

**PLEASE NOTE THIS SPECIAL PUBLIC HEARING
BEGINS AT 5:00 PM**

**SPECIAL PUBLIC HEARING
ANACORTES PLANNING COMMISSION**



WEDNESDAY, DECEMBER 18, 2019

Municipal Building Council Chambers

6th Street and "Q" Avenue

AGENDA

5 P.M.

[VIEW PACKET MATERIALS HERE](#)

1. **Roll Call**
2. **Minutes of November 20, 2019 and December 4, 2019 will be presented at a later date.**
3. **Public Hearing**: Critical Area Regulations Update – Open Public Hearing reviewing the Recommendations on Draft 2 of Critical Areas Ordinance Update.

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



Planning Commission Agenda Bill

Meeting Date: 12/18/2019 **Agenda Item:** Click here to enter text.

Subject: Draft Critical Area Ordinance Update: Planning Commission Public Hearing

Staff Contact: Don Measamer, Tess Cooper

Approved for Submittal to PC by	
	Laurie Gere, Mayor
x	Don Measamer, PCED Director
	Darcy Swetnam, City Attorney

Action Type	
X	Public Hearing
	Staff Report
	Discussion
	Action

Summary Statement: A public hearing will be held as part of the 2016 critical areas regulations update process that is required to be conducted under the periodic update requirements of the Growth Management Act. The second draft was released in October 2019 and has been reviewed by Planning Commission over the course of several meetings.

Proposed Schedule: The following general process is proposed for public and Planning Commission review

November 20	PC Work Session: Geologically Hazardous Areas, Critical Aquifer Recharge Areas, Frequently Flooded Areas, and Critical Area Commerce Checklist,
November 27	SEPA determination and Notice of Hearing
December 4	PC Work Session: Case Study Examples, Public Comment Matrix, Discussion
December 18	PC Public Hearing
January 3, 2020	Written comment period ends
January 8, 2020	PC deliberation and possible recommendation
January 22, 2020	PC deliberation and recommendation (if needed)

Background: Additional project background information can be viewed at (<https://www.anacorteswa.gov/201/Critical-Areas-Regulations-Update>)

Previous Council/Committee/Commission Action: None.

Competing Viewpoints Considered: The purpose of the hearing is to receive public testimony.

Recommended Motion: None

Attachments:

Staff Memo on Legislative Actions

2nd Draft Recommended Changes

Crosswalk of changes – Existing 17.70 through 2nd Draft

Public Comment Matrix as of 12/9/2019



Planning, Community, & Economic Development Department

Don Measamer, Director

Memorandum

To: Anacortes Planning Commission
Date: December 12, 2019
From: Planning, Community & Economic Development Department
Subject: Critical Areas Regulations Update – Procedural requirements

SUMMARY

The Planning Commission has held multiple public meetings to review, discuss, and receive public input regarding the proposed updates to the critical areas regulations. Over 60 written public comment letters and emails have been received to date. Documents related to the proposal have been made available to the Commission and the public on the project website over the past several months. A public hearing was advertised and will be held on December 18, 2019. A written comment deadline is set for January 3, 2020.

The Planning, Community and Economic Development Department (PCED) is providing this memorandum in advance of the December 18, 2019 Planning Commission meeting to clarify procedural requirements for legislative actions that are applicable to the Planning Commission's review of development regulation amendments (which include critical areas regulations).

PLANNING COMMISSION REVIEW

AMC Ch. 19.16, Legislative Actions describes the Planning Commission's role in the review of amendments to the development regulations. The code section is attached. The Planning Commission is required to hold at least one public hearing before issuing its recommendation. Per AMC 19.16.080, if necessary due to the number of people present to comment, the Planning Commission may continue the public hearing to another date, time, or location. The

procedures do not provide the ability to extend a public comment period, or require staff to generate additional drafts of the proposed updates. The procedures are intended to result in the City Council receiving the same document that was available for public comment, along with a separate recommendation from the Planning Commission, which may include other relevant comments, suggestions, or recommendations that the Planning Commission desires to include. The City Council can then decide how to proceed – whether to accept the recommendations and generate a new draft, or decline the recommendations and proceed in a different direction.

Staff recommends that the Planning Commission take public testimony at the public hearing on December 18, 2019 and close the public hearing (unless additional time is necessary to accommodate the number of people present wishing to comment).

Upon closure of the written public comment period on January 3, 2020, staff will compile all comments received and provide them to the Commission prior the January 8, 2020 regular meeting, along with staff's analysis and recommendations for PC's consideration during deliberations.

19.16.080 Review by planning commission.

A. *Public Hearing.*

1. After environmental review, the planning commission must hold at least one public hearing before issuing a recommendation on each proposal.
2. If necessary due to the number of people present to comment, the planning commission may continue the public hearing to another date, time, or location.

B. *Deliberations.*

1. *Required Consideration.* The planning commission must consider the following in making its recommendation:
 - a. Public hearing testimony and written comment received during any public comment period;
 - b. Recommendations and analysis from relevant city advisory groups;
 - c. Staff recommendations and analysis;
 - d. Legal advice;
 - e. Consistency of the proposal with the comprehensive plan;
 - f. For proposed comprehensive plan map changes, whether the proposal is justified by changed or changing conditions, whether the proposal would create an isolated land use designation unrelated to adjacent designations (a spot zone), and whether the proposal will be compatible with neighboring properties and not adversely affect the value of those properties.
2. *Ability to Ask Follow-Up Questions.* The Planning Commission may ask specific follow-up questions of those that testify or submit written comments in order to clarify their testimony or request specific further information.
3. *Ability to Continue Deliberations.* The Planning Commission may continue their deliberations to a subsequent meeting if it needs additional information or additional time to deliberate.

C. *Recommendation to City Council.*

1. *Timing.* At the conclusion of its deliberations, the planning commission must vote on the proposal.
2. *Vote.* The planning commission may vote to recommend approval, approval with modifications, or rejection of the proposal. The planning commission may recommend general modifications to the proposal and need not provide explicit textual edits.

3. *Content.* The planning commission's recommendation on a proposal must be by recorded motion, which must contain the following components:

- a. *Findings of Fact.* a list of facts that the planning commission believes to be true and that are relevant to its recommendation on the proposal.
- b. *Reasons for Action.* an explanation of the planning commission's rationale in making its recommendation.
- c. *Recommendation.* the recommendation resulting from the vote.
- d. *Vote.* a record of the roll call vote on the entire recorded motion.
- e. *Additional Comments.* other relevant comments, suggestions, or recommendations, not strictly related to the recommendation, that the planning commission desires to include.
- f. Signature of the chair attesting that the recorded motion reflects the planning commission's decision. (Ord. 2992 § 1 (Att. A), 2016)

The Anacortes Municipal Code is current through Ordinance 3046, passed July 22, 2019.

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.

[City Website: www.cityofanacortes.org](http://www.cityofanacortes.org)

City Telephone: (360) 293-1900

[Code Publishing Company](#)

Anacortes Critical Area Regulations

2nd Draft Changes

December 11, 2019

The following table lists the changes recommended for the 2nd draft the Anacortes Critical Area Regulations resulting from internal staff discussion, legal review, Planning Commission direction, and response to public comments.

AMC Reference	Recommended Change
Body of Text	<i>Change Required Administratively:</i> Grammar, numbering, and code citations will be reviewed and corrected by staff.
19.12, Definitions	<i>Change Requested by Public Comment:</i> Correction of the definition of Passive Recreation to include the missing section (A, B, C,D) from old definition that was in Title 17 but is no longer in Title 19 definitions. Current Language: <i>19.12.020: "Passive recreation" means a mix of uses on undeveloped land (including wetland buffers) or minimally improved lands which includes the following: naturally landscaped areas, nonlandscaped green spaces, picnic areas, water bodies, trails, interpretive trails and other similar structures or development.</i> Options: a. Leave definition as is in 19.12.020 b. Correct the definition to match previous 17.06.723 c. Change the definition of Passive Recreation all together.
Staff Recommendation	Staff recommends (option b.) correcting the definition to match the previous definition to read: <i>19.12.020 (17.06.723) "Passive recreation" refers to a mix of uses on undeveloped land (including wetland buffers) or minimally improved lands which includes the following: naturally landscaped areas, non-landscaped greenspaces, picnic areas, water bodies, trails, interpretive trails and other similar structures or development.</i> <i>Passive recreation may be defined as a non-motorized activity that:</i> <i>A. Offers constructive, restorative, and pleasurable human benefits and fosters appreciation and understanding of open space and its purpose;</i> <i>B. Is compatible with other passive recreation uses;</i> <i>C. Does not significantly impact natural, cultural, scientific, or agricultural values; and</i> <i>D. Requires only minimal visitor facilities and services directly related to safety and minimizes passive recreation impacts.</i>
19.12, Definitions	<i>Change requested by Dept. of Ecology.</i> "qualified professional." For wetlands, we [Ecology] recommend: A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands

AMC Reference	Recommended Change
	using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans. Current language: <i>"Qualified professional" means a person with experience and training in the applicable field or critical area. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geology or related field, and have two years of related work experience.</i> Options: a. Leave definition as is in 19.12.020, b. Modify definition as suggested above.
Staff Recommendation	Staff recommends (option b.) modifying the definition to read: <i>"Qualified professional" means a person with experience and training in the applicable field or critical area. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geology or related field, and have two years of related work experience. <u>A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.</u></i>
Table 19.20.030	<i>Change Required Administratively:</i> Because the Permit types have been modified by the new Critical Area Regulations it is important to include them in the Types of Review section 19.20.030 and the Review classification and process matrix shown in Table 19.20.030. Add: Type I – Exemption with Prior Written Notice, Type II – Critical Area Permitted Alteration Permit, Type III HE – Critical Area Variance Options: This is a necessary addition.
Staff Recommendation	Staff recommends the above amendment to Chapter 19.20 and the permit procedure table 19.20.030.
19.70.015 Applicability	<i>Change Requested by Staff:</i> Staff recommends wordsmithing the following section because it appears Draft 1 got edited incorrectly: Current Language: <i>19.70.015(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 maximum buffer distance of, or likely to affect the functions and values of, one or more critical areas.</i> Options: This is a necessary addition.
Staff Recommendation	Staff recommends the following change:

AMC Reference	Recommended Change
	19.70.015(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 <i>within</i>, within the maximum buffer distance of, or likely to affect the functions and values of, one or more critical areas.
19.70.035(C)	<i>Change Requested by Staff:</i> 19.70.035(C) Modifications to Existing Nonconforming Structures and Uses, modified from section 19.70.500 is missing (B) the State Ferry Terminal provision. Current Language: C. Modifications to Existing Nonconforming Structures and Uses. Existing structures and uses that were established legally but do not meet the current critical area, buffer, or buffer setback requirements may continue in accordance to AMC 19.49.040, and may be modified as follows: 1. Routine maintenance and repairs; 2. Structural modifications or additions that do not intensify the nonconformity of the structure or increase the area of hardscape lying within the critical area or buffer. The Decision maker may require an updated critical areas report to confirm location of buffers and that the addition is located entirely outside the critical area or buffer; 3. Vertical additions above the ground floor that do not encroach further into the critical area or buffer beyond the existing exterior walls, except that critical areas review is required for additions in landslide hazard areas or buffers; 4. Restoration or replacement of a structure that is damaged by fire, natural disaster or other calamity when: a. A complete application for reconstruction or replacement is submitted within one year of the damage; and b. The restoration or replacement is made to conform to the current critical areas regulations, or if such regulations cannot be physically met without reducing the size of the building, the restoration or replacement may not intensify any nonconformity that existed prior to the damage. c. Except that critical areas review is required for restoration and replacement in landslide hazard areas or buffers. Options: This is a necessary correction
Staff Recommendation	Staff recommends adding the following item #5 to the above section: 5. State Ferry Terminal. The existing developed footprint, except for infill between the toll booth area in the lowest parking lot, hillside walking paths, and a hillside side slope along the western side of the main terminal parking lot, and including all associated parking, at the Washington State Ferry Terminal facility, shall not be increased and redevelopment may occur provided there is no net loss of ecological function and value in the adjacent buffer areas for Cannery Pond and Ship Harbor Interpretive Preserve wetlands.
19.70.040 Exemption Table	<i>Change Requested by Public Comment:</i> Public comment has been received that the Exemption statement “when it can be demonstrated” is confusing, and that the Exemption should not include the term bicycles. Passive Outdoor Activities. When it can be demonstrated that there will be no adverse effect, the following activities are allowed within critical areas and their buffers: educational activities,

AMC Reference	Recommended Change
	<i>scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, public beach access including water-related activities, bicycling, and hiking. This exemption does not include constructing new roads or trails, vegetation clearing, or collection of plants or animals</i> Options: a. Leave as listed in Draft 2 (above), b. Modify the item to improve clarity and remove bicycles: <i>Passive Outdoor Activities.</i> <i>In accordance with 19.70.040(B) above, and when there will be no adverse effect, the following activities are allowed within critical areas and their buffers: educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, public beach access including water-related activities, and hiking. This exemption does not include constructing new facilities, vegetation clearing, or collection of plants or animals.</i> c. Scrap the language in Draft 2 all together and revert back to the terms as listed in the current Critical Area Regulations under 17.70.380(B) Uses By Right.
Staff Recommendation	Due to the high number of comments and concerns with changes in Draft 2 using the words passive recreation and bicycling, staff recommends (option c.) reverting back to the wording of the Current Regulations under 17.70.380(B), thereby eliminating any changes to the allowed uses by right in critical areas or buffers. Exemption to read: <i>Provided they do not require structures, grading, fill, draining, or dredging except as provided herein or authorized by a Critical Area Permit: Outdoor recreational activities, including fishing, birdwatching, hiking, boating, horseback riding, swimming, canoeing, and similar activities with limited environmental impact are exempt activities.</i>
Table 19.70.050 Permitted Alterations	<i>Change requested by Staff:</i> Change the title “Public Services” to “Public Roads and Utilities” for clarity. Options: a. Keep the title as is, b. Change the title to Public Roads and Utilities.
Staff Recommendation	Staff recommends (option b.) providing additional clarity by changing the title and incorporating necessary language to read: <i>Public Roads and Utilities.</i> <i>To allow public improvements, when the strict application of the standards in this Chapter would otherwise unreasonably prohibit the provision of public amenities...</i>
Table 19.70.050 Permitted Alterations	<i>Change requested by Dept. of Ecology:</i> Permitted Alterations Table, Public Services: We recommend adding the following as #3: ○ It shall 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. Current Language:

