In places where the SPTH 200 is less than 100 feet, the RMZ is set at 100 feet to provide for the pollution removal function.

“Restoration” means measures taken to restore an altered or damaged natural feature, including: (1) active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and (2) actions performed to reestablish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

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

“Shoreline jurisdiction” means all marine waters along Puget Sound, streams and rivers with an annual mean flow of more than 20 cubic feet per second, lakes greater than 20 acres in size, shorelands adjacent to these water bodies, and associated wetlands.

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

“Site Potential Tree Height” (SPTH 200) means the average maximum height of the tallest dominant trees at age 200 for a given place’s soils site class. WDFW provides SPTH 200 based on soil surveys at;

<https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>

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

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

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

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

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

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

Watercourse (or "river" or "stream") means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

“Wetland” or “wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. “Wetlands” generally include swamps, marshes, bogs, and similar areas. “Wetlands” do not include those artificial wetlands intentionally created from

nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. “Wetlands” include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands.

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

“Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water. (Ord. 3064 § 2 (Att. A), 2021)

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

Disclaimer: The city attorney’s office has the official version of the Anacortes Municipal Code. Users should contact the city attorney’s office for ordinances passed subsequent to the ordinance cited here.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

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Riparian Management Zones

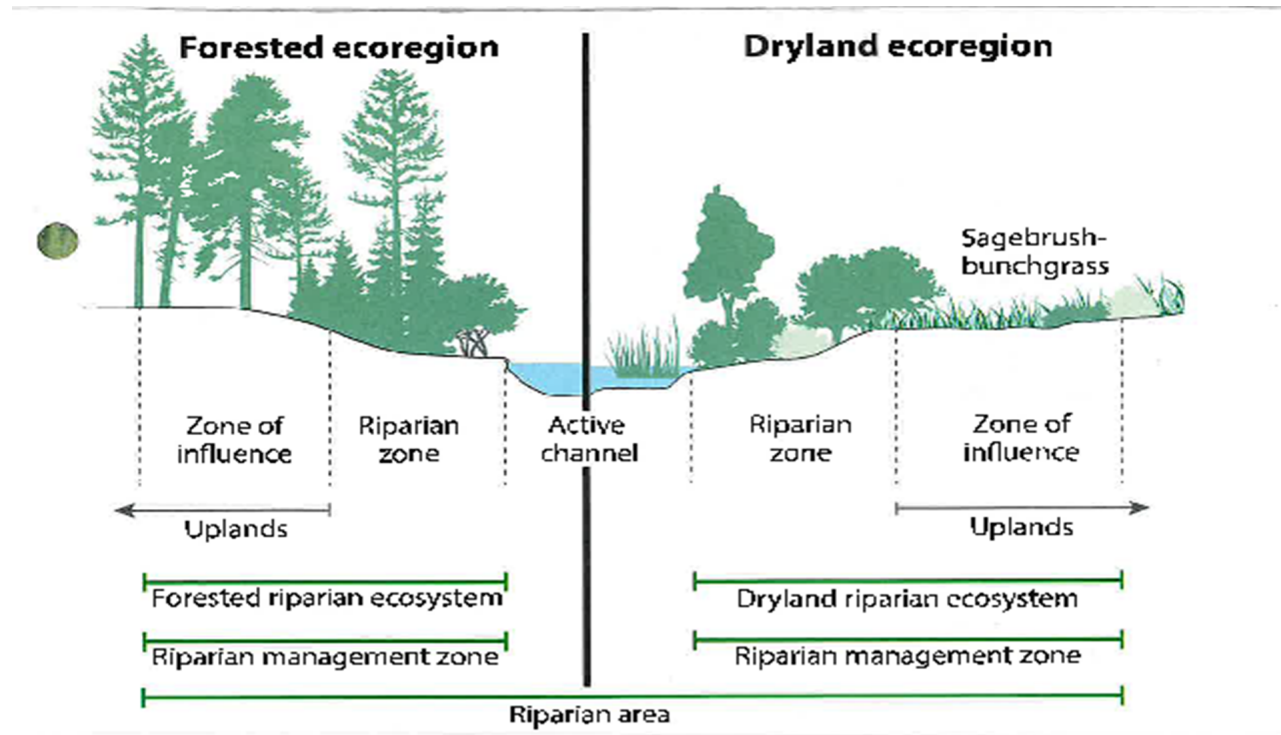
- ▶ AMC 19.70.330

Wetland buffer Averaging AMC Section 19.70.235 not reduced less than 75% per GMHB

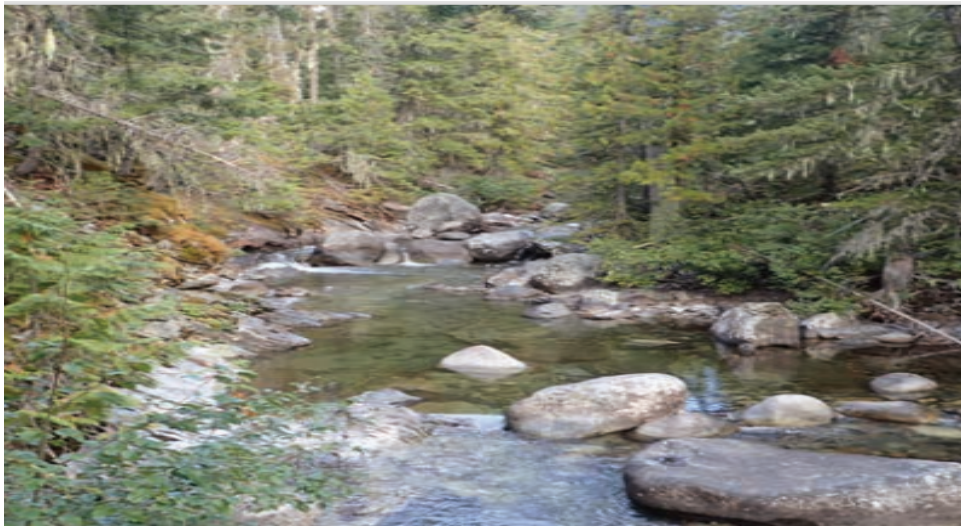
- ◆ F. *Averaging Buffer Widths*. The decision-maker may allow averaging of wetland buffer widths on a case-by-case basis when the critical area report demonstrates that the following criteria are met:
 - ◆ 1. There is not a feasible alternative to the site design that could be accomplished without buffer 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.~~

Riparian Management Zones

- ◆ Riparian Management Zones consist of the watercourse and the area adjacent to the watercourse, previously noted as the stream and buffer.
- ◆ The Riparian Management Zone (RMZ) is a critical area , specifically, it is a type of Fish and Wildlife Habitat Conservation area. A project site's RMZ is associated with each aquatic species upstream and downstream from the project site.
- ◆ The width of the RMZ is the height of the tallest 200-year-old-site-potential tree (SPTH-200) or 100 feet, which ever is greater, measured horizontally from the watercourse.
- ◆ The RMZ may exceed the 200-year site potential tree height based on section 19.70.330.A.3.
- ◆ 3. Activities that may impact an RMZ must provide a critical areas report prepared by a qualified professional describing the functions and values of the RMZ. The report must include the 200 year site potential tree height (SPTH) as determined by WDFW at <https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>

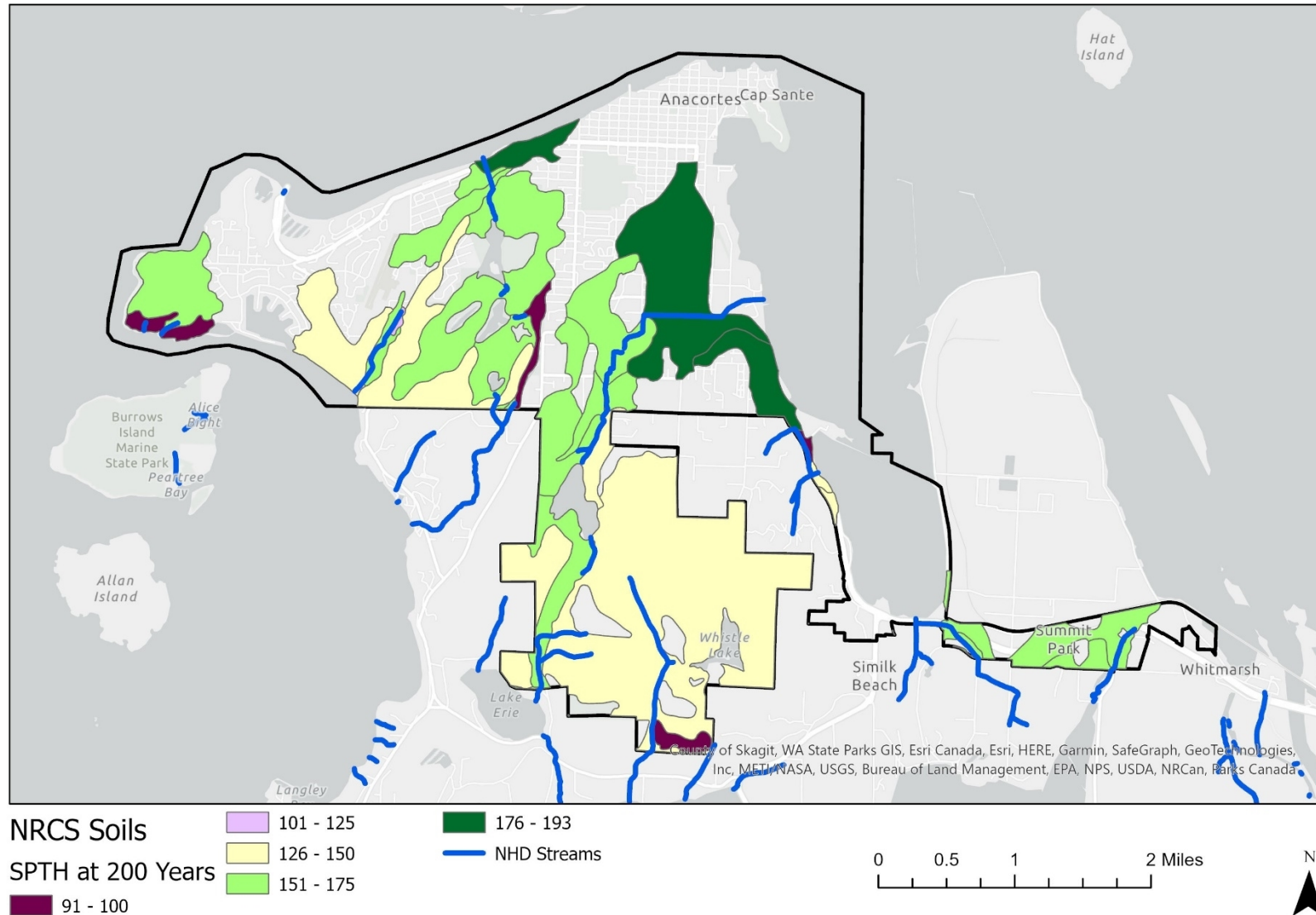


From WDFW Riparian Ecosystems, Volume 2: Management Recommendations



Dryland ecoregion riparian area, Whitman County/Michael Townsend

200-year Site-Potential Tree Heights, Riparian Soils Anacortes, Washington



- ◆ Section 19.70.330 A.3. Activities that may impact an RMZ must provide a critical areas report prepared by a qualified professional describing the functions and values of the RMZ. The report must include the 200 year site potential tree height (SPTH) as determined by WDFW at <https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>
- ◆ If SPTH was also calculated using site-scale data, that information must also be included. The report must describe inner measurement point (e.g, ordinary high-water mark) and the extent of the RMZ with sufficient detail to allow field delineation. The report must demonstrate that the project will result in no net loss of the ecosystem functions for the RMZ and associated species.
- ◆ Most common SPTH in Anacortes range 91 to 193 feet

- ◆ Section 19.70.330.B. Development standards for parcels containing an RMZ;
- ◆ 1. Application of standards and regulatory intent
- ◆ a. The provisions of this subsection 19.70.330 apply to all development on parcels containing an RMZ as defined in subsection 19.70.330.A (1).
- ◆ b. It is the long term goal of the City to restore the City's RMZs and to protect fish passage where scientifically justified. The City has determined that best available science supports protecting these RMZs as described in this section 19.70.330.
- ◆ 2. Watercourse: Development is prohibited within or over the riparian watercourse, except as provided in this subsection 19.70.330 B. The Director may approve access over the riparian watercourse, if the applicant demonstrates that :
 - ◆ a. no other access is available;
 - ◆ b. the access is provided by a freestanding structure that maintains the natural channel and floodway of the watercourse ;
 - ◆ c. the coverage of the watercourse and disturbance of the RMZ and any other adjacent environmentally critical area or buffer are kept to a minimum; and
 - ◆ d. the material used to construct the access is durable and non-toxic to the maximum extent feasible. If using untreated wood is infeasible, wood treated with pentachlorophenol, creosote, chromate copper arsenate, or comparably toxic compounds is prohibited. Treated wood and other material shall be the least toxic and shall be applied and used according to National Oceanic and Atmospheric Administration Fisheries guidelines for using treated wood in or over aquatic environments.
 - ◆ e. In the watercourse any action detrimental to habitat or actions affecting trees and vegetation, including but not limited to clearing or removal, is prohibited, except as provided in subsections 19.70.330. B. 2 (a).