AMC Reference	Recommended Change
	Public Services. <i>To allow development by a public agency when the strict application of the standards in this Chapter would otherwise unreasonably prohibit the provision of public amenities.</i> 1. <i>Public agency and services defined. For the purposes of this subsection, "public agency" means any agency, political subdivision, or unit of local government, or private utility regulated by the Washington Utilities and Transportation Commission, including, but not limited to, municipal corporations, special purpose districts and local service districts, private regulated utilities, any agency of the state of Washington, the United States or any state thereof, or any Indian tribe recognized as such by the federal government. "Public services" include, but are not limited to, water supply, sewer and stormwater management facility, electric power, telephone, cable television, gas, and transportation for persons and freight.</i> 2. <i>Public services may be allowed to alter critical areas and buffers when:</i> a. <i>Mitigation sequencing per AMC 19.70.135(A) has been applied;</i> b. <i>The application of the critical areas regulations would unreasonably restrict the ability of the public agency to provide public services;</i> c. <i>There is no other practical alternative to the proposed development with less impact on the critical area;</i> d. <i>The proposed development does not create a health or safety hazard on or off the development site, and will not be detrimental to the properties or improvements in the vicinity;</i> e. <i>Any alterations permitted to the critical area are mitigated in accordance with AMC 19.70.135 and relevant mitigation standards for the impacted critical areas(s) type;</i> f. <i>The proposal is consistent with the Anacortes Comprehensive Plan and other applicable regulations.</i> g. <i>Conditions authorized. Conditions may be established as necessary to mitigate impacts to critical areas and to conform to the standards required in this Chapter.</i> Options: a. Keep the item as is, b. Change the provision to incorporate Ecology's recommendation.
Staff Recommendation	Staff recommends adding the following item #3 to the above section: 3. <i>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.</i>
Table 19.70.050, Permitted Alterations	<i>Change Requested by Staff and Dept. of Ecology:</i> The following minor changes are requested to the Recreation Areas/Facilities provision: 1. Remove ACFL from this section and create a new section in the Permitted Use table, 2. Add the language "including but not limited to", 3. Add: Non-treated wood should also be used for information signs. (Ecology) 4. Add the missing language of D from 17.70.380. Options: a. Leave current draft language with no change, b. Approve all changes as suggested below,

AMC Reference	Recommended Change						
	c. Approve some of the changes as directed by PC.						
Staff Recommendation	Staff recommends (option b.) the all of following changes: <table><tr><th>Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)</th><th>Critical Area</th><th>Buffer</th></tr><tr><td> Recreational Areas / Facilities <u>outside of ACFL</u> Low impact activities which are consistent with the purpose and function of the critical area buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the critical area. A. Limited public park or public recreational access including <u>but not limited to</u> trails, viewing platforms, fishing access (no wider than 6 foot), and foot bridges, provided that all of the following are satisfied: a. The area/facility is part of a public park that is dependent on its location for recreational function; and b. The area/facility is limited to the minimum necessary to accomplish the recreational function; and c. The removal of trees and native vegetation is minimized; and d. The balance of the development is consistent with other requirements of this chapter; and e. The project is identified in the Anacortes Comprehensive Plan or Parks <u>Comprehensive Plan, and ACFL Master Plans.</u> B. Private pedestrian walkways and public trails must meet the following standards: a. The trail is generally parallel to the perimeter of the critical area; b. The trail is located in the outer 25% of the buffer area and is designated to avoid removal of s trees and native vegetation; c. The trail does not exceed 6 feet in width, and is limited to native soils or pervious surfaces. Raised boardwalks utilizing non-treated pilings may be acceptable; and The trail may be subject to closure during critical spawning, migration or breeding time periods of sensitive species that are present. C. Informational signs. Construction and placement of informational signs or educational demonstration facilities no more than 9 square feet surface area and 4 feet high, as long as there is no permanent infringement on hydrology or stream flow <u>and non-treated wood is used;</u> D. Limited excavating and filling necessary for the repair and maintenance of piers, walkways, observation decks, wildlife management shelters, boathouses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve <u>the natural contour of the wetland, except as authorized by a Critical Area Variance.</u> </td><td>No</td><td>Yes</td></tr></table>	Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer	Recreational Areas / Facilities <u>outside of ACFL</u> Low impact activities which are consistent with the purpose and function of the critical area buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the critical area. A. Limited public park or public recreational access including <u>but not limited to</u> trails, viewing platforms, fishing access (no wider than 6 foot), and foot bridges, provided that all of the following are satisfied: a. The area/facility is part of a public park that is dependent on its location for recreational function; and b. The area/facility is limited to the minimum necessary to accomplish the recreational function; and c. The removal of trees and native vegetation is minimized; and d. The balance of the development is consistent with other requirements of this chapter; and e. The project is identified in the Anacortes Comprehensive Plan or Parks <u>Comprehensive Plan, and ACFL Master Plans.</u> B. Private pedestrian walkways and public trails must meet the following standards: a. The trail is generally parallel to the perimeter of the critical area; b. The trail is located in the outer 25% of the buffer area and is designated to avoid removal of s trees and native vegetation; c. The trail does not exceed 6 feet in width, and is limited to native soils or pervious surfaces. Raised boardwalks utilizing non-treated pilings may be acceptable; and The trail may be subject to closure during critical spawning, migration or breeding time periods of sensitive species that are present. C. Informational signs. Construction and placement of informational signs or educational demonstration facilities no more than 9 square feet surface area and 4 feet high, as long as there is no permanent infringement on hydrology or stream flow <u>and non-treated wood is used;</u> D. Limited excavating and filling necessary for the repair and maintenance of piers, walkways, observation decks, wildlife management shelters, boathouses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve <u>the natural contour of the wetland, except as authorized by a Critical Area Variance.</u>	No	Yes
Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer					
Recreational Areas / Facilities <u>outside of ACFL</u> Low impact activities which are consistent with the purpose and function of the critical area buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the critical area. A. Limited public park or public recreational access including <u>but not limited to</u> trails, viewing platforms, fishing access (no wider than 6 foot), and foot bridges, provided that all of the following are satisfied: a. The area/facility is part of a public park that is dependent on its location for recreational function; and b. The area/facility is limited to the minimum necessary to accomplish the recreational function; and c. The removal of trees and native vegetation is minimized; and d. The balance of the development is consistent with other requirements of this chapter; and e. The project is identified in the Anacortes Comprehensive Plan or Parks <u>Comprehensive Plan, and ACFL Master Plans.</u> B. Private pedestrian walkways and public trails must meet the following standards: a. The trail is generally parallel to the perimeter of the critical area; b. The trail is located in the outer 25% of the buffer area and is designated to avoid removal of s trees and native vegetation; c. The trail does not exceed 6 feet in width, and is limited to native soils or pervious surfaces. Raised boardwalks utilizing non-treated pilings may be acceptable; and The trail may be subject to closure during critical spawning, migration or breeding time periods of sensitive species that are present. C. Informational signs. Construction and placement of informational signs or educational demonstration facilities no more than 9 square feet surface area and 4 feet high, as long as there is no permanent infringement on hydrology or stream flow <u>and non-treated wood is used;</u> D. Limited excavating and filling necessary for the repair and maintenance of piers, walkways, observation decks, wildlife management shelters, boathouses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve <u>the natural contour of the wetland, except as authorized by a Critical Area Variance.</u>	No	Yes					
Table 19.70.050, Permitted Alterations	Change Requested by Staff and Public comment: Staff recommends a new Permitted Alterations Table item for the ACFL to differentiate activities in the ACFL separate from other critical areas and buffers. This will give the ACFL its very own provisions under the Critical Area Permitted Alteration Permit. Options:						

AMC Reference	Recommended Change					
	a. Leaving Recreational Facilities/Areas in the ACFL as is in the current draft language (above without changes and changing the Critical Area designation to “Yes”), b. Give the ACFL its own designation in the Permitted Use Table.					
Staff Recommendation	Staff recommends (option b.) and the following addition to specify requirements for the ACFL:					
	<table><tr><td>Anacortes Community Forest Lands. Given the unique qualities of the community forest, all properties designated as ACFL have been nominated as a regulated critical area. Any and all new uses and development of new facilities within the ACFL must meet the requirements of the Conservation Easements/Deed Restrictions of the land, Anacortes Comprehensive Plan, The ACFL Comprehensive Plan, AMC 19.70 Critical Areas, and the newly created AMC 12.18 ACFL.</td><td>Yes</td><td>Yes</td></tr></table>	Anacortes Community Forest Lands. Given the unique qualities of the community forest, all properties designated as ACFL have been nominated as a regulated critical area. Any and all new uses and development of new facilities within the ACFL must meet the requirements of the Conservation Easements/Deed Restrictions of the land, Anacortes Comprehensive Plan, The ACFL Comprehensive Plan, AMC 19.70 Critical Areas, and the newly created AMC 12.18 ACFL.	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, AMC 19.70 Critical Areas, and the newly created AMC 12.18 ACFL.	Yes	Yes				
Table 19.70.050, Permitted Alterations	<i>Change Requested by Staff:</i> To make sure the code works administratively the provision for Regulated Activities in Critical Aquifer Recharge Areas needs to be incorporated into the Permitted Alterations table. Options: This is a necessary correction					
Staff Recommendation	Staff recommends the following addition to specify requirements for CARA’s:					
	<table><tr><td>Regulated Activities in Critical Aquafer Recharge Areas. All regulated activities listed under AMC 19.70.540.</td><td>Yes</td><td>N/A</td></tr></table>	Regulated Activities in Critical Aquafer Recharge Areas. All regulated activities listed under AMC 19.70.540.	Yes	N/A		
Regulated Activities in Critical Aquafer Recharge Areas. All regulated activities listed under AMC 19.70.540.	Yes	N/A				
19.70.210, Wetland Designation	<i>Change requested by Public Comment:</i> Because section 17.70.230(D) was removed eliminating special protections for Regionally and Locally significant wetlands; the public is requesting that we put this section back into the Critical Area Code. Options: a. Leave the draft as is without Regionally/Locally Significant Wetlands, b. Put the section back in exactly as it was in 17.70.230(D), c. Add the provision back in with modified requirements.					
Staff Recommendation	Staff suggests (option c.) and the following language be added to 19.70.210(C) for the designation of Regionally Significant wetlands.					
	<i>C. Regionally Significant Wetlands. The following are automatically designated as Category I wetlands regardless of Rating and shall have a designated buffer per the rating system but in no case less than 110 feet pursuant to 19.70.250 Required Buffer areas:</i> 1. Cannery Pond (West of the State Ferry Terminal) 2. Ship Harbor Interpretive Preserve (East of the State Ferry Terminal),					

AMC Reference	Recommended Change
	3. Any other regulated Category II wetland, as rated under subsection (B)(2) of this section, that is within the watersheds of Little Cranberry Lake, Whistle Lake and Heart Lake and that drains by natural seasonal surface water connection into those lakes or their upstream associated wetland systems. D. Locally Significant wetlands. The following wetlands are designated as Category II wetlands regardless of Rating: 1. The wetlands on or adjacent to the Port of Anacortes owned property at the Anacortes Airport. Buffers shall conform to the Memorandum of Understanding between the Port and the City until the expiration of the Agreement.
19.70.240 Wetlands – Specific Wetland Category Development Standard	<i>Change requested by Dept of Ecology.</i> 19.70.240.B.3: The small wetland exemption should be applied to Category IV wetlands only. The draft language includes Category III wetlands. Paragraph 3.d should read, "The wetland is a low quality Category IV wetland with a habitat score of less than 6 points in the adopted rating system. Also "hydrologically isolated" should be replaced with "non-federally regulated," and this definition should be included: ○ Non-federally Regulated (formerly isolated) Wetland – A wetland that is determined by the United States Army Corps of Engineers (USACE) to not qualify as a Water of the United States. Non-federally regulated wetlands may perform important functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law. Current Language: 3. <i>Small, Hydrologically Isolated Category III and IV Wetlands (less than 1,000 sq. ft.). The Decision maker may allow small, hydrologically isolated Category III and IV wetlands to be exempt from the requirement to avoid impacts (AMC 19.70.135(A)(1) Mitigation requirements) and allow alteration of such wetlands if all of the following conditions are met:</i> a. <i>The remaining mitigation sequencing actions of AMC 19.70.135(A) (2)-(6) are followed;</i> b. <i>The wetland is less than 1,000 square feet in area;</i> c. <i>The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices.</i> d. <i>The wetland is a low quality Category III or IV wetland with a habitat score of less than 5 points in the adopted rating system;</i> e. <i>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;</i> f. <i>The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance which are regulated as fish and wildlife habitat conservation areas in Chapter 19.70.300 (FWHCA section);</i> g. <i>The wetland is not associated with shorelines of the state or their associated buffers;</i> h. <i>The wetland is not associated with riparian areas or buffers;</i> i. <i>The wetland is not part of a wetland mosaic; and</i> j. <i>A mitigation plan to replace lost wetland functions and values is developed, approved, and implemented consistent with AMC 19.70.140.</i>

AMC Reference	Recommended Change
	<i>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.</i> Options: a. Leave the designation of isolated wetlands as is in Draft 2, b. Incorporate the recommendations of Ecology.
Staff Recommendation	Staff recommends (option b.) to drop Category III wetlands and incorporate their suggested language to read: 3. <i>Small, Hydrologically Isolated Category IV Wetlands (less than 1,000 sq. ft.). The Decision maker may allow small, hydrologically isolated Category III and IV wetlands to be exempt from the requirement to avoid impacts (AMC 19.70.135(A)(1) Mitigation requirements) and allow alteration of such wetlands if all of the following conditions are met:</i> <i>a. The remaining mitigation sequencing actions of AMC 19.70.135(A) (2)-(6) are followed;</i> <i>b. The wetland is less than 1,000 square feet in area;</i> <i>c. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices.</i> <i>d. The wetland is a low quality Category IV wetland with a habitat score of less than 6 points in the adopted rating system;</i> <i>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;</i> <i>f. The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance which are regulated as fish and wildlife habitat conservation areas in Chapter 19.70.300 (FWHCA section);</i> <i>g. The wetland is not associated with shorelines of the state or their associated buffers;</i> <i>h. The wetland is not associated with riparian areas or buffers;</i> <i>i. The wetland is not part of a wetland mosaic; and</i> <i>j. A mitigation plan to replace lost wetland functions and values is developed, approved, and implemented consistent with AMC 19.70.140.</i> <i>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.</i>
Wetland Buffers Tables 19.70.250	<i>Change requested by Dept. of Ecology:</i> Ecology has recommended a few changes to the Wetland buffer tables, this will allow our Land Use Intensity approach to match the Ecology Buffer Recommendations. Options: a. Revert our buffer table back to those shown in the current code in 17.70.340(1), and incorporate the updated habitat score numbers, b. Adopt the buffer tables as currently shown in Draft 2,

AMC Reference	Recommended Change																																																																								
	c. Keep the Land Use Intensity approach but modify the numbers as recommended by Ecology.																																																																								
Staff Recommendation	Staff feels the Land Use Intensity approach is a better method for the City of Anacortes and recommends (option c.) by changing the buffer numbers as such: 1. Buffer Widths for wetlands that have a high level of function for wildlife habitat as indicated by a habitat function score of 8 or 9 points or more on the wetland rating form: Table 19.70.250 (B). <table><tr><th>Wetland Category</th><th colspan="3">Buffer Width (feet)</th></tr><tr><th></th><th>High Intensity</th><th>Moderate Intensity</th><th>Low Intensity</th></tr><tr><td>Category I</td><td>200 300</td><td>190 225</td><td>150 150</td></tr><tr><td>Category II</td><td>200 300</td><td>150 225</td><td>100 150</td></tr><tr><td>Category III</td><td>150</td><td>110</td><td>75</td></tr><tr><td>Category IV</td><td>50</td><td>40</td><td>25</td></tr></table> 2. Buffer Widths for wetlands that have a moderate level of function for wildlife habitat as indicated by a habitat function score of 6 or 7 points or more on the wetland rating form: Table 19.70.250 I. <table><tr><th>Wetland Category</th><th colspan="3">Buffer Width (feet)</th></tr><tr><th></th><th>High Intensity</th><th>Moderate Intensity</th><th>Low Intensity</th></tr><tr><td>Category I</td><td>150</td><td>110</td><td>75</td></tr><tr><td>Category II</td><td>150</td><td>110</td><td>75</td></tr><tr><td>Category III</td><td>150</td><td>100-110</td><td>60-75</td></tr><tr><td>Category IV</td><td>50</td><td>40</td><td>25</td></tr></table> 3. Buffer Widths for wetlands that have a low level of function for wildlife habitat as indicated by a habitat function score of 3 to 5 points or more on the wetland rating form: Table 19.70.250 (D). <table><tr><th>Wetland Category</th><th colspan="3">Buffer Width (feet)</th></tr><tr><th></th><th>High Intensity</th><th>Moderate Intensity</th><th>Low Intensity</th></tr><tr><td>Category I</td><td>100</td><td>75</td><td>50</td></tr><tr><td>Category II</td><td>100</td><td>75</td><td>50</td></tr><tr><td>Category III</td><td>80</td><td>60</td><td>50-40</td></tr><tr><td>Category IV</td><td>50</td><td>40</td><td>25</td></tr></table>	Wetland Category	Buffer Width (feet)				High Intensity	Moderate Intensity	Low Intensity	Category I	200 300	190 225	150 150	Category II	200 300	150 225	100 150	Category III	150	110	75	Category IV	50	40	25	Wetland Category	Buffer Width (feet)				High Intensity	Moderate Intensity	Low Intensity	Category I	150	110	75	Category II	150	110	75	Category III	150	100-110	60-75	Category IV	50	40	25	Wetland Category	Buffer Width (feet)				High Intensity	Moderate Intensity	Low Intensity	Category I	100	75	50	Category II	100	75	50	Category III	80	60	50-40	Category IV	50	40	25
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Wetland Buffers 19.70.250	<i>Change requested by Dept. of Ecology and Public Comment:</i> The public has requested we look at encouraging habitat corridors for wildlife. Ecology: Here is some language regarding buffer reductions that you might want to consider in order to provide more flexibility for applicants and to incentivize low-impact development practices. (see below) Options:																																																																								

AMC Reference	Recommended Change				
	a. Keep Draft 2 buffer tables as proposed. b. Incorporate the recommendation from Ecology to allow smaller buffers for people who install wetland protection measures.				
Staff Recommendation	Staff agrees with Ecology that incentivizing buffer improvements is a good idea. Smaller high functioning buffers are better for critical areas than bigger low functioning buffers. We recommend incorporating Ecology's recommendation to read: 1. <i>For wetlands that score 6 points or more for habitat function, buffer widths for high intensity may be reduced to moderate intensity if both of the following criteria are met:</i> a. <i>A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other relatively undisturbed area, as defined in the 2014 wetland rating system, or any other Priority Habitat as defined by the Washington State Department of Fish and Wildlife. The latest definitions of Priority Habitats and their locations are available on the WDFW web site at: http://wdfw.wa.gov/hab/phshabs.htm). The corridor must be protected for the entire distance between the wetland and the relatively undisturbed area or Priority Habitat by some type of legal protection such as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist.</i> b. <i>The measures in Table XX are implemented, where applicable, to minimize the impacts of the adjacent land uses.</i> 2. <i>For wetlands that score 3-5 habitat points, only the measures in Table XX are required for the use of moderate intensity buffer widths.</i> 3. <i>If an applicant chooses not to apply the mitigation measures in Table XX, or is unable to provide a protected corridor where available, then high intensity buffer widths must be used.</i> Table XX Required measures to minimize impacts to wetlands (All measures are required if applicable to a specific proposal) <table border="1"> <thead> <tr> <th>Disturbance</th><th>Required Measures to Minimize Impacts</th></tr> </thead> <tbody> <tr> <td>Lights</td><td> - Direct lights away from wetland </td></tr> </tbody> </table>	Disturbance	Required Measures to Minimize Impacts	Lights	Direct lights away from wetland
Disturbance	Required Measures to Minimize Impacts				
Lights	Direct lights away from wetland				

AMC Reference	Recommended Change	
	Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
	Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management
	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
19.70.350, FWHCA - Specific Standards	<i>Change requested by Public Comment:</i> The public has been concerned with the removal of the introduction regarding the ACFL. One public comment received was to add a statement to the code to give some context of the importance of the ACFL: <i>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.</i> Options: - Leave the ACFL Language as is in Draft 2, - Replace the Introduction as an appendix in the end of the code section, - Add a purpose statement to the ACFL section to give proper context.	

AMC Reference	Recommended Change
Staff Recommendation	Staff agrees that context would be helpful and recommends (Option c.) by adding a purpose statement to 19.70.350(C)(1) to read: <i>Purpose. The Anacortes Community Forest Lands include three lakes and their watersheds, numerous wetlands, rock bluffs, old growth forests, grassy knolls, windswept hilltops, sheltered caves, and a variety of other habitats and microclimates that provide a unique and irreplaceable habitat for both imperiled and commonplace species. This land has been dedicated by the City for the preservation of forest lands and species, as described in the Conservation Easement documents, the ACFL Comprehensive Plan, and in the newly created Anacortes Municipal Code Title 12.</i>
19.70.350, FWHCA - Specific Standards	<i>Changes requested by Staff and the Skagit Land Trust:</i> To keep formatting consistent we propose adding a purpose statement to (C)(2) of this section, March Point Heronry (using existing language in subsection a.) and revisions to the specific standards as recommended by the Skagit Land Trust based on Best Available Science and local knowledge of the habitat needs. Current Language: <i>C.2. March Point Heronry</i> <i>a. 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.</i> <i>b. Proposed development activities within 1,000 feet, or that is likely to impact the colony, must provide a critical areas assessment report and habitat management plan that follows at a minimum the guidelines provided by WDFW's Management Recommendations for Washington's Priority Species (March 2012). https://wdfw.wa.gov/publications/00026/abbreviated_great_blue_heron.pdf.</i> <i>c. Buffers will be implemented as described in the buffer section below.</i> <i>d. Colony protection is required for minimum 10-years after abandonment.</i> Options: This is a necessary correction
Staff Recommendation	Staff recommends the subsection read as follows: <i>C.2. March Point Heronry</i> <i>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.</i> <i>a. Proposed development activities within the 1,000 foot management zone, 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).</i> <i>b. Buffers will be implemented as described in the buffer section below.</i>

AMC Reference	Recommended Change
	<i>c. Colony protection is required for minimum 10-years after abandonment.</i>
19.70.350	<i>Changes requested by Skagit Land Trust:</i> Because the management recommendations were interpreted incorrectly, and because an error was found in the WDFW Recommendations the Skagit Land Trust requests the following changes to the Heron buffers. Current Language: <i>Great Blue Heron nesting and breeding areas: Development near a verified heron breeding habitat including nesting colony areas, former nesting colonies, pre-nesting staging areas, and breeding season foraging habitat require:</i> <i>i. A year-round urban buffer of 197 feet,</i> <i>ii. For unusually load activities that occur during breeding season (February – September) a seasonal buffer of 656 feet, and a Blasting buffer of 3,280 feet.</i> <i>iii. A management plan developed by a qualified professional to follow, at a minimum, WDFW’s Management Recommendations for Washington’s Priority Species (March 2012).</i> Options: This is a necessary correction
Staff Recommendation	Staff recommends the section read as follows: <i>Great Blue Heron nesting and breeding areas: Development near a verified heron breeding habitat including nesting colony areas, and former nesting colonies:</i> <i>i. A year-round urban buffer of 197 feet,</i> <i>ii. For unusually loud activities that occur during breeding season (February – September) a seasonal buffer of 656 feet, and a Blasting/Extreme noise buffer of 1,320 feet.</i> <i>iv. A management plan developed by a qualified professional to follow, at a minimum, WDFW’s Management Recommendations for Washington’s Priority Species (March 2012) and that identifies the nesting and breeding site as well as pre-nesting staging areas, and breeding season foraging habitat.</i> <i>v. For the March’s Point Colony, given the observed and documented sensitivity of this mega-colony to human intrusion and the fact that the colony is in a rare, isolated but tight location, a year-round buffer of 984 feet.</i>
Title 12.18	<i>Change requested by Public Comment:</i> The community has expressed concern with the loss of Appendix B language describing the history and acquisition of the Anacortes Community Forest Lands. A suggestion to add an additional section or chapter of an ACFL specific municipal code was received during the public comment period. Options: a. Leave Draft 2 as is utilizing the current ACFL provisions, b. Add the Addendum back into Draft 2,

AMC Reference	Recommended Change
	c. Create a new chapter for the ACFL in the Anacortes Municipal Code.
Staff Recommendation	Staff recommends adding a section to Title 12, under AMC 12.19 where detailed information about the Anacortes Community Forest Lands can go with Appendix B.

Anacortes Critical Areas Regulations Update

Summary /Crosswalk of KEY proposed changes: Existing 17.70 through the 2nd Draft
December 12, 2019

Note: This document provides a summary of changes to the critical areas regulations that have been proposed over the course of the development of 2 drafts. A complete reorganization of the regulations currently contained in AMC 17.70 is proposed in order to allow for integration of the updated regulations into Title 19 Unified Development Code, improve readability, and promote consistency in critical areas regulation administration. Additionally, changes are proposed for consistency with technical guidance from various resource agencies, best available science reports, and best practices. This summary of changes is organized according to the 2nd Draft Ch. 19.70 Chapter and section headings, with reference to where the corresponding regulations currently exist within AMC 17.70. The 1st Draft was released for public review in July 2017. The 2nd Draft was released for public review in October 2019. **See the “2nd Draft Changes” document for staff recommended changes to the 2nd Draft (not reflected in this document).*

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
General Provisions (NEW)			
N/A	AMC 17.70.010 Introduction (Appendices A-D)	Removes Introduction section (which lists out a description of the ACFL, maps, history of ACFL land acquisition; and lists of Vulnerable species, animals and plants)	
19.70.010 Purpose	Does not exist	- Adds new General Provisions section intended to improve regulatory context and guidance for administration of the regulations - Sets the purpose and standards for regulation of development affecting all critical areas types.	
19.70.015 Applicability	Does not exist (Applicability is typically defined within each critical area section but is not easily found, and often not clear)	Adds broad applicability statement per Department of Commerce guidance	
19.70.020 Identification, Classification, and Rating of Critical Areas	Does not exist	Adds overarching general standards for identification, classification, and rating of critical areas	
19.70.025 Protection of Critical Areas	Does not exist.	Adds general protection requirements that apply to all critical areas types	
19.70.030 General Requirements	New	Adds general city review responsibilities	
19.70.035 Critical Areas Review	New 17.70.500 Nonconforming activities (wetlands)	Adds new provisions specifying when a critical area permit is required and clarifies provisions for modifying existing nonconforming structures and uses in all critical areas types	
19.70.040 Exempt Activities	17.70.500 Nonconforming activities 17.70.100 (CARA) 17.70.220 (Geo) 17.70..380 & 17.70.500 (Wetlands) 17.70.540.A.3.b.i & 17.70.380 (FWHCA - ACFL)	Reorganizes existing “Uses by Right” in wetlands (AMC 17.70.380) and ACFL FWHCA provisions (AMC 17.70.540.A.3.b.i) to new “Exemptions” section	- Reorganizes exempt activities for all critical areas types into a table - Divides “exemptions” into two categories - No review required and Letter of Exemption required - Relocates and retitles “Passive Recreation” to Permitted Alterations, providing for limited public and private recreational access, including trails, subject to Ecology-recommended impact minimizing measures, plus a critical areas report