- ◆ Section 19.70.330.3. Riparian Management Zone : The RMZ is defined in subsection 19.70.330.A.(1). Existing improved areas of public or private streets/driveways are excluded from the regulations for the RMZ.
- ◆ a. Development is prohibited in the RMZ, except as follows:
 - ◆ 1) To provide the minimum necessary access if no other access is available to development approved under subsection 19.70.330.B.2.(a)
 - ◆ 2) On existing developed lots and platted lots existing prior to adoption of Ordinance 4025 that satisfy one or more of the provisions within AMC Table 19.70.040 (A) and Table 19.70.045 if the applicant demonstrates that:
 - ◆ a. The development complies with flow control and water quality requirements, regardless area of land disturbing activity or the size of the addition or replacement of impervious surface. Chapter 19.76 Storm Water
 - ◆ b. Any development, including but not limited to coverage by impervious surface, does not exceed 35 percent of the total lot area, and provided further that the maximum lot coverage does not exceed that allowed under Title 19.
 - ◆ c. When compliance with storm water flow control and water quality requirements is required solely based on subsection 3 a (2) a, b , the director may approve a restoration plan in lieu of compliance with subsections 3 a (2) a, b if the applicant demonstrates that the plan meets the following criteria:
 - ◆ i. The watercourse and/or RMZ ecological function will be restored so that it prevents harmful erosion, protects water quality, and provides diverse habitat: and
 - ◆ ii. The restoration results in greater protection of the watercourse and RMZ than compliance with 3.a (2) a,b.
 - ◆ 3. In the RMZ any action detrimental to habitat and any action affecting trees and vegetation, including but not limited to clearing or removal, are prohibited, except as provided in subsection 19.70.330.B.3.a.1, or 19.70.330.B.3.a.2
 - ◆ 4. If the RMZ is degraded due to the lack of trees and vegetation, the presence of invasive or non-native species, and/or the presence of impervious surface or other development, the applicant shall prepare and carry out a restoration plan that restores the ecological function of the RMZ to the extent commensurate with the impact of the development on the RMZ and according to mitigation standards pursuant to Section 19.70.125 and Section 19.70.130
 - ◆ 5. If the development is authorized pursuant to AMC 19.49.040 or AMC Table 19.70.040 (A) and AMC Table 19.70.045 the Director must require that the degraded portion of the RMZ be restored by removing existing nonnative and invasive plant species, and replanting with native trees and vegetation, and providing a five-year monitoring and maintenance plan consistent with the requirements of Section 19.70.130, based on a Critical Area Restoration plan.

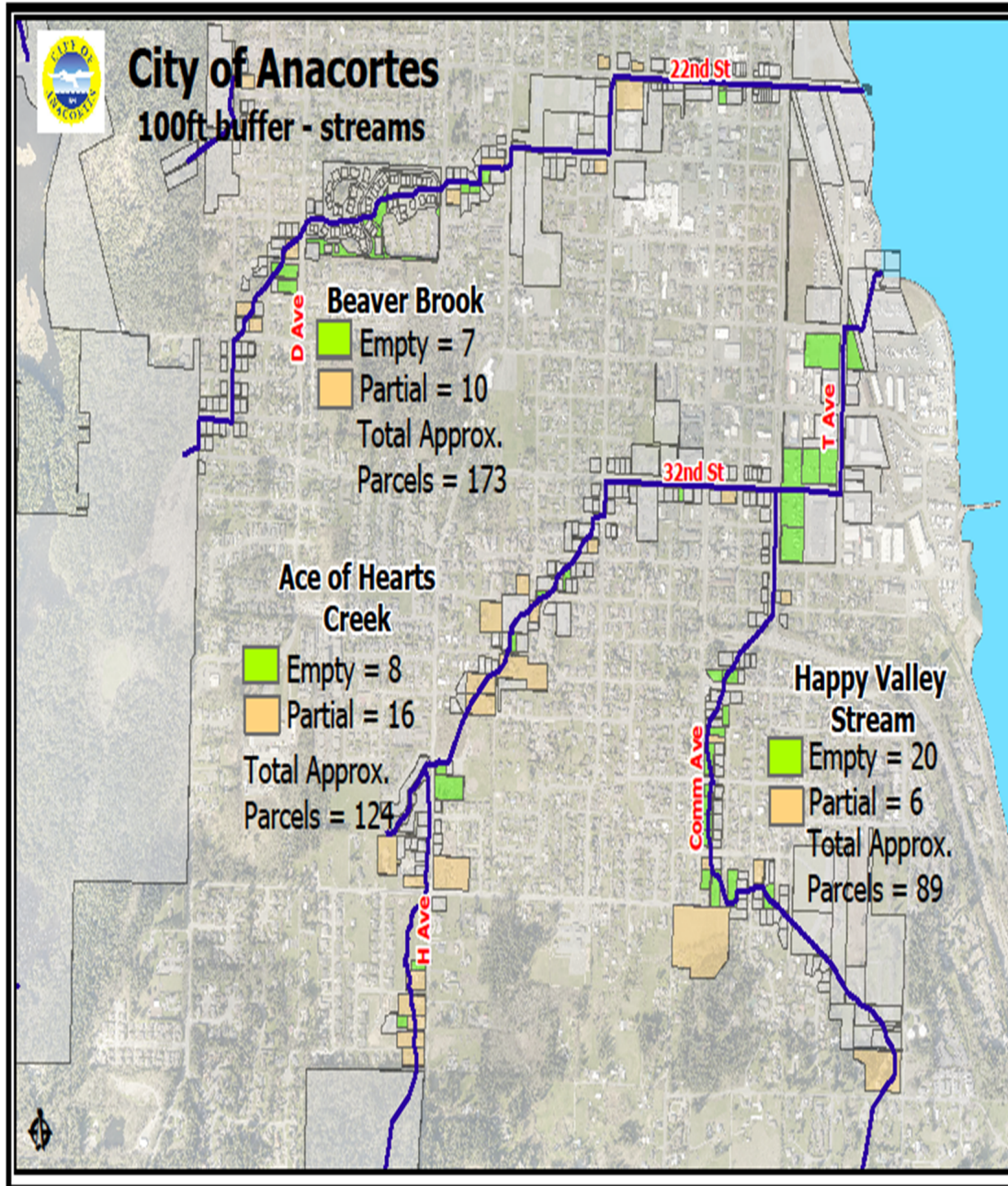
- ◆ Section 19.70.330.6. Small project waiver
- ◆ a. The Director may approve fences, rockeries, or similar features or temporary disturbance for installation of utility lines in a RMZ if no construction occurs over, in, or within 15 feet of a watercourse or water body, and if the applicant demonstrates that the proposal meets the following criteria:
 - ◆ 1) The feature is constructed on a lot that has been in existence as a legal building site consistent with Section 19.49.040 Non-Conforming Structures.
 - ◆ 2) The feature:
 - ◆ i) Does not contain floor area;
 - ◆ ii) Does not remove trees or native vegetation;
 - ◆ iii) Does not block wildlife movement through the riparian management zone; and
 - ◆ iiii) Mitigates impacts to ecological functions.
 - ◆ b. The Director's decision requires:
 - ◆ i) The use of fencing with a highly durable protective barrier during the construction to protect the RMZ.
 - ◆ ii) Mitigation pursuant to Section 19.70.125 and 19.70.130 to offset the area of both temporary and permanent development.
 - ◆ iii) Additional measures, as appropriate, to protect the remainder of the RMZ.

Riparian Management Zone and SPTH Definition

- ◆ Riparian Management Zone means the area that has the potential to provide full riparian functions. This area occurs within one 200-year site potential tree height measured from the edge of the stream channel. In situations where a channel migration zone is present, the RMZ occurs within one SPTH 200 measured from the outer edge of the CMZ. In places where the SPTH 200 is less than 100 feet, the RMZ is set at 100 feet to provide for the pollution removal function.
- ◆ “Site Potential Tree Height” (SPTH 200) means the average maximum height of the tallest dominant trees at age 200 for a given place’s soils site class. WDFW provides SPTH 200 based on soil surveys at:
- ◆ <https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>

Watercourse Definition

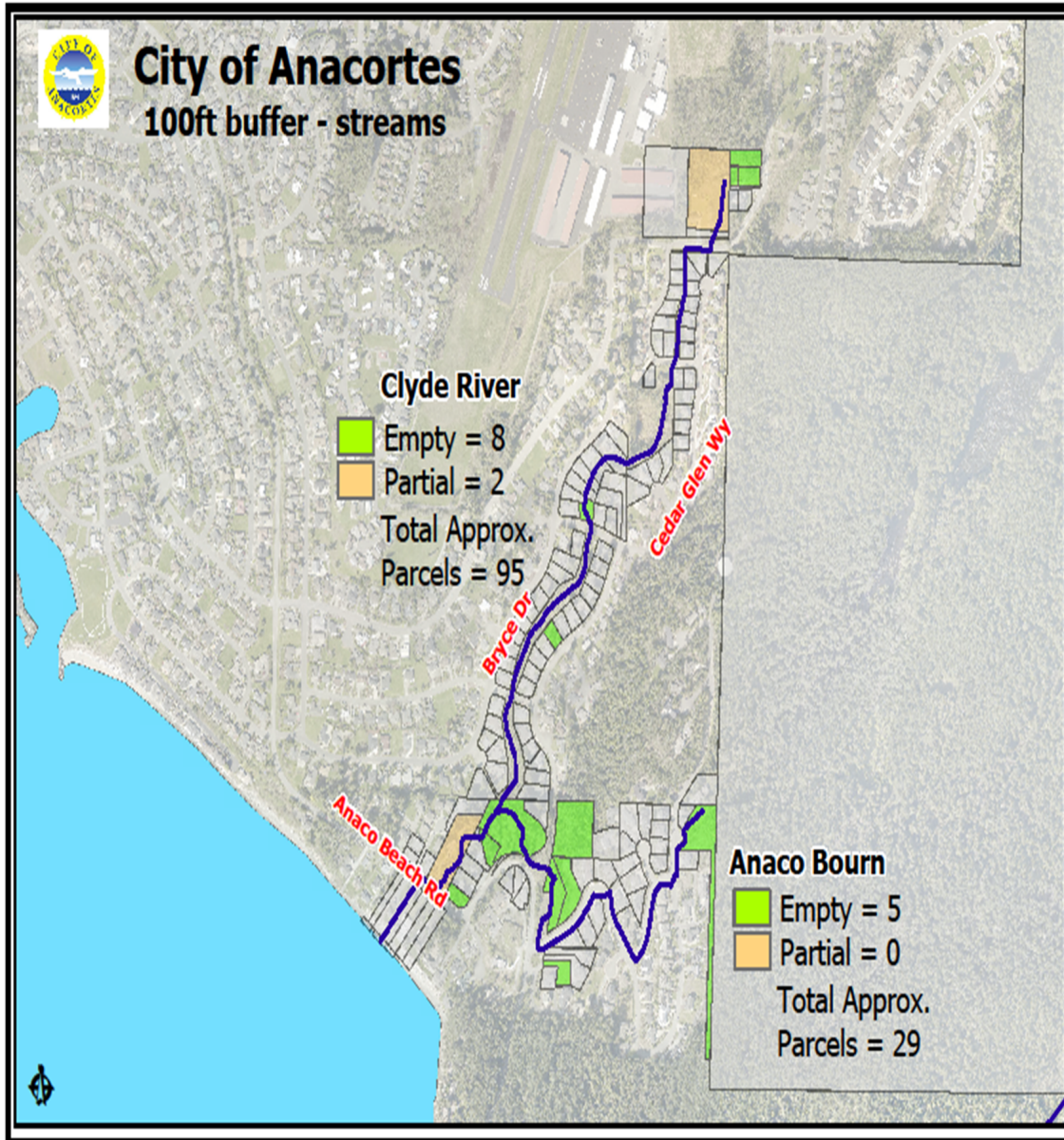
- ◆ Watercourse (or "river" or "stream") means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.