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
			Adds clarification that the “passive outdoor activities” exemption does not include constructing new roads or trails, vegetation clearing, or collection of animals.
19.70.050 Permitted Alterations	17.70.100 (CARA) 17.70.250 (Geo) 17.70.340.F.7 ; 17.70.400 -.460 (Wetlands), 17.70.560 (FWHCA) 17.70.560 & 17.70.575 (FWHCA)	- Carries over “Passive Recreation” facilities as an “allowed use” within wetland buffers , but adds Ecology-recommended impact-minimizing parameters for such facilities - Updates/adds critical area permit types and criteria for non-exempt projects, including “variance” and “public agency exception”, replacing “special/conditional use permit”; but staff notes the need to make some adjustments to this section as part continuing update process	- Reorganizes and consolidates into tables critical area permit types for all critical areas types - Updates critical area permit types and criteria for non-exempt proposals – Adds new permit type: “Permitted Alterations” (Type 2) - Buffer modifications; Public Services (utilities and access); Conservation/Enhancement projects; Chemical applications; Recreational areas / Facilities; SFR and necessary appurtenances
19.70.055 Reasonable Use Exception Variance	17.70.390 17.70.575	Updates/adds critical area permit types and criteria for non-exempt projects, including “reasonable use exception”, “variance” and “public agency exception”, replacing “special/conditional use permit” currently in 17.70; but staff notes the need to make some adjustments to this section as part continuing update process	- Updates critical area permit types and criteria for non-exempt proposals – Adds new permit type - “Reasonable Use Exception Variance” (Type 3-HE) - Everything else
Critical Areas Review Procedures (NEW)			
19.70.110 Critical Area Identification Form	Does not exist	New Critical Area Identification Form added to submittal requirements for all permit review processes to help identify potential critical areas on or near a project site	Updates to review procedures to provide a more efficient review process
19.70.125 Critical Area Report	Listed within each CA type chapter	- Clarifies when a critical area report is required and consolidates requirements report contents from individual critical area sections - Clarifies when 3rd party review of critical areas reports is required	Adds minimum application requirements for critical areas permits
19.70.135 Mitigation Requirements	Within each CA type chapter	Consolidates existing general requirements found within each section and adds new clarification that an applicant must demonstrate use of mitigation sequencing prior to impacting critical areas	
19.70.140 Mitigation Plan Requirements	Within each CA type chapter	Consolidates standards for mitigation plans in one location	
19.70.145 Title Notice	Does not exist	Adds new provisions for long-term protection and property purchaser notification of critical areas presence	Updates requirements for title notice documents
19.70.150 Field Marking	17.70.340.G 17.70.560.H	Expands and clarifies temporary and permanent field marking requirements	
19.70.155 Construction Plan Review, Monitoring, and Inspection	Does not exist	Provides opportunity to require qualified professional review of construction plans and presence on site during construction	
19.70.160 Financial Guarantee Requirements	17.70.330 (wetlands) 17.70.560 (FWHCA)	Clarifies and expands financial guarantee (bonding) requirements when impacts to critical areas or buffers are proposed	
19.70.170 Unauthorized Critical Area Alterations	17.70.470	Clarifies and expands procedures for addressing unauthorized impacts; and performance standards for restoration; adds financial penalty for impacts to critical areas, buffers, and trees	Updates to restoration standards per Ecology guidance
19.70.175 Final Decision and Appeals	17.70.400 for special/conditional use permits	Clarifies appeals of critical areas determination and critical areas permits (follow procedures for underlying permit type)	

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
Wetlands			
19.70.200 Wetlands – Description and Purpose	17.70.270; 17.70.280	Consolidates and simplifies existing purpose statements	
19.70.210 Wetlands – Designation and Rating	17.70.320	- Updates to wetland designation and rating system to reference most current WA State DOE Wetland Rating System for Western Washington – 2014 Update - Removes Regionally and Locally Significant Wetland designations	
19.70.220 Wetlands – Mapping and Delineation	17.70.300 & 17.70.320	- Adds clarification regarding general reference mapping - Updates delineation requirements to reference federal manual per WAC 173-22-035	Updates mapping to show existing and potential wetlands
19.70.230 Wetlands – General Development Standards	17.70.340	Carries over existing general standards, adds references to new location for exemptions	
19.70.240 Wetlands – Specific Wetland Category Development Standards	17.70.340	Carries over development standards for each Category of wetland, with updates to reference permitting requirements for proposed alterations; adds specific reference to requirement for mitigation sequencing, and updates to criteria per DOE guidance	Reduces size threshold (from 4,000 sf to 1,000) for Cat I, II, III and IV wetlands to be exempt from the requirement to avoid impacts and added more criteria per DOE guidance
19.70.250 Wetlands – Required Buffer Areas	17.70.340	- Standard buffer widths updated per Ecology guidance - Added 33% increase provision and updated points values to match 2014 rating system - Adds requirement to demonstrate no feasible alternative when proposing buffer averaging - Carries over “Passive Recreation” facilities as an “allowed use” within wetland buffers, but adds Ecology-recommended impact-minimizing parameters for such facilities, including restriction to the outer 25% of buffer and max. of 6’ wide - Adds/updates criteria for stormwater management facilities within buffers per DOE guidance - Adds provisions regarding previously established buffers & “interrupted buffers” - Adds a required 10’ setback from buffers	- Revises buffer approach to incorporate wetland type and functions, types of adjacent land use, and the environmental characteristics of the existing buffer, per DOE guidance - Relocates allowed buffer uses to permitted alterations (19.70.040) and changes review type from Type 1 to Type 2, and updates criteria per DOE guidance - Removes language about previously established buffers and clarifies provisions for functionally separated and isolated buffers
19.70.260 Wetlands- Critical Areas Report Additional Requirements	17.70.330	Expands upon existing report requirements	
19.70.270 Wetlands – Compensatory Mitigation Performance Standards and Requirements	17.70.350	- Adds alternative mitigation methods to the mitigation provisions to include off-site mitigation, advanced mitigation, in-lieu fees, and mitigation banking to allow for creation of those programs in the future (BAS, DOE guidance) - Updates to mitigation ratios and performance standards per DOE guidance	- Adds definitions for types of restoration - “Re-establishment and Rehabilitation” - Adds provisions for “Permittee-responsible mitigation” - Additional updates to mitigation ratios to include estuarine wetlands - Added design and construction requirements for wetland creation sites

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
Fish and Wildlife Habitat Conservation Areas			
19.70.300 – Fish and Wildlife Habitat – Description and Purpose	New	Consolidates and simplifies existing purpose statements	
19.70.310 – Fish and Wildlife Habitat – Designation	17.70.540	Replaces the list of named 15 streams with “Waters of the State”, which covers all streams; state priority habitat and species (mapped by WDFW) listed out for easier identification; existing habitats and species of local significance retained; local designation process retained	
19.70.320 – Fish and Wildlife Habitat – Mapping	17.70.540	- Carries over and updates list of mapping and inventories - Updates references to external mapping sources that are adopted by reference	Updated mapping, including stream map with names and typing according to WA DNR
19.70.330 – Fish and Wildlife Habitat – General Development Standards for All FWHCA's	17.70.560	Carries over General standards except some existing standards for buffer averaging, fencing, signage, etc. relocated to General Provisions	
19.70.340 – Fish and Wildlife Habitat – Specific Standards for Streams	17.70.540.A.7	- Updates buffers for Type F (shown tentatively as 100'), with staff acknowledgement that additional review of guidance for stream buffers in urban areas is needed - Allowed activities in streams divided by Type: Fish Streams, Non Fish Perennial, Non Fish Seasonal - Specific standards for streams – classification system improves the protection for “fish” streams	- Carries over 50' buffers for streams based on BAS report - Provides additional discussion and updates to standards for development near piped streams and roadside ditched segments, including stream enhancement measures, and incentives for daylighting streams - Simplifies standards for stream crossings to reference compliance with state and federal fish passage criteria
19.70.350 – Fish and Wildlife Habitat – Specific Standards for Other FWHCA's	17.70.570	- Updates standards for non-stream FWHCA's – adds specific standards for Endangered, Threatened, and Sensitive Species, and other Priority Habitats and Species - Carries over ACFL-specific provisions and updates protections for the March Point Heronry	- Adds language re: recreation and recreation-related facilities in ACFL, intended to recognize the conservation easement program's purpose of preserving the ACFL for public recreation and conservation; and consistency with ACFL Comprehensive Plan - Adds more specific language re: March Point Heronry - Adds specific buffer requirements for non-stream FWHCA's (marine shorelines, nesting bald eagles, great blue heron nesting areas and all others)
19.70.360 – Fish and Wildlife Habitat – Buffer Width Averaging for All FWHCA's	17.70.570	Updates habitat buffer averaging criteria	Adds additional criteria for buffer width averaging, including maximum allowed reduction, and changes review process from Type 1 to Type 2
19.70.370 – Fish and Wildlife Habitat – Stormwater Management Facilities	Does not exist	Adds standards for stormwater management facilities within FWHCA's	Updates standards for stormwater management facilities per DOE guidance
19.70.380 – Fish and Wildlife Habitat – Critical Area Report Additional Requirements	17.70.550	Expands on existing critical areas report and habitat assessment requirements	Adds additional technical information requirements for streams and heron habitat
19.70.390 – Fish and Wildlife Habitat – Mitigation Performance Standards and Requirements	17.70.560	Consolidates mitigation performance standards and requirements	Adds cross reference to requirements in AMC 19.70.135

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
Geologically Hazardous Areas			
19.70.400 – Geologically Hazardous Areas- Description and Purpose	New	Adds new purpose language	
19.70.410 – Geologically Hazardous Areas – Designation	17.70.180 & 17.70.190	- Designations expanded to include more areas per BAS report - Updates designation for erosion hazard areas to include coastal erosion prone areas - Updates designation for landslide hazard area to include slopes having gradient steeper than 80% subject to rock fall during seismic shaking - Adds designation for marine bluffs and refers to the SMP for regulations	
19.70.420 – Geologically Hazardous Areas – Mapping	17.70.210	Mapping sources carried over and expanded upon	- Updates to City mapping per BAS report - Updates known or suspected landslide hazards - Adds Skagit County Potential Landslide and Erosion Areas, 2016 - Adds DNR liquefaction susceptibility and site class mapping - Adds DNR Tsunami Hazard Mapping
19.70.430 – Geologically Hazardous Areas – General Development Standards	17.70.220 & 17.70.250	- Removes exemptions for certain activities from the requirement to submit critical area reports - Eliminates exemptions for critical area reports in seismic hazard areas	
19.70.440 – Geologically Hazardous Areas – Specific Development Standards	17.70.220 & 17.70.260	- Retains existing 50’ buffer requirement from landslide hazard areas - Updates allowed buffer reductions to a minimum of 15’ (up from 10’) per BAS report - Adds requirement for property covenant/ notice on title per BAS report - Updates slope stability analysis requirements per BAS report - Updates to stormwater management standards to prohibit infiltration systems in landslide hazard areas unless report determines no adverse effect to slope stability, per BAS report - Updates to require 3rd party review of proposals for alterations to geologically hazardous areas per BAS report - Adds the requirement for 3rd party review in landslide hazard areas - Adds performance standards for tsunami hazard areas - Strengthens language for vegetation retention and management requirements - Adds specific standards for stormwater management	Revised buffer reductions to allow up to a maximum of a 25% reduction to the 50’ buffer requirement (min. buffer = 37.5’)
19.70.450 – Geologically Hazardous Areas – Critical Area Report Additional Requirements	17.70.230 & 17.70.240	Carries over and consolidates existing report requirements	

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
Critical Aquifer Recharge Areas			
19.70.500 Critical Aquifer Recharge Areas – Description and Purpose	17.70.080	Adds new purpose language	
19.70.510 Critical Aquifer Recharge Areas – Applicability and Hazardous Materials Questionnaire	Does not exist	New requirement to help determine regulated activities/facilities - Regulated facilities questionnaire required as part of application	
19.70.520 Critical Aquifer Recharge Areas – Designation	17.70.090	- Eliminates Category I and II distinction; Critical Aquifer Recharge Areas designation criteria is same as for current Category 1. - Applicability is specific to certain use types that have the potential to negatively impact ground water quality within CARAs - Removes reference to seawater intrusion areas since this is primarily a concern with drilling of new wells for potable water, and the City’s water source is the Skagit River	
19.70.530 Critical Aquifer Recharge Areas – Mapping	17.70.090		- Updates mapping per BAS recommendations: - Designates CARAs (formerly Category I) - Adds areas that are mapped with high permeability soils as CARA - Adds areas that contain groundwater wells within the city limits as CARA
19.70.540 Critical Aquifer Recharge Areas – General Development Standards	17.70.150	Carries over prohibited activities	
19.70.550 Critical Aquifer Recharge Areas – Specific Development Standards for Regulated Facilities	17.70.160	- Carries over specific performance/ development standards - Adds table with specific references to other State and Federal statutes regulating groundwater impacting activities	
19.70.560 Critical Aquifer Recharge Areas – Critical Areas Report Additional Requirements	17.70.120	Carries over report requirements	Consolidates report requirements
Frequently Flooded Areas			
19.70.600 Frequently Flooded Areas – Description and Purpose	17.70.020	Adds purpose language	
19.70.610 Frequently Flooded Areas – Designation	17.70.040	- References existing recodified FEMA floodplain management requirements to new Chapter AMC Ch. 19.74 (to be completed as part of this process) - Adds reference to tsunami hazard areas in geologically hazardous areas section - Adds discussion of sea level rise and climate change per BAS recommendations	
19.70.615 Frequently Flooded Areas – Mapping	17.70.040.B	Carries over mapping references/designation	
19.70.620 Frequently Flooded Areas – General Development Standards	17.70.060	Adds cross reference to redcodified Floodplain Management standards in AMC 19.74	

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
19.70.625 Frequently Flooded Areas – Critical Areas Report Additional Requirements	New	Adds the Federal ESA requirements for floodplain development to conduct a Habitat Assessment Report for all development in these areas; and provides exemptions to the requirement to complete a habitat assessment for certain activities	

Critical Areas Regulations Update

Draft 2 Public Comment Summary

Updated 11/26/19

Below is a brief summary of public comments received up until November 26, 2019, and staff responses. Comments have been grouped by theme/ issue. Complete written public comment letters can be viewed [here](https://www.anacorteswa.gov/DocumentCenter/Index/1267) (<https://www.anacorteswa.gov/DocumentCenter/Index/1267>) and should be consulted for full details and context.