City of Anacortes

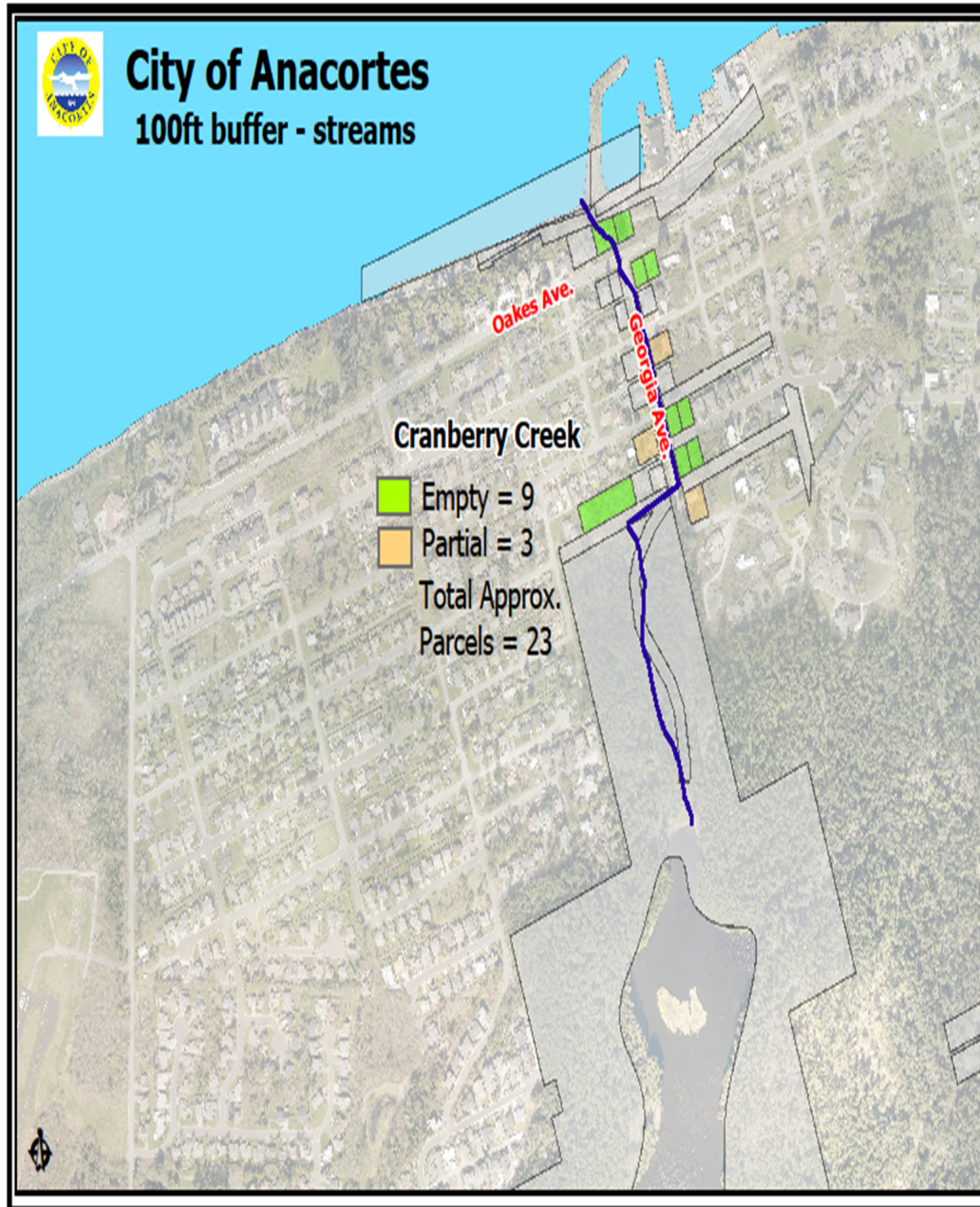
100ft buffer - streams

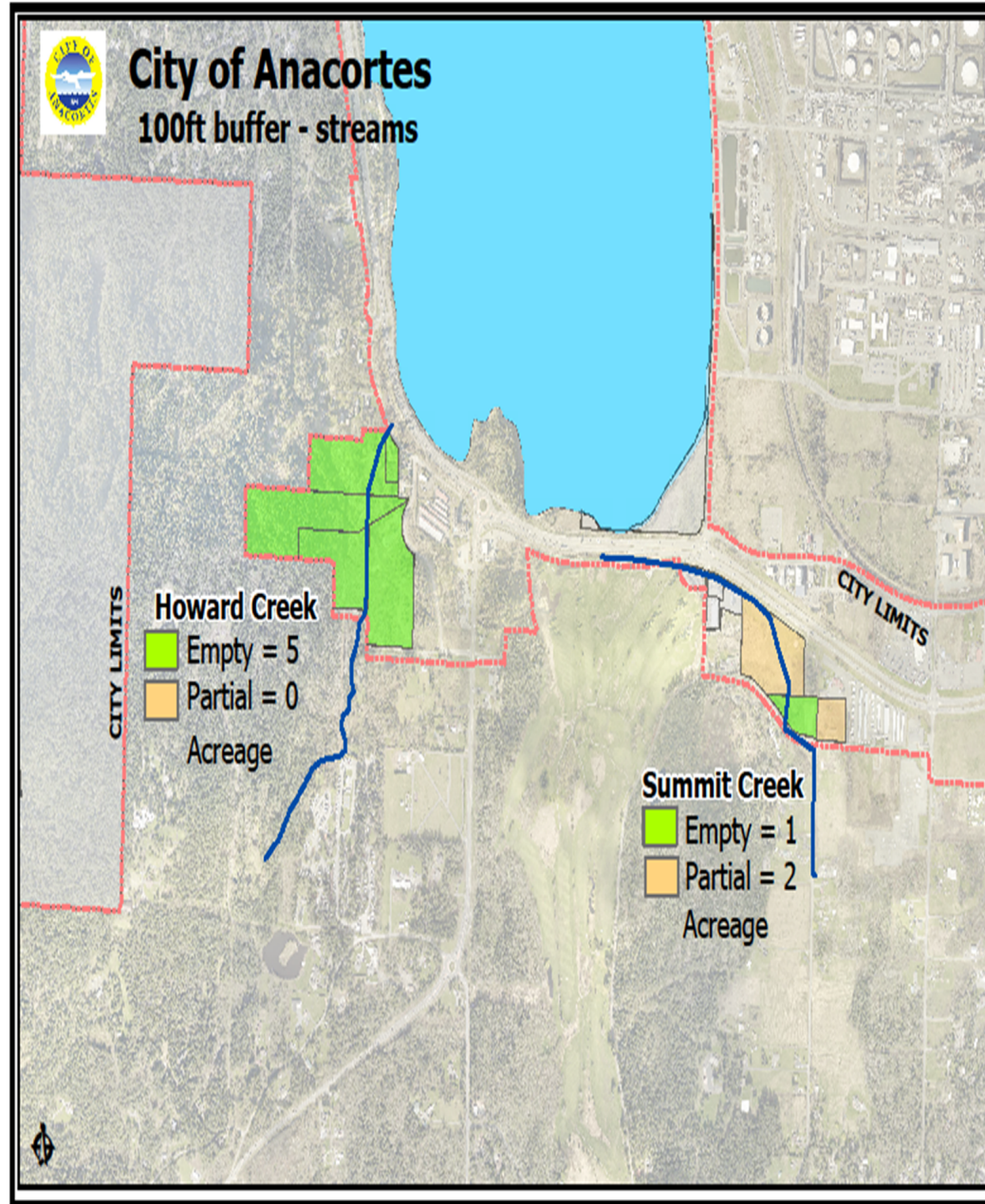


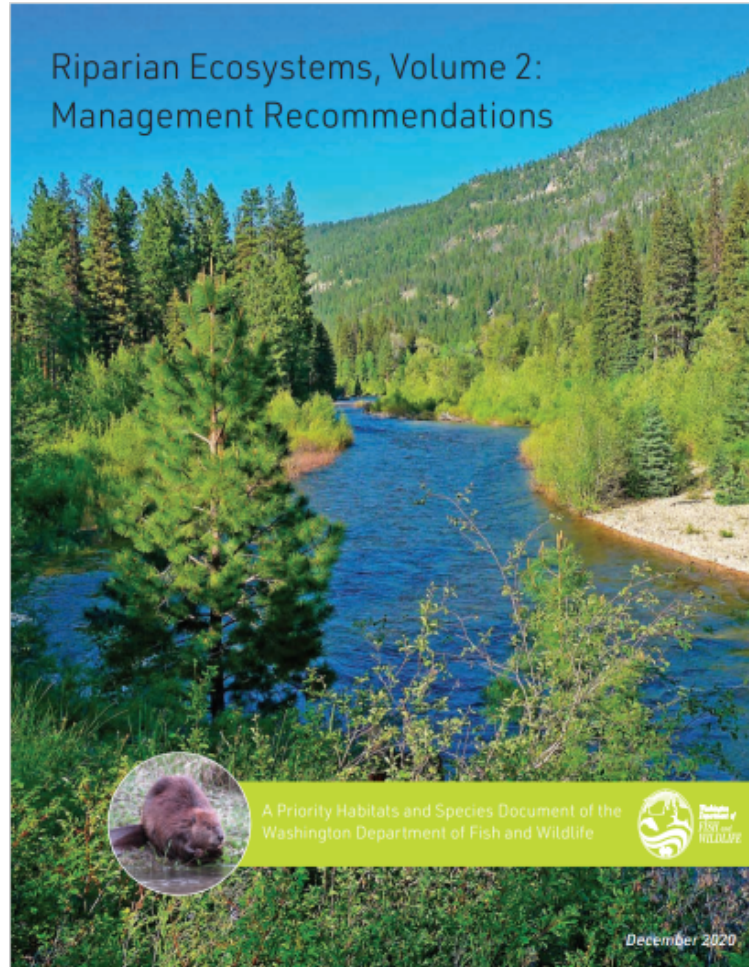


City of Anacortes

100ft buffer - streams







Riparian Management Zones

- ◆ Washington Department of Fish and Wildlife and Washington Department of Commerce fully supports the recommended Riparian Management Zone regulations as proposed and confirms that the regulations meet required Best Available Science

Don Measamer

From: Kyle Loring <kyle@loringadvising.com>
Sent: Friday, July 15, 2022 4:25 PM
To: Don Measamer
Cc: Darcy Swetnam; Libby Grage; Nathan Goldschmidt
Subject: Re: Riparian Corridors Critical Areas Code Update

***** This email is from outside the City of Anacortes network. Please use caution when clicking on links, opening attachments, or replying. *****

Hi Don,

Thanks again for circulating the CAO amendment materials and for moving it forward. We've had a chance to review the proposed changes and you'll probably be hearing from Marlene Finley in addition to me by way of follow-up. But here are a few initial thoughts.

We support the framework and the 1 site potential tree height width for RMZs (it doesn't appear that the language actually establishes RMZs equal to 1 SPTH, but I'm assuming in good faith that that was the intent, and can propose language to effectuate that intent). We do have a concern with the proposal to allow development up to 50-75 feet from streams on "platted lots," especially without any showing that would be necessary for development and without application of the mitigation sequence (though it's possible that 19.70.330.C.6 is intended to apply the last mitigation step, restoration, in these instances).

This concern arises because that proposed exception could render the general rule toothless and because it conflicts with the Best Available Science, which doesn't make allowance based on whether lots have been platted, doesn't distinguish between different types of streams for the recommendation that 1 SPTH apply to them, and recommends avoiding new clearing, grading, and filling (etc.) within the RMZ.

You mentioned that the language comes from the City of Seattle ordinance, so I took a look at it and note that it is quite dated at this point (adopted in 2006, [Ordinance No. 122050](#)). That may explain the dated approach and other quirks, like its use of 50 and 75 feet and its reference to only a limited number of riparian functions (those incorporated into 19.70.330.C.5) rather than the full suite of functions known to exist.

We plan to submit a more thorough comment letter since the comment period is upon us, but I'd also be happy to discuss these items with you in greater detail. Just let me know if you think it would be worthwhile to talk.

Also, we had a few related questions:

- how would you define "platted" for the purposes of the new language? Do you know how many parcels this would include? And where they're located?

Sincerely,
Kyle

Kyle A Loring (*he/him*)

LORING ADVISING PLLC

PO Box 3356 | Friday Harbor, WA 98250

360-622-8060 | www.loringadvising.com

On Sat, Jul 9, 2022 at 3:20 PM Kyle Loring <kyle@loringadvising.com> wrote:
Hi Don,

Thank you for circulating the draft language and for the discussion yesterday. I should be able to get in touch by the end of the week with our thoughts (I'm out of the office Monday-Wednesday).

Best,
Kyle

Kyle A Loring (*he/him*)

LORING ADVISING PLLC

PO Box 3356 | Friday Harbor, WA 98250

360-622-8060 | www.loringadvising.com

On Fri, Jul 8, 2022 at 2:30 PM Don Measamer <don@cityofanacortes.org> wrote:

Hello Kyle,

Good to speak with you today. Please find attached the draft Updated Riparian Corridor, Riparian Watercourse, and Riparian Management Zone regulations. Typical strikethrough highlighted for the old and underlined and highlighted for the proposed language. The proposed language also changes the wetland averaging to 75 % instead of 50 % as agreed upon, page 40, item F.5.

I have also attached new mapping prepared by Geoengineers for riparian watercourses, all the named watercourses remain the same, new ones are numbered. Within the BAS report.

You will also find attached a revised BAS report from Geoengineers.

Please review and let me know your thought.

Best Regards,



DON MEASAMER

Director of the Planning, Community & Economic Development Department

City of Anacortes

904 6th Street & Q Avenue | Anacortes, WA 98221

p: 360-299-1942

don@cityofanacortes.org | www.anacorteswa.gov



By Email

July 20, 2022

Don Measamer, Director
Planning, Community & Economic Development Department
PO Box 547
Anacortes, WA 98221
don@cityofanacortes.org

Re: Ordinance 4025: Evergreen Islands Comments on critical areas ordinance amendments per Growth Management Hearings Board Order

Dear Mr. Measamer,

I'm submitting these comments on behalf of Evergreen Islands ("Evergreen") to address the proposed amendments to the Critical Areas Ordinance ("CAO") that the City of Anacortes ("City") has made in response to the Growth Management Hearings Board's March and April 2022 orders. We appreciate the removal of the 50% wetland buffer provision at AMC 19.70.235.F.5 and support the proposed riparian corridor framework for managing development near streams. To provide additional clarity, we propose below a few changes to the text.