Issue / Key Words	Comments summary	Draft 2 reference	Staff Comments
General Comments not associated with a specific section			
Update timing and deadline	Multiple commenters requested additional time for the process.	n/a	Comments continue to be accepted and the proposed project schedule has been extended to include additional Planning Commission meetings and opportunities for public input.
Removal of Introduction	Comment received is disappointed in the elimination of local knowledge, values, and interest in the new Draft 2.	n/a	Staff recommends removing these sections from the code as they are not specifically code language. They can be added in the end as appendices, or moved to guidance documents or comp plans.
Overall weakening of CAO	Commenter felt that the proposal will weaken the critical areas ordinance.	n/a	The critical area regulations have been edited to tighten up language and clarify confusion, and overall improve critical area protections.
Overall weakening of CAO	Comment received expresses disappointment with the Draft 2 and does not believe critical area regulations should be eliminated.	n/a	The critical area regulations have been edited to tighten up language and clarify confusion, and overall improve critical area protections.
Support of Dr. Barnes Comments	Comment in support of Dr. Barnes concerns.	n/a	Noted by staff.
Support of Dr. Barnes Comments	Commenters would like to endorse the comments of Ross Barnes and Evergreen Islands.	n/a	Noted by staff.
Roles of the planning dept.	Commenter is concerned with the roles of both the Planning Staff and Planning Commission.	n/a	Noted by staff.
Development	Commenter is concerned that the Draft CAO allows uncontrolled development in critical areas.	n/a	The critical area regulations have been edited to tighten up language and clarify confusion, and overall improve critical area protections.
Meeting Packets	The commenter is concerned with the packet availability of the packet material.	n/a	The packet material has been posted as presented with the agenda bill. Draft 2 was provided during the 10-23 meeting packet.
Meeting Packets	The commenter is concerned the agenda bill does not match the packet materials.	n/a	The packet material has been posted as presented with the agenda bill. Draft 2 was provided during the 10-23 meeting packet.
Timeline of CAO process	Concerned with the fast timeline and the spirit of open government.	n/a	Comments continue to be accepted and the proposed project schedule has been extended to include additional Planning Commission meetings and opportunities for public input.

Issue / Key Words	Comments summary	Draft 2 reference	Staff Comments
Monitoring and Adaptive Management	Commenter felt it was important for the City to monitor critical areas over time to ensure that the regulations are protecting the critical areas as intended.	n/a	The CAO currently has adaptive management provisions for wetlands and streams, in AMC 17.70.530 and 17.70.540(A)(7), respectively. While relatively few projects subject to the provisions have been permitted over the past 10 years, funding, record tracking, lack of clear goals and benchmarks, and other technical issues have made administering the program challenging. Recently, the Department of Commerce circulated new draft guidance on monitoring and adaptive management. Staff recommends that a monitoring and adaptive management program for specific project tracking be implemented.
Basic Grammar	The comment recommends text of Draft 2 needs to be reviewed to eliminate ambiguity and offers suggestions to improve language.	n/a	Noted by staff, may incorporate recommendations as appropriate.
General timeline and completion	The commenter is concerned with the rushes timeline and the lag since draft 1. The public input process and the lack of missing maps and availability of meeting materials.	n/a	Staff has made attempts to explain the timeline, process, and pause in the CAO update process and encourages concerned parties to review this explanation or contact staff for further clarification. All materials are available on the website.
Timeline and Terms	A comment received expresses concern about the timeline and “process of push”, and the lack of clarity for certain terms including Decision Maker, Mitigation, Reasonable Use, and Flexibility.	n/a	Noted by staff, they will expand the definition section of this chapter.
Removal of PUD’s	A comment was receive that removing the PUD provisions and flexibility has prevented the flexible development around critical areas.	n/a	Noted by staff.
Loss of ACFL intro	Comment received is that the removal of context about the ACFL is an example of seeming efforts to weaken its significance as a FWHCA.	n/a	Noted by staff.
Maps	The maps as released are not accurate.	n/a	Staff has released “DRAFT” maps as we work to compile all of the outside data sources we use to create maps from. The maps are only as good as the data we get from the State and Skagit County.
ACFL Protections	Commenter concerned with the lessening of ACFL protections.	n/a	Noted by Staff.
ACFL Introduction	Comment : There is no longer language that captures the magnitude of the forestlands.	n/a	Noted by Staff.
FWHCA Map weird	The map is very odd and has generalized blobs, hard to read and understand.	n/a	Staff uses the State WDFW Priority Habitats and Species Data, it is meant to be generalized.
Timeline	The commenter is concerned with the timeline rush and the imposed deadline. Also requests a track changes document.	n/a	Noted by Staff.
Bicycling	The commenter feels that our unique natural areas and wetlands should be preserved and doesn’t support changes to advance bicycling.	n/a	Noted by Staff.
Forest Study	The commenter provided a study of forest die off	n/a	Noted by Staff.

Issue / Key Words	Comments summary	Draft 2 reference	Staff Comments
Bike Skills Course	The commenter is opposed to a bike skills course in the ACFL.	n/a	Noted by Staff.
Section: General Provisions			
Exemptions – Passive Recreation	Commenter is concerned with “passive recreation” vs “active recreation”.	Table 19.70.040	Currently, per AMC 19.70.340(F)(7), “passive recreation” facilities designed in accordance with an approved critical areas report are permitted within a wetland buffer provided they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland. The current definition of passive recreation (AMC 17.06.723) includes trails, interpretive trails and other similar structures or development, among other activities and uses: <i>“Recreation, passive.</i> <i>A “passive recreation area” refers to a mix of uses on undeveloped land (including wetland buffers) or minimally improved lands which includes the following: naturally landscaped areas, non-landscaped greenspaces, picnic areas, water bodies, trails, interpretive trails and other similar structures or development.</i> <i>Passive recreation may be defined as a non-motorized activity that:</i> <i>A. Offers constructive, restorative, and pleasurable human benefits and fosters appreciation and understanding of open space and its purpose;</i> <i>B. Is compatible with other passive recreation uses;</i> <i>C. Does not significantly impact natural, cultural, scientific, or agricultural values; and</i> <i>D. Requires only minimal visitor facilities and services directly related to safety and minimizes passive recreation impacts.”</i> The proposed language in AMC 19.70.250 includes as an allowed use in wetland buffers passive recreation facilities (including walkways and trails) meeting certain standards. The proposed standards are generally consistent with the DOE’s Wetlands Guidance for CAO Updates, including orientation, location within outer 25% of the wetland buffer area and to avoid removal of significant trees, use of pervious surfaces and maximum width.
Bicycles as passive recreation	The comment expresses concern with including bicycles as passive recreation, the term non-motorized is ambiguous.	Table 19.70.040	Staff the interpret use of bicycles as passive under the above discussed definition. The definition can be expanded to distinguish gasoline powered vs. electric powered motors, if it is decided clarification is needed. But the Conservation Easements and ACFL Forest Plans regulate the use of motorized bikes, is there a need outside of the ACFL to determine this distinction?
General Language	The commenter provided edits and comments on the language of the general provisions section.	19.70.010 – 19.70.055	Staff has reviewed these recommendations and will consider implementing helpful recommendations.
Bicycles	The commenter is concerned with the use of bicycles as passive recreation.	19.70.040	Only the “use” of bicycles is exempt, NOT the creation of new development (such as building new bike parks or trails).
Bicycles	The commenter is concerned that the bicycle exemption provision would allow a new bicycle path through SHIP harbor wetland buffer.	19.70.040	The exemption is for bicycle “use” on legally existing trails, the exemption is NOT for building new trail, and would not outright allow a new bicycle path without following proper permitting and mitigation requirements.
Exemptions and Bicycles	The commenter is concerned with the use of bicycles as passive recreation.	19.70.040	Noted by staff.

Issue / Key Words	Comments summary	Draft 2 reference	Staff Comments
Exemptions for recreation uses, and passive recreation.	The commenter is concerned that adding recreation uses and passive recreation under exemptions will allow new recreation area alterations without critical area review, and was not accounted for in SEPA.	19.70.040(050)	Recreation “uses” have always been allowed under 17.70.380(B). The code citation by the commenter is for Permitted Alterations, those “alterations” that do require a PERMIT. “Uses” fall under the exemption category, “Alterations” do not fall under the exemption category and require permits. This is not a new addition and does not change the regulations, since it is not a change it is not required to be accounted for in SEPA.
Passive Recreation / Bicycles	The commenter is concerned that passive outdoor activities incorrectly includes bicycles.	19.70.040	Noted by Staff.
Environmental impacts of bicycles	The comment is not in favor of new bicycle trails and the environmental impacts in relation to.		
Section: Critical Areas Review Procedures			
Reasonable Use	The comment is concerned with the flexibility of the Reasonable Use exceptions.	19.70.010D	The language in Draft 2 under the provision is in compliance with RCW 36.70A.370 growth management act requirements.
Section: Wetlands			
Regionally significant wetlands	Comment expresses disappointment in the removal of special designations as discussed by Dr. Barnes including removal of wetlands of local and regional significance, removal of the protective buffers for SHIP wetlands, and removal of stream names.	19.70.210	Staff feels that the code was flawed in designation of a lower buffer for these wetlands and has demonstrated that the wetland rating remains a category I without the special designation, with a larger buffer in most instances. However, we could keep the designation with guidance on how the rating and buffers should be dedicated under the provision.
Elimination of special protections	Commenter is appalled at the elimination of special protections for several wetland areas of keen local interest.	19.70.210	Staff felt that the removal of the confusing provisions would help clarity for all wetlands evaluated the special wetlands to ensure the protection levels will remain the same. The special provisions actually lowered the buffer protections and staff felt this should be removed.
Elimination of special protections	Comment feels the removal of hard work that went into the past CAO and special protections.	19.70.210	Staff felt that the removal of the confusing provisions would help clarity for all wetlands evaluated the special wetlands to ensure the protection levels will remain the same. The special provisions actually lowered the buffer protections and staff felt this should be removed.
Elimination of special protections	Commenter concerned with the removal of special provisions for SHIP and such areas.	n/a	Notes by staff.
Wetland Buffers	The commenter is concerned with the provision to modify the wetland buffers from the ecology recommendations.	Table 19.70.250.B	The Draft will be reviewed by the Department of Ecology and staff will follow their guidance on this.
Loss of locally designated critical areas	The comment received expressed concern that the CAO has been downgraded.	n/a	Noted by staff.
SHIP Harbor special provisions	Commenter would like to note the amount birds and critical habitat found in the ship harbor interpretive	n/a	Noted by staff.

Issue / Key Words	Comments summary	Draft 2 reference	Staff Comments
	preserve, and would like stress how specific provisions are needed.		
Wetland Buffers	The Commenter is concerned about the land use intensity approach and the compliance of our buffers with the Department of Ecologies Guidance.	19.70.250	Staff is working closely with Donna Bunten, Critical Areas Ordinance Specialist and other Ecology Staff to make sure our buffer requirements meet State Standards.
Section: Fish & Wildlife Habitat Conservation Areas			
Hérons	Commenter shares praise that the work on the Draft CAO is good, and has provided a few recommendations to improve the section of FWHCA's on Herons.	19.70.350	Staff have reviewed the recommendations and plan to meet with the Skagit Land Trust to further the discussion.
ACFL	The comment includes suggested protections for the ACFL and draft code language to improve clarity.	19.70.330	Staff have forwarded the recommendation to the Anacortes Parks Department and are considering the suggestions for incorporation into Anacortes Municipal Code.
Wildlife Corridors	The commenter believes the CAO as a whole is good work but would like to see more language about wildlife corridors to protect the sensitive and fragile nature of this islands ecosystems.	19.70.310	Staff has discussed this and feels that mapping may be a way to distinguish these areas. They are provided for in the Comprehensive Plan and fall under FWHCA's, but we will look at ways to improve protections.
ACFL Intro	The commenter feels it's important to keep the introduction explanation of the ACFL, but that it could be revised and improved.	n/a	Noted by staff.
ACFL Intro	The commenter feels it's important to keep the introduction explanation of the ACFL, but that it could be revised and improved.	n/a	Noted by staff.
Heron Recommendations	The comment brings our attention to the error in the State Management recommendations, and asks us to correct the error.	19.70.350	Noted by Staff.
Motorized bikes in the ACFL	The commenter is concerned with motor bike use in the ACFL.	19.70.350	Noted by Staff.
Removal of the Cap Sante Wetland	Multiple commenters were concerned for the removal of the Cap Sante Wetland Preserve from Habitat of Local Importance. 1 , 2 , 3 , 4 , 5 , 6 , 7 , 8 , 9 , 10 , 11	19.70.350	It is not removed but still remains under 19.70.310(A)(11)(c).
ACFL	The commenter is concerned with loss of provisions over the ACFL and encourages us to adopt Bob Barry's suggestion.	19.70.350	Noted by Staff.