In addition, as detailed below and indicated in my email to you last Friday, we are concerned about the loophole that would allow development in riparian management zones ("RMZ") for existing lots. The exception is inconsistent with the Best Available Science ("BAS") for stream protection, which recommends that RMZs extend 1 site potential tree height ("SPTH") from the edge of a stream and that development be strictly limited within the full RMZ. The exception is also unnecessary; the CAO already offers exceptions for critical areas and buffer development, like the reasonable use exception to develop currently undeveloped properties and nonconforming use provisions that allow continued use, maintenance, and repair of development within RMZs and vertical expansion and expansion of areas outside RMZs.

While we have not seen information about the number of parcels that could circumvent stream protection under the exception, we anticipate that it could be significant given the level of parcelization that has occurred in Anacortes. Due to this impact, the lack of need, and the

inconsistency with BAS, we recommend removing the new exception as noncompliant with the Growth Management Act ("GMA").

As with earlier comments, Evergreen welcomes the opportunity to sit down with City representatives to discuss and address this concern.

A. Proposed Clarifications.

We recommend the changes below to increase the clarity of proposed text. Strike through text would be deleted and double-underlined text would be added.

- **19.70.235.F.5.** For all wetlands, ~~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 IV is no less than 75 percent~~
 - This change is grammatically correct and simpler for the reader.
- **19.70.330.B.3.** Parcels proposed for development within a riparian corridor must provide a critical areas report prepared by a qualified professional describing the functions and values of the Riparian Management Zone (RMZ) and must observe an RMZ equal in width to one Site Potential Tree Height (SPTH) proposed RMZ based on the Washington Department of Fish and Wildlife (WDFW) Site Potential Tree Height (SPTH). In no case will the RMZ be less than 100 feet. WDFW Mapping tool: <https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>. In no case will the RMZ be less than 100 feet.

B. The Exception for Platted Lots Conflicts with the BAS and is Unnecessary.

While the CAO revisions generally would prohibit new development in the riparian management zone ("RMZ") that extends one site potential tree height ("SPTH") from the edge of a stream, they create a significant exception that would authorize new development within the RMZ on "platted lots" existing by the date of the adoption of the new revisions. AMC 19.70.330.C.3.a(3). The revisions do not define the term "platted" for the purposes of this provision. But they explain that new development could be constructed up to 75 feet from salmon

streams and up to 50 feet from non-fish-bearing streams. AMC 19.70.330.C.3.a(3)a. According to the June 29, 2022 GeoEngineers update to their earlier report, SPTH in Anacortes ranges from 91 to 231 feet.¹ Thus, the buffers provided by the RMZ would be reduced by 45-72% of the standard buffer. This severely conflicts with the BAS that recommends excluding most development activity from an RMZ measured up to 1 SPTH from a stream. Further, the different treatment of different stream types conflicts with the BAS that recommends providing the same buffer protection to all streams regardless of tree type.

1. Applicable BAS.

As an initial matter, the comments below rely upon the exhaustive work that the Washington Department of Fish and Wildlife (“DFW”) conducted in 2019 and 2020 to review the science related to riparian areas and to propose management recommendations to protect the functions and values of those areas. In 2020, DFW issued management recommendations for protecting riparian areas alongside rivers and streams.² Riparian Recommendations confirm the importance of these streamside areas for sustaining endangered, threatened, and sensitive species, for providing habitat connectivity for aquatic and terrestrial wildlife, and for protecting salmon habitat.³ DFW recommends protecting the riparian ecosystem, which includes the area that provides the full suite of ecological functions – habitat, bank stability, shade, pollution removal, contribution of detrital nutrients, and large woody debris, as well as the area needed to separate incompatible uses.⁴ This area includes the terrestrial “zone of influence” and a periodically saturated riparian zone between this zone of influence and the wet stream itself.⁵

2. The reduction of RMZ protections based on the land’s plat status conflicts with the BAS.

First, the BAS does not identify an exception from standard RMZs based on the historical

¹ GeoEngineers, Revised stream buffer best available science review and buffer recommendations for City of Anacortes Planning, Community & Economic Development Department, 14 (June 29, 2022).

² A. Windrope, *et al.*, Riparian Ecosystems, Vol. 2: Mgmt. Recommendations, A Priority Habitats and Species Doc. of the Wash. Dep’t of Fish and Wildlife (2020) (hereafter “Riparian Recommendations”).

³ Riparian Recommendations, at 3.

⁴ Riparian Recommendations, at 11.

⁵ Riparian Recommendations, at 3, 4.

creation of a parcel. Instead, to protect riparian ecosystems consistent with the GMA, DFW recommends that local jurisdictions prevent most development within the full RMZ, which in forested ecoregions like Anacortes, measures the length of one 200-year SPTH horizontally from the edge of a stream channel.⁶ DFW recommends that local governments regulate all land use activities in RMZs that are likely to impact functions of the riparian ecosystem, and specifically to avoid: (1) clearing, grading, and filling; (2) new development that would require bank hardening; (3) on-site sewage systems without habitat monitoring plans; and (4) removal of hazard trees without proper evaluation and avoidance and minimization of impacts.⁷

DFW's recommendations apply to urban areas like Anacortes because riparian functions operate similarly there as in non-urban areas.⁸ DFW notes that "sometimes [riparian zones] in urban areas may be more important from a habitat standpoint, because within urban areas, adjacent uplands are often even more degraded than the [riparian zones], which then are often the only remaining areas where habitat functions are provided."⁹ Consequently, in addition to general regulations, DFW recommends that urban RMZs be delineated to "protect what areas remain and to highlight lost or degraded areas to target for restoration," and to "quantify current conditions."¹⁰

Thus, the BAS does not support reducing buffers or authorizing development up to 72% closer to a stream than the standard RMZ protection just because a parcel was platted at some point. To the extent that there is a concern that lot owners be able to develop parcels, this concern has already been addressed by Anacortes' generous development exceptions, set forth at AMC 19.70.035-.050.

Second, even if the BAS supported development in RMZs, the full RMZ widths would need to apply to all streams regardless of type. DFW "found no evidence that full riparian ecosystem

⁶ Riparian Recommendations, at 5, 14 (categorizing Washington ecoregions as either "forested" or "dryland" and noting that forested ecoregions dominate western Washington and that dryland ecosystems are found in the Columbia Plateau ecoregion east of the Cascades).

⁷ Riparian Recommendations, at 24-27.

⁸ Riparian Recommendations, at 29.

⁹ Riparian Recommendations, at 29.

¹⁰ Riparian Recommendations, at 30.

functions along non-fish-bearing streams are less important to aquatic ecosystems than full riparian ecosystem functions along fish-bearing streams.”¹¹ The proposal to differentiate between stream types by applying 50 and 75-foot buffers conflicts with this BAS.

3. Neither the Seattle Ordinance nor GeoEngineers’ revised document justify departing from BAS.

We understand that the CAO revisions are based on Seattle’s critical areas rules and perhaps on GeoEngineers’ revised document. Neither of these supports a departure from BAS.

With regard to the City of Seattle ordinance, it predates the BAS by 14 years, which likely explains its inconsistency with the BAS. Seattle adopted its riparian management language in 2006, with Ordinance No. 122050. The ordinance does not explain why Seattle created its scheme, or why it excepted existing lots from the general standards that applied to its riparian areas. In addition, Seattle’s default riparian area extends 100 feet, well below some of the RMZs that apply in Anacortes based on the BAS. It is also notable that Seattle did not identify the full suite of riparian functions that are now known to exist, instead referring to vegetation cover, preventing erosion, and protecting water quality.¹² While these functions are important, they omit at least the following essential functions -- the habitat function, contribution of detrital nutrients, and recruitment of large woody debris.¹³ Thus, the Seattle ordinance would not satisfy current BAS.

GeoEngineers’ revised document likewise does not support rejecting the BAS recommendation to exclude new development within 1 SPTH. First, GeoEngineers overlooks DFW’s conclusion that 1 SPTH is necessary to protect stream functions. This is odd given that GeoEngineers reviews the same FEMAT curves that DFW uses to recommend 1 SPTH for an RMZ, stating that “[t]his reflects FEMAT’s underlying assumption that old-growth forest conditions are need for full riparian ecosystem functions. WDFW uses SPTH at 200 years...in our recommendations in this Volume 2.”¹⁴ Second, while GeoEngineers summarily suggests that “a 50-

¹¹ Riparian Recommendations, at 7.

¹² SMC 25.09.200.3.d.

¹³ Riparian Recommendations, at 11.

¹⁴ Riparian Recommendations, at 13 (emphasis added).

foot buffer is the minimum required to provide a basic level of functions,"¹⁵ they elsewhere continue to acknowledge the need for much larger buffers to limit water pollution and to provide wildlife habitat.¹⁶ And they note that even 50% SPTH would provide only 70-75% of the large woody debris and shading functions necessary for streams.¹⁷ With Anacortes streams ranging from 91 to 231 feet, this means that even 46-116-foot buffers (or, more accurately, non-developable RMZ widths) would provide only ¾ of the necessary functions. Both of 50 and 75-foot buffers fall well below even this inadequate amount. Thus, the GeoEngineers does not support 50-foot and 75-foot buffers.

4. CAO Exceptions Already Allow Use of Properties with Critical Areas.

The CAO already includes numerous exceptions to its critical areas protections. For example, critical areas and buffers can be altered without review for emergencies, site investigations, and outdoor recreation activities, and yard and garden maintenance or repair can occur in buffers without review.¹⁸ With a letter of exemption, a person can develop critical areas and buffers for: (1) utility operation, maintenance, repair or replacement; (2) transportation infrastructure operation, maintenance, repair, or replacement; (3) recreation areas operation, maintenance, repair, or replacement; and (4) vegetation management; and can clear, grade, and construct fences and arbors in buffers for piped streams.¹⁹ In addition, with a permit, a person can: (1) modify wetland buffers with averaging; (2) construct a broad range of development defined as public services in critical areas and buffers; (3) conduct conservation and restoration projects in critical areas and buffers; (4) apply herbicides, pesticides, fertilizers, and other hazardous substances for nuisance weeds and algae in critical areas and buffers; (5) develop recreational areas/facilities in buffers; and (6) construct up to 2,800 square feet of single-family residences and normal appurtenances in critical areas and buffers.²⁰

¹⁵ GeoEngineers, at 14.

¹⁶ GeoEngineers, at 9-12.

¹⁷ GeoEngineers, at 15.

¹⁸ AMC 19.70.040(A).

¹⁹ *Id.*

²⁰ AMC 19.70.045.

Permitted activities Table 19.70.045
allow for Type II administrative
decision - critical area permit required
as addition - total disturbance not more than
2,800 SF. even with existing non conforming
-6-

In addition, where a person cannot obtain reasonable and economically viable use of a property with one of these exceptions, they may apply for a variance to authorize development in critical areas and buffers.²¹ While the mitigation sequence applies to the reasonable use exception variance, there is no limit on the amount of critical area and buffer that can be developed pursuant to this exception.²²

A landowner may also modify existing nonconforming structures and uses in critical areas and buffers.²³ These modifications can include: (1) routine maintenance and repairs; (2) structural modifications that do not intensify the nonconformity or increase hard surfaces within the critical area or buffer; (3) vertical additions; and (4) restoration or replacement of a structure damaged by fire, natural disaster, or other calamity.²⁴

Thus, the CAO already offers numerous opportunities to develop land where the standard application of its protections for wetlands, streams, geohazards, and flooding would otherwise preclude that development.

C. Conclusion.

To avoid adopting amendments that conflict with the BAS, we recommend deleting the provisions at AMC 19.70.330.C.3.a(3) and relying on the CAO's existing exceptions for nonconforming development and reasonable use to depart from standard CAO protections where necessary.

Sincerely,



Kyle A. Loring
Attorney for Evergreen Islands

Cc: Anacortes City Council, Anacortes Mayor, Darcy Swetnam, Libby Grage, Nathan Goldschmidt, Marlene Finley

²¹ AMC 19.70.050.

²² *Id.*

²³ AMC 19.70.035.C.

²⁴ *Id.*

Don Measamer

From: Sears, Tricia (DNR) <Tricia.Sears@dnr.wa.gov>
Sent: Monday, July 18, 2022 12:34 PM
To: Don Measamer
Cc: Long, Lexine (COM); Sears, Tricia (DNR)
Subject: City of Anacortes, Critical Areas Ordinance, comments from WGS

***** This email is from outside the City of Anacortes network. Please use caution when clicking on links, opening attachments, or replying. *****

7/18/22

Hello Don,

In keeping with the interagency correspondence principles, I am providing you with draft comments on the City of Anacortes' proposed update of its critical areas ordinance (Commerce ID# 2022-S-4136).

I looked at the entire proposal, but did not do a detailed review of types of critical areas outside our purview. Your proposal is riparian corridor focused. At this time, we have no comments.

Thank you for this opportunity to comment. If you have any questions or need additional information, please contact me. For your convenience, if there are no concerns or follow-up discussion, you may consider these comments to be final as of the 60-day comment deadline of September 6, 2022.

Cheerio,
Tricia

Tricia R. Sears (she/her/hers)
Geologic Planning Liaison
Washington Geological Survey (WGS)
Washington Department of Natural Resources (DNR)
Cell: 360-628-2867 | Email: tricia.sears@dnr.wa.gov

Don Measamer

From: Nora Kammer <nkammer@skagitcoop.org>
Sent: Tuesday, July 19, 2022 2:01 PM
To: Don Measamer
Subject: Comment on Ordinance 4025 - Critical Areas

***** This email is from outside the City of Anacortes network. Please use caution when clicking on links, opening attachments, or replying. *****

Don,

The provided Riparian Management Zone definition is "the zone within 100 feet of the riparian watercourse measured horizontally landward from the ordinary high water mark of the watercourse as surveyed in the field, or from the top of the bank if the ordinary high water mark cannot be determined. In watercourses with braided channels or alluvial fans, the ordinary high water mark must be determined so as to include the entire watercourse feature." This definition indicates that regardless of the location in the city of Anacortes, the Riparian Management Zone is 100 feet from the OHWM or top of bank. " But we understand that in some instances the RMZ may extend to the SPTH.

I am concerned that this definition does not include instances where the RMZ may be greater than 100 feet, as specified in 19.70.330.B.3

In 19.70.330.B.1, it is indicated that in some instances the RMZ may be wider than 100 feet as described in 19.70.330.B.3. While the language is a little unclear in 19.70.330.B.3, it sounds like the code is requiring that any development within a Riparian Corridor, which may include an RMZ wider than 100 feet as defined by a SPTH, is required to provide a critical areas report. While extending the study area of a critical areas report to the SPTH does promise to identify features and function within an area appropriately sized to the stream feature and geography, it does not ensure any **protection** of that area. The protective measures offered to the RMZ must be more clearly defined for the areas within one Site Potential Tree Height for that ecological function to be protected within the City of Anacortes.

Code 19.70.330.B.3 suggests that a professional must be hired to determine the site potential tree height. We urge the City of Anacortes to improve the definitions, codes, and mapping services so that this information is more readily available to the public, project proponents, and landowners. This will better prepare project proponents to consider and accommodate the buffer areas out to one SPTH.

We also recommend that you add a definition for Site Potential Tree Height with further information on how to measure and incorporate that distance into the Biological Site Evaluations for a development site.

We applaud the city for the improved protections for wetlands in 19.70.235.F.5.

Thank you,
Nora Kammer
Environmental Protection Ecologist
Skagit River System Cooperative
MAILING: PO Box 368, La Conner, WA 98257
PHYSICAL: 11426 Moorage Way, La Conner, WA 98257

Phone: 360.391.8472

Fax: 360.466.4047

SRSC's offices are open Monday through Thursday.



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: PO Box 43200, Olympia, WA 98504-3200 · 360 902-2200 · TDD 360 902-2207

Main Office Location: Natural Resources Building, 1111 Washington Street, Olympia, WA

September 8, 2022

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

Via email to: don@cityofanacortes.org

RE: Ordinance 4025 Amending Critical Areas Regulations

Dear Mr. Measamer,

I write on behalf of the Washington Department of Fish and Wildlife (WDFW) to offer support of your proposed changes to Anacortes Municipal Code Chapter 19.70, Critical Areas. We understand that the Growth Management Hearings Board recently determined that your previously adopted Critical Areas Ordinance (CAO) departed from Best Available Science (BAS) because its riparian buffers were undersized in violation of the Growth Management Act's requirement to protect all functions and values of critical areas. We write to confirm that in our best professional judgment your revised CAO designates and protects riparian areas and streams consistent with the BAS.

Thank you for carefully reading and putting into practice our recently developed riparian BAS and management recommendations to identify and protect riparian ecosystems consistent with the goals of the Growth Management Act and Shoreline Management Act. This guidance was designed to support compliance with RCW 36.70A.172(1), which calls for BAS to be included in developing policies and development regulations to protect the functions and values of critical areas. We are pleased to see that your CAO reflects *Volume 1: Science Synthesis and Management Implications*¹, a source of BAS for understanding how riparian areas and surrounding watersheds affect ecological functions and aquatic habitats. We also find that your CAO reflects guidance provided by *Volume 2: Management Recommendations*² in your efforts to protect and—where possible—restore healthy, intact, and fully functioning riparian ecosystems, which are fundamental for clean water, healthy salmon populations, and climate-resilient watersheds.

¹ Quinn, T., G.F. Wilhere, and K.L. Krueger, technical editors. 2020. Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

² Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

We offer acknowledgment of the following key items in your revised CAO related to Riparian Management Zones (RMZs):

- **RMZ Designation, Width:** Our guidance says that the riparian ecosystem in forested ecoregions varies in width depending on the soil productivity for growing trees, and that the width of the riparian ecosystem is defined as the “site-potential tree height” or the average height of the tallest dominant tree 200 years old or greater (SPTH₂₀₀)³. Where the SPTH₂₀₀ is less than 100 feet, we recommend the RMZ width be delineated at a minimum of 100 feet to provide an 85-95% pollution removal function⁴. Your proposed CAO adopts this standard. Specifically, your CAO defines RMZs with widths varying from 100-193’ based on SPTH₂₀₀.
- **RMZ Designation, Inner Boundary:** We recommend that RMZs be measured from the wider of the ordinary high water mark or the outer edge of the channel migration zone. Your CAO does likewise.
- **RMZ Protection:** We recommend that riparian vegetation be retained and/or restored within the full width the RMZ with the goal of maintaining and increasing riparian ecosystem function over time. Your CAO—while allowing for reasonable use exceptions and acknowledging that historical practices have left an impact—contains the protection measures that we feel put you on a path of adequately protecting RMZs consistent with our guidance.
- **RMZ Functions:** Your CAO specifies that the primary riparian ecosystem functions are (a) shade, (b) bank stability, (c) large wood recruitment, (d) nutrient inputs, and (e) pollutant removal and that as Fish and Wildlife Habitat Conservation Areas, RMZs also provide important terrestrial wildlife habitat. Your policies affirm that these functions are to be maintained (and where possible restored). This is consistent with our recommendations⁵.
- **No Net Loss/Mitigation Sequencing:** Your CAO is designed to ensure no net loss of riparian functions is provided via mitigation sequencing. For challenging development proposals where disturbance cannot be avoided, your code has provisions to keep unavoidable development as far from the stream as possible and to limit overall imperviousness. When looking for places to accomplish offsetting compensatory mitigation, your CAO seeks to improve riparian functions through onsite and, if necessary, offsite restoration actions such as barrier removal and native vegetation restoration within RMZs⁶. Your CAO also has provisions regarding stormwater, disturbance footprint limitations, maintenance, and monitoring. These are all important components of your revised CAO that we support as consistent with our guidance⁷.
- **Critical Area vs. Buffer:** We recommend that RMZs are designated as a critical area (rather than a buffer) because of their ecological significance⁸. Your CAO designates RMZs as critical areas.
- **Stream Network:** Our recommendations do not differentiate RMZ importance or width based upon the size of the stream or whether the adjacent stream reach is fish-bearing or non-fish-bearing, as

³ Volume 2, section 2.2.2

⁴ Volume 2, section 1.4, #5c

⁵ Volume 2, pp. 16-17, Fig. 2.1

⁶ Volume 2, section 4.4

⁷ Volume 2, section 3.2.2, #4

⁸ Volume 2, section 2.1

the science does not support treating them differently⁹. Your CAO does not differentiate RMZ width based on stream water types, rather it adequately protects *all* RMZs throughout the stream network. This reflects the reality that both healthy and harmful inputs travel downstream, and that salmon and steelhead recovery will depend on high water quality standards and riparian functions *throughout* watersheds, not just in the reaches that they inhabit. We commend you for taking this scientifically supported approach¹⁰.

- **Definitions:** Your CAO adds definitions for “Riparian Management Zone,” “Site Potential Tree Height,” and “Watercourse” that are consistent with our recommendations and anticipated WAC revisions.

We recognize that for Anacortes, an urban area with intense land uses, achieving full riparian ecosystem function is inherently more difficult than it is in more rural and natural settings. Despite this difficulty, we appreciate your recognition of the importance of delineating urban RMZs to protect what riparian functions remain and identifying areas with lost or degraded functions to target for restoration. Doing so can provide wildlife corridors that link habitat patches; actions which are especially important where they are the only remaining areas where habitat functions exist¹¹. We anticipate improved riparian function will result from revegetation projects using native plants and by projects to improve connectivity between habitat patches. An open space corridor analysis can help identify existing connections to protect, as well as areas where restoring connectivity is a priority.

With respect to salmon, we anticipate this CAO will maintain and enhance the ability of different species to not just survive, but thrive, during different stages of their life cycle¹². We encourage you to continue your efforts to maintain habitat connectivity through properly sized culverts such that all fish can pass through at all relevant life stages. To provide “special consideration for anadromous species” [RCW 36.70A.172(1)], we recommend that in addition to your CAO provisions, decision makers utilize their discretionary authority to apply more stringent variance requirements and focus compensatory mitigation within stream systems with anadromous species. Your CAO addresses daylighting streams: when accomplishing this we recommend prioritizing fish bearing streams with existing forest cover and beginning daylighting downstream of fish bearing reaches (regardless of forest cover) to remove fish passage barriers and restore riparian functions (e.g., Clyde Creek)¹³. Similarly, we recommend prioritizing restoration downstream of Anacortes Community Forest Lands to increase connectivity with high quality, intact RMZs. When daylighting streams, we encourage you to retain/restore a full SPTH₂₀₀ RMZ width (where practicable¹⁴).

Once this CAO is adopted, it will be important to implement it in a way that achieves No Net Loss (NNL) of riparian ecosystem functions. We do not anticipate that all future harm to existing riparian ecosystem functions will be avoidable, but we expect this CAO will provide for NNL of riparian ecosystem functions

⁹ Volume 2, pp. 11-12, #6

¹⁰ Volume 2, section 3.4

¹¹ Volume 2, section 3.3

¹² Volume 2, section 3.3

¹³ Washington Department of Fish and Wildlife. 2019. Fish Passage Inventory, Assessment, and Prioritization Manual. Olympia, Washington.

¹⁴ We use the term “practicable” to mean feasible or reasonable, and the term applies to situations where the full SPTH₂₀₀ width does not currently consist of native riparian vegetation or a restorable pervious surface.

and values by providing offsetting compensatory mitigation when the regulations authorize unavoidable harm (WAC 365-196-830)¹⁵. We anticipate this CAO may lead to more onsite and offsite compensatory mitigation than has been provided in the past, because it offsets harm to riparian functions out to a distance of SPTH₂₀₀. We encourage you to consider establishing a mitigation bank or in-lieu fee mitigation program to enable consolidation of riparian restoration projects that are not practicable on smaller, dispersed lots. We encourage projects that enhance riparian corridor connectivity (e.g., removal of stream barriers) to help mitigate for losses in riparian function. We encourage you to implement restoration projects closer to the stream as that provides more ecological benefits than projects farther from the stream. We advise local governments to keep permitted development at least 100' from streams where practicable. When development is permitted within RMZs, local WDFW Habitat Biologists can assist permittees with project design to minimize harm to riparian functions, and they can help review compensatory mitigation proposals to ensure no net loss of riparian functions and values. We strongly recommend you implement a program to monitor and adaptively manage the implementation of your CAO to ensure that NNL of existing riparian ecosystem functions is achieved at the jurisdiction scale. We will continue to make high resolution land cover data available that you can use to for this purpose¹⁶.

Thank you for working with us to amend your CAO to demonstrate to the Growth Management Hearings Board that your RMZs and associated protections align with BAS to protect all riparian functions and values. We consider this CAO to be a model for riparian protection. We would be happy to continue to work collaboratively with you, to answer any questions about these comments and/or any of our riparian management recommendations, and to provide technical assistance to you as you implement this CAO in the years to come.

Sincerely,



Chuck Stambaugh-Bowey
Regional Habitat Program Manager

cc:
Kara Whittaker, Land Use Conservation and Policy Section Manager
Tom O'Brien, Ecosystem Services Division Manager
David Howe, Acting Habitat Program Deputy Director
Scott Kuhta, Commerce Periodic Update CAO Lead
Lexine Long, Commerce Senior Planner

¹⁵ Volume 2, section 3.2.1 (introduction) and p. 66 (mitigation sequence)

¹⁶ Volume 2, chapter 5



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

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September 13, 2022

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

RE: City of Anacortes Ordinance 4205: An Ordinance amending the Critical Area Regulations in Anacortes Municipal Code Chapter 19.70, 19.70.235.F.5 and Article III, Fish and Wildlife Conservation Areas, to address riparian corridors

Dear Mr. Measamer,

Thank you for sending Growth Management Services the proposed amendments to the City of Anacortes Critical Areas Ordinance related to stream buffers to comply with the Growth Management Hearings Board Final Decision and Order concerning Case No. 21-2-0002c. We received your submittal on 07/08/2022 and processed it with the Submittal ID 2022-S-4136.

We would like to express our support for these updates to the riparian section of the critical areas chapter, AMC 19.70. This update contains many good provisions for the protection of riparian ecosystems, including using Best Available Science (BAS), and recommendations from the Washington Department of Fish and Wildlife (WDFW) Riparian Management Recommendations Volume 2 for establishing riparian management zones based on site potential tree height.

Your community has reviewed and revised its critical area regulations to ensure the community is protecting its most vulnerable and environmental resources and to bring your regulations and code up-to-date with the latest laws and regulations. We recognize the substantial investment of time, energy, and resources that these documents represent, and we congratulate you, your planning commission, staff, and involved citizens for the good work represented by these amendments.

If you need any additional technical assistance on these or any other growth management issues, please contact me at Lexine.long@commerce.wa.gov or (360)-480-4498. We extend our

Mr. Don Measamer

September 13, 2022

Page 2

continued support to the City of Anacortes in achieving the goals of growth management and protection of critical areas.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Lexine Long', with a stylized, cursive script.