Issue / Key Words	Comments summary	Draft 2 reference	Staff Comments
ACFL	The commenter is concerned with loss of provisions over the ACFL and encourages us to continue protection for the ACFL.	19.70.350	Noted by Staff.
ACFL	Comment : Please do not relax protections for the ACFL or March Point Heronry.	19.70.350	Noted by Staff.
ACFL	Please revise the language to recognize the importance of the ACFL.	19.70.350	Noted by Staff.
Forest Lands	The commenter included multiple suggestions for improving language and provisions for the Forest land including clarifying locally significant wetland provisions, maintaining wildlife corridors, and reinstating the previous definition.	19.70.350	Noted by Staff.
ACFL	The commenter considers the ACFL important to our community.	19.70.350	Noted by Staff.
ACFL			
Section: Geologically Hazardous Areas			
Recent landslides not mapped	The comment suggest that the mapping should include more conclusive mapping of recent slide activities as well as well known unstable slopes.	19.70.420	Noted by staff.
Section: Critical Aquifer Recharge Areas			
None received			
Section: Frequently Flooded Areas			
FEMA NFIP	The commenter is concerned that we have removed the federally mandated NFIP requirements for floodways.	19.70.620	The requirements will be moved out of the CAO and into our development regulations under section 19.47. The provisions are not changed or being removed, just relocated.
Section: Definitions			

Issue / Key Words	Comments summary	Draft 2 reference	Staff Comments
Technical Definitions	The comment suggests the CAO should incorporate more technical definitions to avoid ambiguity.		.
Bicycles	Commenter suggests clarifying the definition of bicycling		Noted by staff.
Non-motorized	Comment suggest this should be defined under bicycles		Noted by staff.
SEPA Environmental Checklist			
SEPA	Comment on the Threshold Determination. Why such a rush?		The SEPA was in accordance to state law.

Rec'd
12/4/19

RICHARD A. EGGERTH
VICE-CHAIR, MT. BAKER GROUP
SIERRA CLUB
rickeggerth@gmail.com

December 4, 2019

To members of the Anacortes Planning Commission and its staff,
regarding the proposed update to the Critical Areas Ordinance:

Good evening. My name is Rick Eggerth. I'm the vice-chair of the Mt. Mount Baker Group of the Washington State Chapter of the Sierra Club. Our Group represents thousands of Sierra Club members in Whatcom, Skagit, and San Juan counties, including over 600 Skagit County members, and at least 495 in or near Anacortes.

While we appreciate and commend the work of the Planning Commission and its staff in what is undeniably a very large and difficult task, we cannot ignore that we also have numerous concerns about the Critical Areas Ordinance update. But not all of our concerns can be included in this statement tonight because of the lack of time there has been to consider and analyze the CAO update. In fact, perhaps the biggest concern we have is the unexplained haste with which the update is being rushed to completion. For example, according to the Planning Commission Agenda Bill for tonight's meeting, the second draft of the CAO was provided during the October 23, 2019 meeting. Yet the footer on all 97 pages of the second draft reflects the date of May 2, 2019. Why has it been available so long but released only recently? And why the rush to get it done during the busiest time of the year, the holiday season? We all know how crazy life gets in the holidays, with travel, family get-togethers, gift buying, bad weather, and parties added onto already busy schedules. Why must rushing the CAO be a part of that?

If there is a legally mandated deadline, then please tell us what it is. But if there is none, we see no reason to rush the process. We formally request a minimum 60-calendar day extension beyond the currently proposed Dec. 18 special session City Council meeting the Planning Commission has calendared to make its recommendations regarding the CAO update. During that 60-day extension we also ask for at least two more Commission meetings with public input into the drafting of the update.

The need for more time to review and analyze the CAO is made all the more urgent by the Planning Commission's decision not to publicly release a copy of the draft that shows all the proposed changes. In the opening paragraph of the Critical Area Ordinance Update on the City of Anacortes website (see "Current Draft Documents" link on "Critical Areas Regulations Update" page on City of Anacortes website,

<https://www.anacorteswa.gov/201/Critical-Areas-Regulations-Update>), the Commission states that

[t]hree categories of changes have occurred in the current draft of the Critical Area Ordinance, *and because those changes were too difficult to track with a track changes document*, we have outlined them here for you:
(Emphasis added.)

Then after listing the three types of changes apparently made in the draft CAO, the Commission says:

The list of changes is included for your reference, please become familiar with the entire document however, please focus your attention on reviewing the details of the functional changes as outlined below and providing us with your feedback on that section ONLY.

What then follows is less than three pages summarizing who knows how many changes in the 97-page CAO. If there is a track changes version of the CAO available on the website, I cannot find it.

This decision by the Commission is remarkable. I engaged in the practice of law for 30 years before retiring in 2010. I have extensive experience in reviewing revisions of draft documents of all sorts, including letters, memoranda, briefs, reports, and even proposed legislation. Being able to track the proposed changes to the documents, whatever were the documents and whatever were the changes, was a necessary and critical part of the process of reaching a final product. And never do I recall being denied access to proposed changes as they were being proposed. Until now. Not only is refusal to make the changes available unprecedented in my experience, but I would wager that it is not legally appropriate. Moreover, it should be up to the public to decide whether a track changes document is "too difficult to track," and what parts of a document it wants to comment on, not the public body who exists to serve the public interest.

Therefore, we respectfully request that, in addition to the minimum 60-day extension already requested, this Commission provide to the public a version of the draft CAO showing all changes proposed by or through the Commission, including who proposed the changes, and provide that document within the next seven calendar days.

Finally, we wish to comment on the subject of buffer averaging. Our understanding of buffer averaging in wetlands is that it is supposed to *protect* wetlands, not exploit them. We have difficulty even accepting the concept of buffer averaging when dealing with wetlands. Buffer averaging seems to arise from land use zoning practices, like, for instance, determining exactly where an area zoned residential ends and an area zoned

Mt. Baker Group, Sierra Club
CAO Update Comments
Dec. 4, 2019

commercial begins. That might need adjustment, or averaging, to account for different *human* uses of the land. But wetlands do not recognize human boundaries. We can't explain to plants and animals that this area is no longer for them, but they will have more space if they move to a completely different part of the wetland that they may never have explored. This concept is understood in other municipal buffer averaging ordinances. For instance, Tacoma Municipal Code section 13.11.330C says:

Buffer Averaging. The widths of buffers may be averaged if this will improve the protection of wetland functions, or if it is the only way to allow for use of the parcel. Averaging may not be used in conjunction with the provisions for buffer reductions.

(Emphasis added. See MRSC – Municipal Research and Services Center – page entitled “**Flexibility in Environmental Regulation**,” <http://mrsc.org/Home/Explore-Topics/Environment/Special-Topics/Flexibility-in-Environmental-Regulation.aspx#page=95>)

This language reflects the fundamental understanding that averaging is a tool to improve and protect wetlands. But similar language in the CAO update is not nearly so clear, as evidenced in section 19.70.250: “Wetland buffers must be established to protect the integrity, functions and values of the wetland.” This does not focus on protection, as what constitutes the integrity, functions and values of a wetland could mean very different things to different people. For instance, what that would mean to someone hoping to stop climate change would be very different from what it means to someone hoping to develop the wetland. As such, the fundamental language of the entire part of the CAO regarding buffer averaging needs to be made clear. And that change would probably require additional changes to that part of the CAO.

If we had time to review and analyze a version of the CAO update that specified the proposed changes, we could provide a more detailed list of comments. That requires that the Planning Commission provide more time, and detail the proposed changes. We therefore reiterate our requests that more time and detail be provided.

Thank you.

Sincerely,



Richard A. Eggerth
Vice-Chair, Mt. Baker Group
Sierra Club

Dara Grotte

4503 Blakely Drive
Anacortes, WA 98221

December 4, 2019

Dear Amber Moffitt, Geoffrey Mount, Jeffrey Graf, Ward R. MacKenzie, Christine Cleland-McGrath, Andrea Doll, Jeremy McNett,

Since Laurie Gere has become mayor city of Anacortes government has not listened one single time to anything I have said. That is no exaggeration.

That said, because Cynthia Richardson requested it in a December 4, 2019 letter to the editor in the Anacortes American I am now taking the time to write. Please consider her request. She is not wrong that this is very important.

I see the same thing happening in Anacortes that Cynthia writes about. That what was put in place prior to this current city government is now being destroyed by the current city government. Including the irreplaceable.

A copy of Cynthia's letter:

Speak up about forestland codes

The Anacortes Planning Commission is currently reviewing Draft 2 of revisions to the Critical Areas Regulations. I am concerned that this document does not sufficiently address the importance of the Anacortes Community Forest Lands to our community.

There is no language that describes the magnitude of the forestlands, their importance to our city, the richness of the habitats, or the fact that many critical areas such as lakes and wetlands are contained within the forestlands and together they constitute an amazingly diverse and irreplaceable ecosystem that must be protected.

Our forestlands are as important to Anacortes as Yellowstone or the Grand Canyon are on a national level – perhaps even more so, since they constitute such a large area of our small city.

I consider the ACFL so important that it deserves a separate section within the Critical Areas Regulations, and I have urged city staff to develop such a section and present it to the Planning Commission for inclusion in the new ordinance.

The code should include much more specific detail about goals and policies for the ACFL. (The new zoning regulations include minutiae such as allowing mailboxes in the front setback. Surely

we could protect our forestlands by providing a more extensive ACFL section in the Critical Areas Regulations. Isn't the ACFL more important than a mailbox location?)

The ACFL is an irreplaceable asset, created and protected by the efforts of hundreds of citizens, city staff, and elected officials who developed the governing regulations over the years. We need to be sure that the new code revisions continue and even enhance that protection.

We're all busy, and it takes time to be involved in city planning efforts, but there is still time for citizens to view Draft 2 of the Critical Areas Regulations on the city website, submit comments, and speak at the Planning Commission meetings on Dec. 4, 11, and 18.

Cynthia Richardson

Anacortes

Sincerely,

A handwritten signature in cursive script that reads "Dara Grotte".

Dara Grotte

From Annabelle Housefox
12/4/19

CARBON DIOXIDE AND VEGETATION DIEBACK

NORTHWESTERN WASHINGTON EDITION
QUALITATIVE ECOLOGICAL ASSESSMENT FOR 2019



PREPARED BY
S. SENNET

ARBORVISTA ECOLOGY

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CARBON DIOXIDE AND VEGETATION DIEBACK

A QUALITATIVE ASSESSMENT REGARDING THE POTENTIAL OF GREENHOUSE GAS DYNAMICS
CONTRIBUTING TO RECENT TREE MORTALITY THROUGHOUT NORTHWESTERN
WASHINGTON STATE, US

PERIOD OF STUDY: DECEMBER 2018 – AUGUST 2019

SUBMITTED FOR PUBLICATION: SEPTEMBER OF 2019

BY SHERRY SENNET

ARBORVISTA ECOLOGY
MOUNT VERNON, WA

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SECTION I – SOIL SURFACE LEVEL CARBON DIOXIDE AND WEATHER PHENOMENA

Study: “Carbon Dioxide Concentrations Present at the Soil’s Surface in Storm and Fair Weather Currents, and Implications for Summer Droughts and Vegetation Stress Responses”

2019

S. Sennet

ABSTRACT

Soil surface level carbon dioxide (SSL CO₂) was monitored in conjunction with local weather phenomena from December 2018 through August 2019. SSL CO₂ readings were collected twice daily at minimum and maximum daily temperatures, with extra readings conducted during various weather transitions / events. During the warm season (air temperature generally above 55F), surface level carbon dioxide was very responsive to approaching cloud formations, and regardless of the time of year, carbon dioxide accumulated at the soil surface during periods of fair weather. These behavioral characteristics imply that the warmer the weather, the stronger a repulsive relationship grows between clouds and carbon dioxide. The warm season atmospheric molecular-repulsion dynamic observed between electrically charged water vapor-rich clouds and carbon dioxide may indicate that other nonpolar anthropogenic greenhouse gas emissions such as methane may also accumulate in fair weather currents. The accumulation of elevated levels of nonpolar greenhouse gases in fair weather currents would explain why various climate studies show that a planet warmed via anthropogenic emissions results in less precipitation than a planet warmed by natural causes. Thus, summer drought conditions are likely exacerbated in areas adjacent to sources of heavy carbon dioxide emissions.

INTRODUCTION

The global warming effects caused by increased levels of carbon dioxide emissions in the atmosphere have been discussed at length. What is less understood about carbon dioxide is the local impact of high concentrations of this atmospheric gas on regional weather patterns, and the resulting feedback effects involving local flora. In Washington State, carbon dioxide (CO₂) is not as regularly monitored as other air pollutants such as particulate matter (PM), methane (CH₄), ozone (O₃), etc. The reasoning for this is likely because, unlike PM or O₃, the current range of CO₂ has not yet been attributed as a cause of any human health concerns. According to Kane International Limited, typical outdoor air consists of 250-350 ppm CO₂, while 350-1,000 ppm is a reasonable range for indoor CO₂. CO₂ levels exceeding 1,000 ppm, however, may initiate impacts to human health (drowsiness, headaches, etc.).

Carbon dioxide is a nonpolar gas that consists of one carbon and two oxygen atoms, with a molecular weight of 44.01 grams per mole. The molecular mass of CO₂ is heavier than both oxygen and water, but it still becomes buoyant, expands, and rises aloft when atmospheric temperatures increase due to solar heating. Sources of CO₂ include decaying biological matter and respiration, as well as the burning of fossil fuels.

While the purpose of this study is to evaluate the observed dynamics between local CO₂ levels and various weather phenomena, identifying the heaviest sources of CO₂ is beyond the scope of this study, as is differentiating behavioral characteristics between upper level CO₂ emissions (i.e. oil refinery smokestacks, airplanes, etc.) vs lower surface level CO₂ emissions (i.e. cut timber and other decaying vegetation, auto emissions, etc.).