Lexine Long
Senior Planner
Growth Management Services

cc: David Andersen, AICP, Managing Director, Growth Management Services
Valerie Smith, AICP, Deputy Managing Director, Growth Management Services
Scott Kuhta, AICP, Senior Planner, Growth Management Services

Chapter 19.70 CRITICAL AREAS

Sections:

Introduction – General Provisions

- 19.70.010 Purpose.
- 19.70.015 Applicability.
- 19.70.020 Identification, classification, and rating of critical areas.
- 19.70.025 Protection of critical areas.
- 19.70.030 Project evaluation.
- 19.70.035 Critical areas review.
- 19.70.040 Exempt activities.
- 19.70.045 Permitted alterations.
- 19.70.050 Reasonable use exception and critical area variance.

Article I. Critical Areas Review Procedures

- 19.70.110 Critical area identification form.
- 19.70.115 Critical area report.
- 19.70.120 Application requirements.
- 19.70.125 Mitigation requirements.
- 19.70.130 Mitigation plan requirements.
- 19.70.135 Title notification.
- 19.70.140 Field marking.
- 19.70.145 Construction plan review, monitoring, and inspection.
- 19.70.150 Financial guarantee requirements.
- 19.70.165 Unauthorized critical area alterations.
- 19.70.170 Final decision and appeals.

Article II. Wetlands

- 19.70.210 Description and purpose.
- 19.70.215 Designation and rating.
- 19.70.220 Mapping and delineation.
- 19.70.225 General development standards.
- 19.70.230 Specific wetland category development standards.
- 19.70.235 Required buffer areas.
- 19.70.240 Critical area report additional requirements.
- 19.70.245 Compensatory mitigation performance standards and requirements.

Article III. Fish and Wildlife Habitat Conservation Areas

- 19.70.310 Description and purpose.
- 19.70.315 Designation.
- 19.70.320 Mapping.
- 19.70.325 General development standards for all FWHCAs.
- 19.70.330 Specific standards for **streams**, **Riparian Corridors**
- 19.70.335 Specific standards for other FWHCAs.
- 19.70.340 Stormwater management facilities.
- 19.70.350 Critical area report additional requirements.
- 19.70.355 Mitigation performance standards and requirements.

Definitions

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 avoids or minimizes 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, harm to the critical area's functions and values must be avoided if possible and minimized to the greatest extent practicable. Disturbances 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.

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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: 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.	Yes	Yes
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	No	Yes

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associated buffers, do not alter topography, do not destroy or clear native vegetation, do not remove non-hazard trees in the buffer or critical area, and do not diminish water quality or quantity.		
a. Native growth protection areas, mitigation sites, or other areas protected via permit conditions, conservation easements or similar restrictive covenants (as defined in AMC 19.70.135) 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 or city-authorized private roadway;		

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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; d. All work performed is above the ordinary high water mark and above the top of a stream bank; and		

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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 required 10-foot stream setback for a piped stream segment if no other critical area or buffer is present.	No	Yes

(Ord. 3064 § 2 (Att. A), 2021)

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

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;
- c. An analysis of the effect of the development proposal on the critical area and/or buffer;
- d. 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;
- e. 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 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;		

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Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
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 riparian corridors-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 jurisdiction and/or that meet the criteria of RCW 77.55.181(1) and that are reviewed and approved according to the provisions of RCW 77.55.181. A biological evaluation report is required to determine whether the proposal would conserve, preserve, or enhance critical area functions in the long term to minimize temporary environmental impacts.	Yes	Yes
Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary for the control of	Yes	Yes

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Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
nuisance weeds and algae; except that their use will be restricted in accordance with the State-Washington Department of Ecology and State-Washington Department of Fish and Wildlife m Management recommendations, and regulations of the Washington State Department of Agriculture and the U.S. Environmental Protection Agency.		
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, 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

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
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 <u>as determined by the decision-maker</u>; and 2. Alteration of critical areas and their buffers including all clearing, grading, structures, and appurtenances, has not and will not exceed cumulatively <u>2,800 square feet of disturbance</u>; 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 <u>19.70.125</u> is applied and the proposal includes on-site mitigation to the extent feasible <u>and off-site mitigation to the extent necessary</u>, 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 <u>8.10</u> , Parks and the Anacortes Community Forest Lands.	Yes	Yes
Critical Area Aquifer Recharge Areas. All regulated activities listed under AMC <u>19.70.515</u> , Applicability and hazardous materials questionnaire.	Yes	Yes

Commented [FKE(3)]: Is it preferable to retain this language or specifically cite the Director?

Commented [FKE(4)]: It will be important to continue to use mitigation sequencing to minimize the footprint –2,800 sq feet should not become a default size of such disturbances.

(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

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

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~~ to the critical area onsite to the maximum extent possible, while still allowing reasonable use of the lot; offsite mitigation will be utilized to the extent necessary to achieve no net loss of ecological functions. 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-offset to the maximum extent feasible on-site and to the extent necessary off-site 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](#).

Commented [FKE(5): If an action is "likely to adversely affect a critical area" why is the report discretionary?

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 and~~ an assessment of the characteristics ~~of or~~and 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.

Commented [FKE(6): Can this be clarified with "the Director his/her designee"? Who else would be in a position to review/approve this?

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.
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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	300	225	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:

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

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

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

Disturbance	Required Measures to Minimize Impacts
	• 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. 4015 § 2 (Att. A), 2022; 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 (~~WDFW~~), 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 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 – 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. ~~Riparian management zones~~ **Riparian Corridors** as defined in AMC 19.70.330

4. 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;

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

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

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

87. 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;

89. 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 ~~February 2021~~ **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. ~~Beller's ground beetle~~;

b. Biodiversity areas;

cb. ~~Brant~~;

d ~~Bald eagle habitat protected pursuant to the Federal Bald and Golden Eagle Protection Act~~;

e. Chinook/fall chinook salmon;

ed. ~~Cliffs/bluffs~~;

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f. Coho salmon;

g. e.—Great blue heron nest sites and breeding areas;

hf. ~~Osprey nest sites;~~

. Pacific herring;

i. Pacific sand lance

ig. ~~Peregrine falcon nest sites and breeding areas;~~

h. ~~Purple martin breeding areas;~~

i. Resident coastal cutthroat trout;

kj. Shorebird concentrations

l. ~~Winter-S~~steelhead trout;

m. Surf smelt~~k.~~

n. Water-fowl concentrations.

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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 **fish and wildlife** habitat conservation areas and their buffers **or Riparian Management Zones (RMZs) defined in AMC 19.70.330.B.1** 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 **RMZs** 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 **RMZs**;
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;

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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 ~~RMZs~~ 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 ~~RMZs~~ is subject to the following:

1. Land that is located wholly within an FWHCA or its buffer ~~RMZs~~ 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 ~~RMZ~~;
3. Access roads and utilities serving a proposed subdivision may be permitted within the FWHCA and associated buffers ~~RMZ~~ 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 ~~RMZs~~ 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~~ ~~Riparian Corridors~~ ~~Management Zones~~.

~~A. Typing. Stream Riparian Watercourse types must be classified according to WAC 222-16-030(2)–(4). Stream classifications must include the following:~~

- ~~1. Type F streams watercourses are those that provide fish habitat;~~
- ~~2. Type Np streams watercourses are perennial waters that do not contain fish habitat; and~~
- ~~3. Type Ns streams watercourses 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 or shorelines of the state under AMC Chapter 19.72.~~

4. In the case that available information on stream watercourse typing is unclear, stream watercourse typing will be performed by a qualified professional, provided by the applicant, using a site visit, mapping, and all available information.

AB. Riparian corridors The riparian management zone (RMZ) is a critical area, specifically, it is a type of Fish and Wildlife Habitat Conservation Area. A project site's RMZ is associated with each aquatic species upstream and downstream from the project site.

1. The Riparian corridors RMZ consists of the riparian a watercourse and the riparian management zone. The riparian watercourse is defined in 19.70.330.A the watercourse of Type S, F, Np, and Ns waters defined in WAC 222-16-030 and 222-16-031 that have fish or wildlife habitat. The Riparian Management Zone (RMZ) is the area the width area adjacent to the watercourse that has the potential to provide full riparian ecosystem functions for bank stability, shade, pollution removal, contributions of detrital nutrients, and recruitment of large woody debris. The width of the RMZ is of a the height of the tallest 200-year-old site-potential tree (SPTH₂₀₀) or 100 feet, whichever is greater, measured horizontally. The RMZ —within but no less than 100 feet of the riparian watercourse measured horizontally landward from—is measured from the wider of (a) the ordinary high water mark, of the watercourse as surveyed in the field, or from (b) the top of the bank if the ordinary high water mark cannot be determined, or (c) the outer edge of the Channel Migration Zone (if one exists). In watercourses with braided channels or alluvial fans, the ordinary high-water mark shall be determined so as to include the entire stream feature. The riparian management zone RMZ may exceed the 200-year site-potential tree height or 100 feet based on Section 19.70.330.B.3.

2. When a pipe or culvert on a watercourse that has known or potential fish habitat downstream and upstream from the pipe or culvert is daylighted, the watercourse formerly in the pipe or culvert will be regulated as a watercourse, and the area adjacent to that watercourse will be regulated as a RMZ, as defined in subsection 19.70.330.A-B(1). This subsection 19.70.330 does not apply when the pipe or culvert is removed to provide a publicly owned facility designed primarily for water quality treatment, flow control, or stormwater conveyance.

3. Activities that may impact an RMZ must provide a critical areas report prepared by a qualified professional describing the functions and values of the RMZ. —based on the The report shall include the Washington Department of Fish and Wildlife (WDFW) 200-year site potential tree height (SPTH₂₀₀) as determined by the mapping tool provided by the Washington Department of Fish and Wildlife (—WDFW) (— <https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>) and any other SPTH₂₀₀ determination based on best available science. The report must describe inner measurement point (e.g., ordinary high-water mark) and the extent of the RMZ with sufficient detail to allow field delineation. The report must demonstrate that the project will result in no net loss of ecosystem functions for the RMZ and associated species.

B

C. Development standards for parcels with riparian corridors containing an RMZ:

1. Application of standards and regulatory intent

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a. The provisions of this subsection 19.70.330 apply to all development on parcels containing an ~~riparian corridors~~ RMZ as defined in subsection 19.70.330.A.B-1.

b. It is the long-term goal of the City to restore the City's ~~riparian corridors~~ RMZs and to protect fish passage where scientifically justified. The City has determined that best available science supports protecting these ~~riparian corridors~~ RMZs as described in this section 19.70.330.

2. ~~Riparian-W~~watercourse: Development is prohibited within or over the ~~riparian~~ watercourse, except as provided in this subsection 19.70.330.~~CB~~. The Director may approve access over the ~~riparian~~ watercourse, if the applicant demonstrates that :

a. no other access is available;

b. the access is provided by a freestanding structure that maintains the natural channel and floodway of the ~~riparian~~ watercourse ;

c. the coverage of the ~~riparian~~ watercourse and disturbance of the ~~riparian corridor~~ RMZ and any other adjacent environmentally critical area or buffer are kept to a minimum; and

d. the material used to construct the access is durable and non-toxic to the maximum extent feasible. If using untreated wood is infeasible, wood treated with pentachlorophenol, creosote, chromate copper arsenate, or comparably toxic compounds is prohibited. Treated wood and other material shall be the least toxic and shall be applied and used according to National Oceanic and Atmospheric Administration Fisheries guidelines for using treated wood in or over aquatic environments.

e. In the ~~riparian~~ watercourse any action detrimental to habitat or actions affecting trees and vegetation, including but not limited to clearing or removal, is prohibited, except as provided in subsections 19.70.330.B.C.2.~~(a)~~.

3. Riparian Management Zone: The ~~riparian management zone~~ RMZ is defined in subsection 19.70.330.AB.~~(1)~~. Existing improved areas of public or private streets/driveways are excluded from the regulations for the ~~Rriparian Mmanagement Zzone~~ RMZ.

a. Development is prohibited in the ~~riparian management zone~~ RMZ, except as follows:

1) To provide the minimum necessary access if no other access is available to development approved under subsection 19.70.330.BC.2.~~(a)~~.

2) On platted lots existing prior to adoption of Ordinance 4025 that satisfy one or more of the provisions within AMC Table 19.70.040-(A) and Table 19.70.045 if the applicant demonstrates that:

a. The development complies with flow control and water quality requirements, regardless area of land disturbing activity or the size of the addition or replacement of impervious surface. Chapter 19.76 Storm Water

b. Any development, including but not limited to coverage by impervious surface, does not exceed 35 percent of the total lot area, and provided further that the maximum lot coverage does not exceed that allowed under Title 19.

c. When compliance with storm water flow control and water quality requirements is required solely based on subsection 3.a.(2) –a. and; b., the director may approve a restoration plan in lieu of compliance with subsections 3.a.(2) –a. and; b. if the applicant demonstrates that the plan meets the following criteria:

i. The riparian watercourse and/o riparian management zone-RMZ ecological function will be restored so that it prevents harmful erosion, protects water quality, and provides diverse habitat; and

ii. The restoration results in greater protection of the riparian watercourse and riparian management zone-RMZ than compliance with 3.a.(2) –a. and; b.