CO₂ STUDY SITE

The control site for this study is located within a suburban setting at 100 feet above sea level within the city of Mount Vernon, Washington. Located due east of the last remaining stand of large western redcedars and bigleaf maples in the area, the site itself is surrounded by houses, large trees (both coniferous and deciduous), and typical suburban vegetation and activities. A large tree had been removed from the backyard several years prior to residence, a few trees in the neighborhood had recently been taken down, and there has been widespread weeping birch crown dieback in the area. There is a pedestrian nature trail nearby, and heavier urban, industrial, and agricultural activities occur within a few miles (however closer to sea level) along College Way in Mount Vernon. The closest major urban activity to the actual site is a hospital surrounded by other medical offices, churches, and schools. The site is located on a primary route to those locations, and thus there is heavy local auto traffic at the site – especially on weekdays. It is therefore presumed that the primary sources of CO₂ at the control site of this study are: transportation (local auto traffic) and other gas-powered equipment, decaying vegetation, soil and organism respiration, smoke (from local and largescale wildfire sources in the past), general urban venting (ex: rooftop venting of emissions from natural gas use from gas-fueled appliances, etc. – probably especially a factor during winter heating days), and possibly agricultural emissions.¹

EQUIPMENT AND METHODS

A brand new, factory-calibrated Aeroqual Series 500 (S500) handheld gas sensing monitor with CO₂ head were purchased in late 2018 from GasSensing.com via personal funds and some crowd-funding monies. According to GasSensing.com, the “non-dispersive infra-red (NDIR) head will measure CO₂ from 0-2000 ppm with a 1 ppm resolution providing an accuracy of $\leq \pm 5\%$ of reading.” This instrument was chosen for its portability, affordability, and ease of use, and research regarding its accuracy seemed sufficient for the purpose of this study. Annual calibration is recommended for the S500 gas heads. When the head’s annual calibration was due, instead of losing over a week of CO₂ reading while the head was being recalibrated at the factory, additional funds were raised and a second brand new, factory-calibrated CO₂ head was purchased and began operation in June of 2019. There was no noticeable difference in the CO₂ readings between head #1 and head #2, thus, head #2 was used for the remaining duration of this study.

From December 2018-January 2019, preliminary data was gathered from various sites at various different times of day in order to develop a familiarity with the device, site, and reading variance, in addition to forming a methodology for data collection and comparison. Initial CO₂ levels were read at various sites across O’ahu, Hawai’i, and throughout Mount Vernon, Bellingham, Ferndale, Anacortes, Arlington, Seattle and elsewhere in Washington. From February 2019 henceforth, twice daily readings were taken at the control site in Mount Vernon. At the time of every CO₂ reading, temperature, humidity, and other meteorological information were recorded via the Weather Underground (WU) mobile app. WU was chosen for its ease of use, its information and satellite / radar imagery, and its access to a weather station a block away from the CO₂ monitoring site.

Every morning and afternoon at low and high temperatures, respectively, the CO₂ monitor was placed outside and run on the floor of the back deck for several minutes until the numbers stabilized from high indoor CO₂ levels to lower outdoor CO₂ levels. This process usually took <10 minutes; the timing varied depending on the amount of variance between indoor and outdoor CO₂ levels. Once the flux stabilized, the machine was put on standby and moved to the ground’s surface at the original lawn site (OS) and resumed operation for another several minutes on the lawn in order to stabilize to that site’s range of CO₂. The flux was manually recorded as it was observed in

¹ The odor of agricultural manure applications was frequently noted at the site, but monitoring local levels of methane, specifically, is beyond the scope of this 2019 study.

conjunction with the weather conditions occurring at the time. The single number and timestamp logged in the spreadsheet for each reading was nearly always the final number and timestamp recorded during that reading. Each reading session was generally concluded at a point when flux had stabilized, or the numbers were somewhere between the extreme highs and lows of the flux recorded. This method was chosen in order to represent the average range of the data recorded rather than emphasizing the extremes.

SITE CHANGE IN 06/2019

Our eldest cat Romeo passed away on 06/21/2019. His burial site was chosen so that the grave memorial we built for him would be highly visible. Considerations were not taken into account at the time of whether / how his burial might impact CO₂ readings. It was suspected that Romeo's grave might have been interfering with the readings at the original site as early as three days after he was buried (6/24/19), because the deck reading that morning was 383 ppm and the original site was 564 ppm - a much greater variance than was typical between deck and ground, and a reading of 564 seemed particularly high for an overcast AM reading. After a comparison reading session was attempted at various sites around the lot, it was then determined to permanently change the CO₂ monitoring site to the back upper lawn, several yards away and upslope from the original site.

RESULTS AND DISCUSSION

Daily CO₂ notes for the entire study located in APPENDIX 1.A, pp. 14-19.

Month by month highlights and analyses listed in tables in APPENDIX 1.B, pp. 20-23.

GENERAL DAILY FLUX TREND

Throughout the entire duration of this study, the general daily fluctuations of CO₂ were driven by the solar heating of the atmosphere. The sun's rays heat the ground and atmosphere, which causes the gases within the atmosphere to expand, become buoyant, and rise aloft. In the evening, the gases within the atmosphere cool, compress, and fall to the surface. This explains why CO₂ readings are most often the highest (>400 ppm) during the early AM daily low temperature, and lowest (<450 ppm) during the afternoon daily high temperature. The study's highs and lows for 2019 are listed in TABLE 1.1, p. 5, and correlations between high and low temperatures and CO₂ are highlighted. As there were only four correlations noted between the extremes recorded for the year, it is therefore true that temperature is not the solitary driving force behind CO₂ fluctuations. Apart from the aforementioned local CO₂ emission sources themselves, various weather phenomena also appeared to alter the soil surface CO₂ level.

study, "The Increasing Importance of Atmospheric Demand for Ecosystem Water and Carbon Fluxes." In Williams' article, he elaborates as to how drier air driven by anthropogenic-induced warming causes plant stress. And Donna Lu confirms these speculations in her 2019 article at NewScientist: "Plant growth has declined drastically around the world due to dry air."

CONCLUSION

Over the course of this 2019 study, many weather events occurred that forced observable responses in the soil surface carbon dioxide level. In late winter, a series of snow events severely reduced local auto traffic, and during this same period, there was a reduction in production at the local oil refineries. In conjunction with the snowfall temporarily "locking in" local CO₂, the reduction in emissions likely contributed to the recorded lull in the increase of local CO₂ (with the gas staying below 500 ppm even on very cold fair weather days – a noticeable departure from the recorded patterns observed throughout 2019). As the surface level CO₂ began to reach peak intensity in May, it was accompanied by high daytime temperatures and an early soil-drying effect – a repeating annual phenomenon dubbed in this paper as the "May Warming" event (Appendix 1.B, p. 22). As the local trees reached their peak annual photosynthetic rate in mid-June, cloudy and occasionally rainy systems continued to arrive throughout the region until about mid-July – providing far cooler and rainier conditions than the past several summers, and thus dubbed the "June Cooling" event (Appendix 1.B, p. 22). Beginning in late June, the arrival of stronger systems, such as afternoon thunderstorms, drove an abrupt flux of CO₂ at the soil's surface. This hydrometeor-CO₂ dynamic is thus far assumed to primarily be caused by a molecular repulsion effect – a conflict developing between the electric field of the condensed polar water molecules in the clouds and the nonpolar molecules of carbon dioxide. It is thought that the nonpolar nature of CO₂, and its reduced ability to freely share electrons, drives the gas to accumulate in the positive charge conditions of fair weather currents outside of stormy weather currents. This effect seems to become more pronounced as temperatures rise above 55F – much in the same way that carbon dioxide's solubility in water decreases as temperatures rise.

If this molecular repulsion dynamic is the driving force behind the phenomena observed, then other nonpolar greenhouse gases such as methane may also accumulate in fair weather currents, and the reverse gas-cloud dynamic might also be true; if clouds with strong electric fields repulse carbon dioxide in warm weather, then high levels of carbon dioxide and other nonpolar greenhouse gases could potentially inhibit cloud formation. For example, if CO₂ levels were high in early spring due to heavy traffic emissions and oil refinery output, and should the region experience an extended period of fair weather conditions with quickly rising temperatures, CO₂ would continue to accumulate in the absence of peak regional photosynthesis. This heavy concentration of CO₂, perhaps working in conjunction with the high surface albedo of urban and industrial areas (the Urban Heat Island Effect), could enhance solar heating, and promote an atmospheric drying effect that would create an environment inhospitable to cloud formation and prevent precipitation from reaching the area. In other words, under the right circumstances, carbon dioxide appears to have the potential to exacerbate drought conditions. If true, this would help explain the high mortality rate of multiple tree species within several miles of oil refineries, airports, and timber processing plants throughout northwestern Washington.

More research is needed in order to study these hydrometeor-carbon dioxide dynamics – such as the simultaneous measurement of surface and upper atmospheric CO₂ levels, cloud electric fields, and changes in ground and vegetation charge during storm system approaches.

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SECTION II – NORTHWESTERN WASHINGTON’S URBAN HEAT ISLAND EFFECT AND VEGETATION RESPONSES

ABSTRACT

In addition to the aforementioned carbon dioxide-weather phenomena study, northwestern Washington climate data, tree species / ecologies, locations, topography, and satellite imagery were analyzed from January through August of 2019 in order to investigate any trends or common characteristics shared among the zones of heavy tree mortality covered in this study. After careful review of these tropo-biosphere dynamics, it appears as though hotter, drier conditions during the summer months have been enhanced by the nonpolar greenhouse gas emissions and high surface albedo of northwestern Washington’s Urban Heat Island Effect (UHIE), and that this UHIE is driving a summer afternoon cloud-breaking effect that is thrusting the region’s trees into sudden peak afternoon solar radiation exposure. Areas with the heaviest concentration of tree mortality were generally within the atmospheric shadows of oil refineries, airports, timber processors, farmland, and heavy auto traffic. In most cases, tree stands that experienced the highest mortality rate were on west-facing slopes, and most species experiencing partial to full dieback are not genetically equipped with the biogeochemical means to buffer the effects of intense heat, drought, and this sudden exposure to extreme solar radiation.

Further tree decline will be exacerbated by continued urban growth via nonpolar greenhouse gas emissions, land development, and clear-cutting (both in urban and rural / forest settings). The further reduction of Washington’s forest canopy will intensify these climate feedback loops (drought-enhancing-drought or flood-enhancing-flood) by adding more CO₂ into the atmosphere and reducing the region’s capacity for climate stability. These habitat losses will likely place more species (both flora and fauna) on threatened or endangered statuses. This constant habitat displacement will increase native wildlife species’ vulnerability via competition with invasive species, predation, and exposure to the elements.

It has been documented that land use changes are the quickest way to alter a region’s weather patterns. Since it has been discussed that it is the contrast between forests and quickly-growing cities that fuels the intensity of the UHIE, efforts to reduce the impacts of the UHIE should include not only the reduction of fossil fuels emissions, but also the reduction of energy consumption, itself, and increased restrictions regarding land use change from wild green spaces to urban desert. Thus, moving forward into this new era of climate change acknowledgement and action, in order to mitigate the risk of natural disasters stemming from extreme weather events, local policies should be amended to address how local industries / land use affect regional climate via emissions and surface albedo.

INTRODUCTION

Recent tree dieback has been observed across the Pacific Northwest, affecting stands and individual specimens of several different tree species across a rather broad area. This section will attempt to evaluate environmental (rather than pathogenic) contributors to this tree mortality. Localized climate data and meteorological observations will be discussed, in addition to individual tree species’ ecological characteristics and environmental factors surrounding the areas most affected by vegetation decline – including the plausibility of drought impacts enhanced the Urban Heat Island Effect (UHIE) of northwestern Washington.

According to the American Meteorological Society’s textbook, *Weather Studies*, the climatic dynamics of the UHIE can be summarized as thus: “Anthropogenic activity, including land use, changes in land cover, and energy use, can alter the local radiation budget and thereby the local climate” (Mills, 2015, p. 167). The text further elaborates that these urban activities contribute to a warmer, drier environment that is less conducive to cloud formation, and that these impacts are enhanced in cities with quickly rising populations – especially when they are located in close proximity to forested areas.

Alternately, forests influence climate in a way that opposes the UHIE. Trees inhibit severe winds by increasing surface roughness (Mills, 2015, p. 309), and they create a darker surface area that absorbs solar radiation and carbon dioxide, releasing oxygen as a waste product, and “sweating” water vapor and other gases into the atmosphere which contribute to cloud formation. In Alexander Lemburg et al.’s study, “Deforestation decreases resistance of simulated Easter Island climate to drought,” the authors’ climate model clearly shows that ocean-originating rain systems are more attracted to an island covered in trees rather than a bare or grass covered island. And in this author’s study, “Clear-cut and Consequence: Trophic Cascades of Deforestation on Rapa Nui (Easter Island),” qualitative analysis draws a parallel between the island’s deforestation and later societal decline (Sennet, 2018). Beyond Rapa Nui, there have been other historical cases of deforestation followed by crippling droughts, but discussion of these events is beyond the scope of this study.

were consistently very high (>20 days at or above 80F) 2015-2018.⁴ This later period marks the beginning of noticeable vegetation dieback throughout northwestern Washington.

This climate information may be important to note because despite their capacity to live well into ages of 700-1,000+ years, the present-day majority of Washington State's trees (~90%) are less than a hundred years old (Hoh Rainforest Park Ranger, personal communication, March 30, 2019). This is due to continuous development throughout the region and timber harvesting policies generally involving the clear-cutting of swaths of land when forests reach anywhere from 50-90 years old. Therefore, young trees that were beginning establishment during the cooler, rainier period of the 1970s-80s would have a harder time adapting to the hotter, drier summers of the 2000s. Trees that were already mature in the 1950s-1960s had already lived through those hotter summers, and they would have adapted and become more resilient to drought conditions than younger trees which had never experienced those types of conditions in their youth.

LOCATIONS

While tree dieback has been noted throughout the Pacific Northwest, the three areas covered by this study which exhibit the most tree mortality that is visible from main roads are: the Bayview plateau, eastern Whidbey Island and from Bellingham through Ferndale. All of these areas are within the shadow of the region's oil refineries and in close proximity to airports.



⁴ Preceding the intense heat and drought of 2015, The Bellingham Herald reported in 2014 that after the Centralia coal burning power plant, the Cherry Point and Anacortes oil refineries were the state's top GHG polluters in 2013, and that refinery production levels in 2014 were similar to those in 2013 (Associated Press, 2014).