4. In the riparian management zoneRMZ any action detrimental to habitat and any action affecting trees and vegetation, including but not limited to clearing or removal, are prohibited, except as provided in subsection 19.70.330.BC.3.a.1), or 19.70.330.BC.-3.a.2).-

5. The ecological functions of the riparian management corridor include tree and vegetation cover, preventing erosion and protecting water quality.-

56. If the riparian management zone-RMZ is degraded due to the lack of trees and vegetation, the presence of invasive or non-native species, and/or the presence of impervious surface or other development, the applicant shall prepare and carry out a restoration plan that restores the ecological function of the riparian management zone-RMZ to the extent commensurate with the impact of the development on the riparian management zone-RMZ and according to mitigation standards pursuant to Section 19.70.125 and Section 19.70.130.

67. If the development is authorized pursuant to AMC 19.49.040 or AMC Table 19.70.040 (A) and AMC Table 19.70.045, the Director must require that the degraded portion of the riparian management area-RMZ be restored by removing existing nonnative and invasive plant species, and replanting with native trees and vegetation, and providing a five-year monitoring and maintenance plan consistent with the requirements of Section 19.70.130, based on a Critical Area Restoration plan.

8. Small project waiver

a. The Director may approve fences, rockeries, or similar features or temporary disturbance for installation of utility lines in a riparian management zone if no construction occurs over, in, or within 15 feet of a riparian watercourse or water body, and if the applicant demonstrates that the proposal meets the following criteria:

1) The feature is constructed on a lot that has been in existence as a legal building site consistent with Section 19.49.040 Non-Conforming Structures.

2) The feature:

ai) Does not contain floor area;

Commented [FKE(15): We don't want to prevent all erosion – only the erosion that happens at higher than natural rates.

bii) Does not remove trees or native vegetation;

ciii) Does not block wildlife movement through the riparian management zone; and

diii) Mitigates impacts to ecological functions.

b. The Director's decision requires:

1i) The use of fencing with a highly durable protective barrier during the construction to protect the **Riparian Management ZoneRMZ**.

2ii) Mitigation pursuant to Section 19.70.125 and 19.70.130 to offset the area of both temporary and permanent development.

3iii) Additional measures, as appropriate, to protect the remainder of the riparian corridor.

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	50 feet

DNR Water Type (WAC 222-16-030)	Standard Buffer Width
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.	
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. *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.

D. *Functionally Separated and Isolated Stream-Buffers Riparian Management Zones.* Consistent with the definition of “~~buffers~~” ~~Riparian Management Zone~~ in this chapter, ~~areas~~-RMZs are places that potentially provide riparian ecosystem functions. Portions of the RMZ that are functionally isolated and physically separated from a ~~stream~~ ~~riparian watercourse~~ 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~~ ~~watercourse~~ ~~must be~~ ~~are~~ may be excluded from the RMZ. If such an area provides any of the five primary RMZ functions (bank stability, shade, pollution removal, contributions of detrital nutrients, or recruitment of large woody debris), it will ~~not be excluded from~~ be retained within the RMZ; if it provides none of these functions, it may be excluded. ~~considered physically isolated and functionally separated stream buffers riparian management zone~~ Once an RMZ is determined by the decision-maker, based on a submitted critical area report, to be a physically separated and functionally isolated ~~stream buffer riparian management zone~~, development proposals are allowed in these the areas is no longer considered an RMZ critical area.

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. *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.

F E. *Piped Watercourses and Roadside Ditches.* It is recognized that within the urban environment many historical ~~streams~~ ~~streams~~ ~~watercourses~~ have been substantially modified to accommodate development. Many of the regulated and mapped ~~streams~~ ~~watercourses~~ 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 riparian corridors~~ ~~ditches that do not meet the definition of a watercourse~~ are subject to a 10-foot setback from the centerline of the ~~stream course~~ ~~piped watercourse~~ or ditch 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 a previously channelized, culverted, or piped ~~streams~~ ~~watercourses~~ 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 riparian management zone** 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 should~~ include 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 the~~ conveyance will maintain the flow capacity and not create flooding elsewhere in the drainage basin.

G F. ~~Stream Enhancement Measures~~ **Riparian Corridor Management Zone Enhancement Measures.** Only those enhancement measures deemed most applicable and/or appropriate for ~~stream channel or buffer riparian corridor~~ **RMZ** enhancement projects will be considered in a ~~buffer riparian corridor~~ **RMZ** 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 ~~RMZ 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 watercourse~~ was previously underground, in a culvert or pipe. Surface channels which are “daylighted” must be located within a ~~buffer~~ riparian management zone-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. 4015 § 2 (Att. A), 2022; 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~~ **Non-Riparian Corridor** ~~RMZ~~ 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~~ **Non-Riparian Corridor** ~~RMZ~~ -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 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 riparian management zone** when determined by a qualified professional that the location of the facilities will enhance the **buffer-area riparian management zone** and protect the **stream watercourse**; and
- E. Such facilities are designed consistent with the requirements of AMC Chapter [19.76](#). (Ord. 4015 § 2 (Att. A), 2022; Ord. 3064 § 2 (Att. A), 2021. Formerly 19.70.345)

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 [RMZ](#) 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~~ ~~Riparian Corridors~~ ~~RMZs~~.* If no project impacts are anticipated and standard ~~stream-buffer~~ ~~riparian management zone~~ widths are retained, a ~~stream~~ ~~riparian corridor~~ ~~RMZ~~ 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~~ ~~riparian corridors~~ ~~RMZs~~ 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~~ ~~Riparian Corridor~~ ~~RMZ~~ survey showing the field delineated inner point of measurement (e.g., ordinary high water mark(s);
 - b. Standard ~~stream buffer~~ ~~riparian corridor~~ ~~RMZ~~ boundary as determined by AMC 19.70.330, ~~Specific standards for riparian corridors~~;
 - ~~e.~~ ~~Boundary for proposed stream buffers—averaging, if applicable~~;
 - ~~d.~~ ~~c.~~ Vegetative, faunal, and hydrologic characteristics;
 - ~~e.~~ ~~d.~~ Soil and substrate conditions; and
 - ~~f.~~ ~~e.~~ Topographic elevations, at two-foot contours;
2. A detailed description and functional assessment of the ~~stream~~ ~~riparian watercourse~~ channel and ~~stream buffer~~ ~~riparian management zone~~ under existing conditions pertaining to the protection of ~~stream~~ ~~the riparian corridor~~ ~~RMZ~~ 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~~ ~~riparian corridor~~ ~~RMZ~~ functions;
4. Proposed ~~buffer~~ ~~riparian corridor~~ ~~RMZ~~ enhancement, if needed, including a written assessment and accompanying maps and planting plans for ~~buffer~~ ~~riparian corridor~~ ~~RMZ~~ areas to be enhanced, including the following information at a minimum:
 - a. A description of existing ~~buffer~~ ~~riparian corridor~~ ~~RMZ~~ conditions;
 - b. A description of proposed ~~buffer~~ ~~riparian corridor~~ ~~RMZ~~ conditions and how proposed conditions will increase ~~buffer~~ ~~riparian corridor~~ functions in terms of ~~stream~~ ~~riparian corridor~~ ~~RMZ~~ 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~~ ~~riparian corridor~~ ~~RMZ~~ conditions, as compared to performance standards, for enhancement success; and
 - e. A discussion of ongoing management practices that will protect ~~stream~~ ~~riparian corridor~~ functions and habitat value through maintenance of vegetation density within the ~~RMZ~~ ~~stream~~ ~~riparian corridor~~ ~~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 (~~W~~D~~F~~W), 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)

Definitions

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

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

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

“Averaging” means establishing the required buffer setback from a critical area, within the permitted parcel of land only, so that areas within the parcel determined to be more environmentally sensitive than others will have a larger buffer than the less sensitive areas. For every increase in setback for one area of the parcel, there will be an equal corresponding decrease in another area of the parcel. The total land area within the buffer must remain the same as if the buffer were a uniform width.

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

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

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC [365-195-900](#) through [365-195-925](#). Sources of best available science are included in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the Washington State Department of Commerce.

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

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

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

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

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

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

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

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

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

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

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

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

“Floodway, zero rise” means the channel of a stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without any measurable increase in flood height. A measurable increase in base flood height means a calculated upward rise in the base flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to development in the floodplain. This definition is broader than that of the FEMA floodway, but

always includes the FEMA floodway. The boundaries of the 100-year floodplain, as shown on the current flood insurance study for the city of Anacortes, are considered the boundaries of the zero rise floodway unless otherwise delineated by a critical area study.

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

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

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

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

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

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

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

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

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

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

“Mitigation” means avoiding, minimizing, or compensating for adverse critical areas impacts, using the sequential order of preference listed in AMC [19.70.125](#), Mitigation requirements.

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

“Native growth protection area/easement” (NGPA/E) means an easement granted for the protection of native vegetation within a sensitive area or its associated buffer. The easement should be recorded on the appropriate documents of title and filed with the county records division.

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

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

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

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

“Repair” or “maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

Riparian Corridors are the riparian watercourse and the riparian management zone. The riparian watercourse of Type F, Np, and Ns waters defined in Wac 222-16-030 and 222-16-031 that have fish or wildlife habitat. Pipes, culverts, flow control facilities, water quality facilities, and storm water conveyances are not regulated as riparian watercourses.

Riparian Management Zone is means the area that has the potential to provide full riparian functions. This area occurs within one 200-year site-potential tree height measured from the edge of the stream channel. In situations where a Channel Migration Zone is present, this occurs within one SPTH₂₀₀ measured from the outer

edge of the CMZ. In places where $SPTH_{200}$ is less than 100 feet, the RMZ is set at 100 feet to provide for the pollution removal function.

~~the zone area the width of a 200-year old site-potential tree within but no less than within 100 feet of the riparian watercourse measured horizontally landward from the ordinary high water mark of the watercourse as surveyed in the field, or from the top of the bank if the ordinary high water mark cannot be determined. In watercourses with braided channels or alluvial fans, the ordinary high water mark must be determined so as to include the entire watercourse feature.~~

“Restoration” means measures taken to restore an altered or damaged natural feature, including: (1) active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and (2) actions performed to reestablish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

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

“Shoreline jurisdiction” means all marine waters along Puget Sound, streams and rivers with an annual mean flow of more than 20 cubic feet per second, lakes greater than 20 acres in size, shorelands adjacent to these water bodies, and associated wetlands.

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

~~“Site-potential tree height ($SPTH_{200}$)” means t~~The average maximum height of the tallest dominant trees site-class at age 200 for a given place’s soil site class. , as determined by the Washington Department of Fish and Wildlife-WDFW provides $SPTH_{200}$ base on soil surveys at Mapping tool-
(<https://gispublic.dfw.wa.gov/arcgis/rest/services/SPTH/SitePotentialTreeHeightPublic/MapServer>).

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

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

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

~~“Stream” means an area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or~~

bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

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

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

Watercourse (or "river" or "stream") means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

“Wetland” or “wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. “Wetlands” generally include swamps, marshes, bogs, and similar areas. “Wetlands” do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. “Wetlands” include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands.

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

“Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water. (Ord. 3064 § 2 (Att. A), 2021)

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

The Anacortes Municipal Code is current through Ordinance 4020, passed April 11, 2022.

Commented [FKE(16): This is from [https://apps.leg.wa.gov/wac/default.aspx?cite=220-660-030\(154\)](https://apps.leg.wa.gov/wac/default.aspx?cite=220-660-030(154)). GMA WAC 365-190-030 Definitions is being revised to cite this definition as GMA’s definition of watercourse/stream/river. The WAC will be finalized by year’s end.

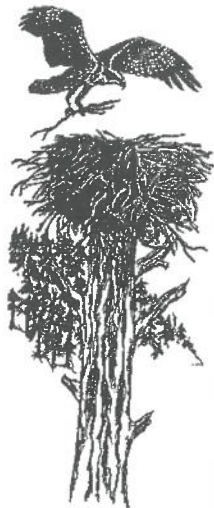
Disclaimer: The city attorney's office has the official version of the Anacortes Municipal Code. Users should contact the city attorney's office for ordinances passed subsequent to the ordinance cited here.

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September 19, 2022

To: Anacortes Planning Commission, Anacortes City Council, and Mayor Miller
Cc: Don Measamer, Director of Planning, Community and Economic
Development; Kyle Loring, Loring Advising

RE: Riparian Management Zones in the Critical Area Ordinance

Dear Planning Commissioners, Council Members and Mayor Miller,

I am writing you on behalf of Evergreen Islands supporting the Planning staff's proposed language changes for riparian management zones in the Critical Area Ordinance. We understand that planning staff have recommended that the City adopt language that largely reflects the approach proposed in the State of Washington Department of Fish And Wildlife's 2020 publications on Riparian Ecosystems.

Evergreen Islands supports the designation of Riparian Management Zones with widths based on "site potential tree height". We appreciate the City's extra attention to protect and restore healthy, functioning streams and riparian ecosystems that contribute to clean water, climate-resilient watersheds and healthy salmon populations.

Evergreen Islands encourages you to adopt the changes recommended by staff and we look forward to working with the City of Anacortes on future stream and riparian restoration projects.

Sincerely,

Marlene Finley
President
Evergreen Islands Board of Directors

Libby Grage

From: Marlene Finley <marlenefinley17@gmail.com>
Sent: Monday, September 19, 2022 4:48 PM
To: Libby Grage
Subject: Fwd: Riparian Management Zones in the Critical Area Ordinance - Letter of support
Attachments: 09192022_COA_RMZ.pdf

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Hi Libby,

I see Don Measamer is out of the office until September 25. Can you please include this letter in the Planning Commission's meeting packet? I should have copied you on this letter. Thank you, Marlene

----- Forwarded message -----

From: Marlene Finley <marlenefinley17@gmail.com>
Date: Mon, Sep 19, 2022 at 4:44 PM
Subject: Riparian Management Zones in the Critical Area Ordinance - Letter of support
To: <sarar@cityofanacortes.org>, <garym@cityofanacortes.org>, <jeffg@cityofanacortes.org>, <wardm@cityofanacortes.org>, <jackc@cityofanacortes.org>, <frankJ@cityofanacortes.org>, <lindam@cityofanacortes.org>, <ryanw@cityofanacortes.org>, Cleland-McGrath, Christine <Christinec@cityofanacortes.org>, <jeremyc@cityofanacortes.org>, <amandah@cityofanacortes.org>, <brucem@cityofanacortes.org>, Carolyn Moulton <carolynm@cityofanacortes.org>, <anthony@cityofanacortes.org>, <mattm@cityofanacortes.org>, Measamer, Don <don@cityofanacortes.org>
Cc: Kyle Loring (LoringAdvising) <loringadvising@gmail.com>, Evergreen Islands Board of Directors <evergreen.islands@outlook.com>

Please see the enclosed letter from Evergreen Islands supporting the Planning staff's proposed changes for riparian management zones in the Critical Area Ordinance. We would like this letter to be included in the Planning Commission's meeting packet.

I am emailing from my personal account because Evergreen Islands emails occasionally fail to get through the City's email filters.

Thank you for your time and consideration.

Marlene Finley

Libby Grage

From: Don Measamer
Sent: Tuesday, September 20, 2022 11:01 AM
To: Libby Grage
Subject: Fwd: 9-28-2022 PH CAO Second Comment Letter

Hi Libby,

Comment letter from Ian

Thanks
Get [Outlook for iOS](#)

From: Ian Munce <ianmunce@gmail.com>
Sent: Monday, September 19, 2022 2:42:39 PM
To: Don Measamer <don@cityofanacortes.org>
Subject: 9-28-2022 PH CAO Second Comment Letter

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Good day, Planning Commissioners

Thank you for the additional opportunity to comment on the City's 2021 Critical Area Ordinance (New CAO) as to its general provisions, critical area review procedures, and wetland section. In this Comment Letter I will first point out how two provisions, in particular, in the New CAO depart from the previous CAO, adopted in 2008 (Old CAO) in a manner that is directly contrary to City Comprehensive Plan (CP) policies as to "transparency, fairness, and predictability" and then propose certain straightforward amendments to address these deficiencies. This approach is an expansion of my concerns relative to State Department of Fish and Wildlife straightforward approach to AMC 19.70.040, an approach that seems to mistakenly assume that the City has some useable enforcement and measurement data.

City CP Policy Land Use Policy 1.4 reads as follows: "Implement land use designations through a clear regulatory process that ensures transparency, fairness, and predictability in the land use development process".

1. WETLAND DESIGNATION AND DEDESIGNATION PROCEDURES

A. Between the adoption of the City's first wetland protection ordinance in 1990 and adoption of the New CAO wetlands over 10,000 square feet, together with their buffers and boundaries could only be amended through a City permit approval or through the City's Annual Development Regulation Amendment Process. Published Public Notice advanced "transparency, fairness, and predictability". There was an opportunity for the public and neighbors to review and question the adequacy of the science included in a wetland report. Unless a City Permit is required the New CAO excludes the public and neighbors by taking the entire process in-house. For instance, the City formally confirmed the

designation of the two acre wetland at 4417/4419 H Avenue on May 21, 2021, this action was not appealed, and yet the City's Wetland Map Overlay now shows this same wetland as 'potential wetland', and staff have been unable or unwilling to explain the dedesignation. This simply would not be acceptable if there was a City Council legislative process.

B. The corrective action called for by CP Policy LU-1.4 is reinstatement of the Annual Development Regulation Amendment Process together with two of the Best Available Science recommendations made by City retained wetland scientists: (1) the City should make provision(s) such that wetland designations once determined do not expire at the end of the typical five years and (2) if wetlands are mowed to the ground a wetland report will not be prepared until mowing has been discontinued and a new wetland growing season has occurred. Finally, the Wetland Overlay Map needs to be corrected for 4417/4419 H Avenue to comply with the City's May 21 Wetland Designation Order.

2. WETLAND MONITORING & CORRECTIVE ACTION (ADAPTIVE MANAGEMENT)

A. The Old CAO contained the following mandate: "Adaptive Management: The City will monitor all construction projects undertaken adjacent to a wetland buffer(s) ... at least once a year in order to assess buffer function and the use of City prescribed best operating procedures. From year to year the City will ensure that there is no net loss of buffer ecological function and value, on a citywide basis. In the event that such a situation occurs the City will promptly mitigate for any loss and take any further corrective action necessary to ensure that this situation does not reoccur. Corrective action may involve widening buffers, fines, and/or performance bonds". Unfortunately this mandate was never implemented and so the City has little or no citywide database to on wetlands beyond that compiled in 1994. Simply dropping this mandate from the New CAO without commissioning a new citywide wetland delineation study does not just violate LU Policy LU-1.4 but makes enforcement extremely problematic.

B. The corrective action called for is to readopt and implement the Adaptive Management mandate, to secure funding for a new citywide wetland delineation study to fill some of the gaps created by the City's failure to implement adaptive management, and to clearly state that the baseline for ensuring the City CP 's mandate to ensure no net-loss (and restoration) of wetland function and value is the January 8, 1990 (the implementation date of the City's Wetland Protection Ordinance).

If the Planning Commission is interested in additional citations and recommendations staff can direct you to my Growth Management Hearings Board filings.

Again, thank you for the opportunity to comment.

Ian Munce, AICP

Libby Grage

From: Ian Munce <ianmunce@gmail.com>
Sent: Thursday, September 15, 2022 12:52 PM
To: Don Measamer
Cc: Libby Grage; Matt Miller; Darcy Swetnam
Subject: Comments re. Proposed Ordinance 4025 Amending Critical Area Regulations
Attachments: Attachment A.docx; Miller-Attachment B.pdf; Attachment A.docx; Miller-Attachment B.pdf

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Dear Mr. Measamer

Thank you and the Washington State Department of Fish and Wildlife for opening up the wetland provisions of the CAO for further review and discussion. As you know, the Growth Management Act gives the highest priority to protecting critical areas and the City in its Comprehensive Plan has committed to efforts to restore critical areas that have been degraded over the years.

My two comments are as follows:

1. PROPOSED FURTHER CLARIFICATION RELATIVE TO AMC 19.70..015(B)2

The current Critical Area Ordinance (CAO) could not be clearer as to its Applicability: "These critical areas regulations apply in addition to zoning and other regulations adopted by the City ... 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' function and values, as determined by the Director". AMC 19.70.015(B)2.

Yet, this is not the approach taken by the City as to the large, City designated wetland at 4417/4419 H Avenue. The CAO specifically states: "... do not destroy or clear native vegetation ...". Table 19.70.040(A) Exempt Activities, Yard and Garden Activities.

This is entirely consistent with, and implements (as required by WAC 365-196-800), the City Comprehensive Plan policies relative to protection and restoration. See Attachment A.

Yet, in the attached letter the City takes the position, without explanation, that the non conforming use language in AMC 19.49 (Attachment B) somehow trumps AMC 19.70.015(B)2. This cannot be correct in a case where literally acres of native vegetation in a designated wetland and wetland buffer are routinely cleared and destroyed every few weeks (I can only presume that this is for some misplaced and, frankly, weird notion regarding landscaping aesthetics).

In your amended CAO please make enforcement standards completely unambiguous by clearly stating that the specific directive of AMC 19.70.015(B)2 trumps the general approach set forth in AMC 19.49.

2. PROPOSED CHANGE TO AMC 19.70.

The proposed change is as follows: “In every case, **harm** (delete “disturbance”) to the critical area’s **function and values** must be **avoided if possible and minimized to the greatest extent possible. Disturbances must be** minimized through best management practices and the use of low-impact equipment.”

First, in my considered opinion the exempt activities above a certain size threshold (say 500 square feet) should require a City permit (and not the nebulous, voluntary compliance envisioned in the current CAO), with public notice, review, and appeal opportunities.

Second, if no City permit review occurs there is unlikely to be more than a property owner’s subjective, and in some cases most likely biased, assessment of “harm”. Contrast this with the current language relative to “disturbance” which is something that can be readily assessed by even a casual observer. In order to comply with the City Comprehensive Plan mandates (see Attachment A) as to wetland protection and restoration the current “disturbance” language must be retained without qualification in order to facilitate appropriate enforcement.

Third, “best management practices” and “low-impact equipment” must be actually and clearly defined and certainly not include the use of riding lawnmowers and land clearing tractors with attached industrial level cutters.

Respectfully submitted

Ian S. Munce, AICP
1711 Quail Drive
Anacortes, WA 98221

APPENDIX A

CRITICAL AREA MANDATES OF ANACORTES COMPREHENSIVE PLAN, 2015 AND NEW CRITICAL AREA ORDINANCE

EMPHASIS ADDED IN BOLD

VISION STATEMENT

**ANACORTES IS A UNIQUE, CREATIVE, AND CARING MARITIME
COMMUNITY THAT ... PROTECTS OUR NATURAL ENVIRONMENT ... FOR
FUTURE GENERATIONS**

VALUES STATEMENTS/Pursue Environmental Sustainability: embrace a conservation ethic, develop and maintain healthy land and marine ecosystems, and adopt innovative and environmentally sensitive development practices.

Land Use Goal LU-4. Resource protection and sustainable design. Maintain and **strengthen** regulations to protect sensitive natural areas and pursue strategies/actions to **restore** degraded natural areas.

Environment and Conservation Goal EC-1 Environmental protection. Serve as a **leader** in environmental stewardship of the natural environment for current and future generations.

Policy EC-1.2 Work cooperatively with local, state, regional, and federal governments and **community organizations** to protect and **enhance** the environment.

Policy EC-1.8 Use the best available science to preserve or enhance the function and values of critical areas through regulations, programs, and incentives.

Policy EC-3.3 Promote soil stability through **retention of existing vegetation**.

Environment and Conservation Goal EC-4 Water Quality. Protect and **enhance** water quality.

Policy EC-4.1 Work with neighboring jurisdictions, **citizens, and other partners** to maintain and **restore** natural hydrological functions in a drainage basin

Policy EC-4.8 Protect and preserve areas that are critical for aquifer recharge, such as **wetlands**, streams, and water bodies.

Policy EC 4.9 Strive for “no net loss” of wetland acreage, function, and value within each drainage basin over the long term.

Environment and Conservation Goal EC-6. Surface Water. Maintain or improve the functional integrity of watercourses, **wetlands**, bodies of water and their shores.

Policy EC-6.2 Streams and **wetlands should be maintained in their existing natural condition** or restored where appropriate.

Policy EC-6.5. Place appropriate restrictions on land surface modifications that would cause unnecessarily landscape scarring, hydrology modifications, erosion, or undermining of support of nearby land including, but not limited to, dredging, filling, clearing, paving, and grading.

From: **Matt Miller** mattm@cityofanacortes.org
Subject: **RE: Native wetland vegetation removal apparently biweekly now**
Date: **May 2, 2022 at 2:04:41 PM**
To: **Ian Munce** ianmunce@gmail.com
Cc: **Darcy Swetnam** darcys@cityofanacortes.org, **Don Measamer** don@cityofanacortes.org, **Christine Cleland-McGrath** christinec@cityofanacortes.org, **Ryan Walters** ryanw@cityofanacortes.org, **Carolyn Moulton** carolynm@cityofanacortes.org

Mr. Munce,

Let me assure you that my administration and I take a proactive approach to wetland protection. I was a Councilmember who worked on and supported the adoption of the new Critical Areas Ordinance, which significantly improved the City's protection of wetlands. And as Mayor, I've been supportive of improving that Ordinance through the Growth Management Hearings Board appeal process and am working to ensure the City has the resources to enforce new regulations. The City has put together a strong team of staff to protect our valuable critical areas, including recently hiring an environmental planner with a background in biology and wetlands science to evaluate and better inform the City's wetlands protections. My administration supports wetland protection.

I understand that you're unhappy with your neighbor mowing their field. As you are aware, on June 29, 2021, the City made a determination that mowing the Middleton property is a legal, existing nonconforming use after review of City records and evidence presented by the Middletons that mowing of that property occurred prior to 1990. The Anacortes Municipal Code addresses nonconforming uses at Chapter 19.49 and directs that, as long as the Middletons don't abandon mowing for a period of a year or more, their use will continue to be allowed. That determination of legal nonconforming use was made nearly a year ago, was not challenged, and now requires the City to allow the Middletons' activity as long as it complies with Chapter 19.49 and other provisions of the AMC.

The City has an obligation to follow the Code and state law in permitting and overseeing land use within the City. I understand that you may disagree with how that law was applied to your neighbor's property and that has caused frustration. However, the City is not in a position to be able to now arbitrarily change a determination of legal nonconforming use. We are working every day to be good stewards of our valuable natural resources and protect wetlands within the City while respecting individual property rights, which is also a GMA goal.

At this point, I believe this matter is settled.

Best/Matt

Matt Miller, Mayor
City of Anacortes
360.299.1950