1 - Southeastern Bellingham

As early as 2011, it was noted by the author that January months were often accompanied by a briefly warm period. The author was new to the region and was unsure if this apparent mid-winter thaw was typical for Bellingham. Homeowners in various Bellingham neighborhoods were also beginning to report early and "off" leaf emergence and blooming periods of plants in their gardens; flowering plum and cherry trees, in addition to azaleas and rhododendrons, have especially been experiencing early blooming or a reduced blooming period that is split between spring and autumn months. This may be a response to warmer winters and / or hotter drier summers forcing the plants into a type of summer dormancy in order to conserve resources.⁵

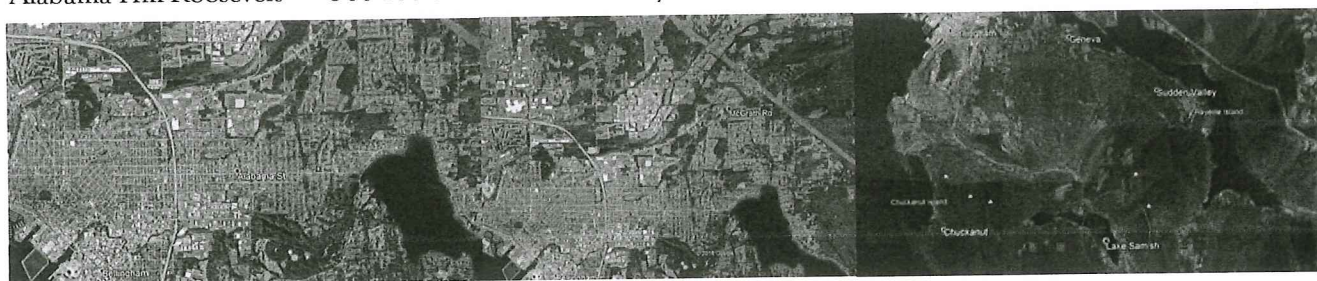
Bellingham neighborhoods evaluated for this study include: Tweed Twenty, Alabama Hill-Roosevelt, Whatcom Falls-Alvarado, and Lake Samish. The Bellingham International Airport is located in northern Bellingham, and oil refineries are located in Ferndale.

These neighborhoods' vegetation impacts will be discussed in more detail later in this section's plant species' profiles.

Alabama Hill-Roosevelt = ~ 300-100ft

Tweed Twenty = ~ 300-400ft

Lake Samish = ~ 320ft



2 - Anacortes Shadow

Driving from Highway 20 off I5 to Bayview to Anacortes, this entire area is littered with tree dieback - western redcedar and mixed deciduous species, especially. This area is surrounded by CO₂ emitting enterprises as well as a high surface albedo: the Anacortes refineries in the west, airports at northern Whidbey and Bayview, timber processing around Highway 20, and the Bayview plateau is surrounded by farming activity.

East Whidbey-Bayview = ~ 70-150ft



3 - Oak Harbor Shadow

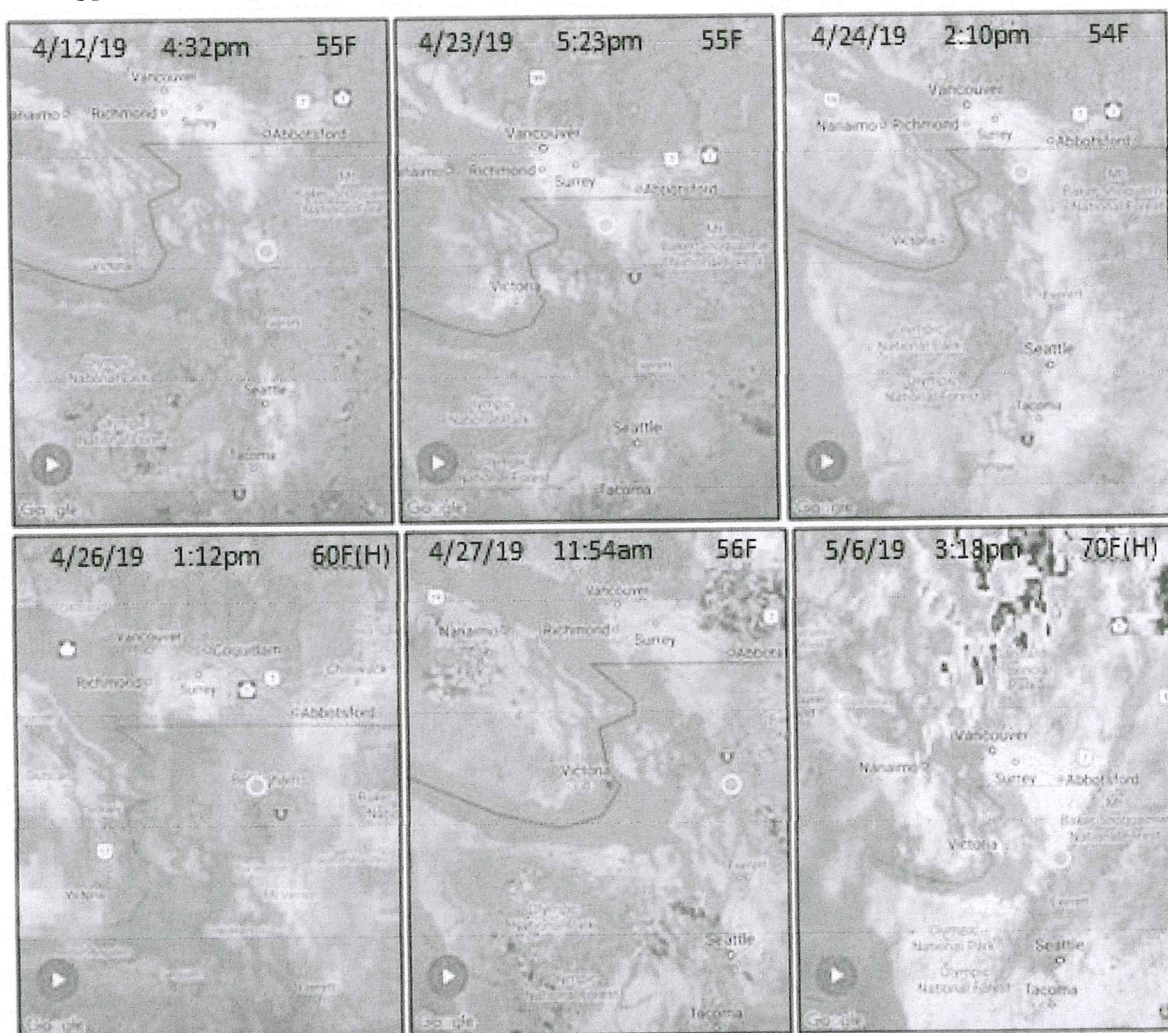
The entire drive from southern Mount Vernon to central Camano Island is visibly marked with tree mortality. Along I5, the western foothills framing southeastern Skagit County contain dense stands of dead trees, as does the

⁵ In addition to earlier cycling, a change from massive, isolated blooms to split and reduced blooming cycles, over the longer term, could affect pollinator behaviors and populations. From a qualitative perspective, small amounts of occasional flowers have the potential of generating less pollinator activity than large masses of simultaneous blooms.

METEOROLOGICAL TRENDS AND SATELLITE IMAGERY

Over the course of the last several years, much of Washington State's summer raincloud systems originated from the Pacific Ocean, but during and immediately after periods of extremely high temperatures, little to none of that initial precipitation actually reached the ground. This was likely due in part to a reduction in regional atmospheric humidity caused by prolonged periods of hot and dry conditions. Atmospheric humidity is a requirement for cloud formation and rainfall deposition. In 2019, this dynamic was initially observed a few times (especially in Bellingham), but as this summer experienced cooler temperatures and a greater number of rain systems than in recent years, after the first rain systems failed to deposit precipitation on the ground, successional systems that immediately followed did result in rain accumulation at the surface. It is therefore inferred that the passing of the initial rain systems increased local atmospheric humidity and thereby created an atmospheric environment more conducive to rainfall deposition at the surface.

Starting in early April of 2019, as temperatures began consistently rising into the mid-fifties, a cloud-breaking effect could be seen over Bellingham and Whidbey Island via satellite imagery. This phenomenon was observed on multiple occasions up through September of 2019. Dates, times, and temperatures were noted wherever possible. When temperatures were not available at the time of the satellite imagery screenshot, the daily high (H) temperature for Mount Vernon was noted. All satellite imagery was captured via the Weather Underground app, which was thus supplied via Google, Inc.



ANALYSIS:

CLOUD-BREAKING AND TREE MORTALITY

The cloud-breaking effect exhibited in these images most often begins in the Vancouver, BC-Whatcom County region, and a separate area of cloud-breaking often includes the Victoria, BC-San Juan Islands-Whidbey area. These areas are all experiencing a great deal of tree mortality. Depending on the strength of the cloud system, this cloud-breaking may then extend southward to encompass Snohomish and King counties. It is apparent that major metropolises are the center of these cloud-breaking events, with areas of high CO₂ emissions experiencing the initial cloud evaporation. Referring to Section I of this report, it could be the nonpolar nature of elevated CO₂ levels which is heating and drying the atmosphere during warmer weather, catalyzing this localized cloud evaporation. During afternoon solar heating, this cloud evaporation is thrusting the biosphere from mild, cloudy morning conditions into hot afternoon, low solar altitude with high albedo conditions – meaning that this UHIE-driven afternoon cloud-breaking effect is creating not only hotter conditions, but also brighter light exposure in western-exposed areas. The vast majority of tree mortality observed over the course of this study was indeed on west-facing slopes. The vast majority of tree species impacted were western redcedars, bigleaf maples, birches, and other deciduous species – all of which appear to lack the ability to convert excess photosynthetic light energy into heat. Repeated exposure to high levels of CO₂ inhibits the biological activity of ethylene in plants (Enoch & Olesen, p. 256), and ethylene is a component involved in plants' protection against heat stress (Larkindale & Knight). This would explain why plants that have the biological capacity to prevent oxidative damage, such as Douglas-firs and other *pinaceae* species, are proving more adaptable to hotter, drier, and more CO₂-rich environmental conditions. Bigleaf maples and swordferns may be closing their stomata during prolonged droughts due to a reduction in humidity and an inability to keep their leaves cool, and therefore have been unable to photosynthesize enough energy to sustain development and are thereby experiencing dieback. Young trees appear to be the most vulnerable, but the dieback occurs across all size and age groups.

Future generations of trees may have a higher survival rate if the following conditions are applied:

- Grow nursery trees from resilient mature tree seed stock.
- Select trees based on traits pertaining to strength and adaptability rather than aesthetic traits.
- Expose the young trees to varying levels of stress as they mature in preparation for planting out.
- Select sites that are appropriate for the desired species.
- Plant vulnerable species in humid areas that are protected from harsh summer afternoon sun exposure.
- Plant trees in the birch family near mature trees with known mycorrhizal relationships, such as Douglas-firs, pines, etc.

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ASSESSMENT CONCLUSION

During periods of increased temperatures, the observed repulsion effect of oil-and-water in the atmosphere and a highly reflective water, agricultural, or urban land surface – major characteristics of the Urban Heat Island Effect – are enhanced and work to impede cloud formation during the summer months, when rainfall is needed most. Alternately, during photosynthesis, mature trees are electron bridges between the soil and atmosphere and work as summer rainfall attractants. Over their lifetimes, trees establish complex biogeochemical relationships between the ground and troposphere via atmospheric electricity and hydrology, which results in a self-sustaining, biological anchorage for the region's climate balance. Gordon Bonan, senior scientist at the National Center for Atmospheric Research in Boulder, Colorado, so poignantly remarks in his textbook *Ecological Climatology*: "It is increasingly recognized that land-use decisions do affect climate, particularly at the regional scale, and that an understanding of future Earth requires study of the interactions and feedbacks among socioeconomic needs, human decision making, land use, and climate, because climate affects the way in which people use land to grow food and fiber" (p. 667). He also stated that "biogeographical processes influence climate more immediately than does the carbon cycle" (p. 666).

In short, based on the analyses of this report, in conjunction with changes in seasonal weather patterns, northwestern Washington's Urban Heat Island Effect – the combination of its heavy carbon dioxide emissions and a continued decrease in tree canopy in both local forests as well as cities – is a major contributor to heightened exposure to solar radiation and atmospheric dryness, and these conditions are a primary component in the deaths of many of northwestern Washington's trees.

In order to protect Washington's trees, wildlife, and cities from future impacts of global and local climate change, the following recommendations are set henceforth:

- Efforts to curb energy use and CO₂ emissions must be supplemented with policies that limit land use change from natural green spaces to high urban or agricultural surface albedo.
- Stricter tree protections should be implemented – especially to protect the species that are already being impacted by the localized effects of climate change.
- Incentives and education should be offered to homeowners and developers to incorporate mature trees into building plans rather than facilitating the trees' removal, or to redevelop already established urban spaces rather than demolish natural green spaces.
- Greater efforts need to be made to study changes in Washington's flora and fauna populations, including the potential trophic cascades that will result from a continued decline in Washington's tree species.
- The sustainability and impacts of current timber industry practices should also be reevaluated, including, but not limited to: the moisture retention capacity of timber industry forest structures, timber forest management (including chemical use), and clear-cutting practices.
- Investments should also be considered for the development of non-virgin-forest building products, such as the implementation of recycled goods. Redeveloping closed lumber mills into manufacturing plants for recycling post-consumer goods such as paper and plastic is also a topic worthy of consideration, as such developments could help mitigate the effects of climate change in multiple ways, as well as aid in job creation.
- Green roofing is also worthy of consideration for reducing the UHIE of northwestern Washington.
- Investments in gray water and rain catchment systems should be considered in order to mitigate potential future water shortage issues.

ACKNOWLEDGMENTS

A great many thanks to my husband, as well as the other supporters of this project, for assisting with a portion of the financial burden and for offering moral support during the many challenges that were faced over the last year.

Thanks are also due to the clients who continued to retain my services during this period, and for my thoughtful, patient instructors who helped guide or challenge me through to this investigation's end.

Mahalo nui loa to the wonderful folks at Lyon Arboretum and the Honolulu Parks Department for granting me permission to conduct CO₂ monitoring at your sites on O'ahu, even though I was unable to make the trip in 2019.

A side note of thanks is due to the developers of the freely accessible Google Earth Pro, as this software was vital for showcasing the terrain maps featured throughout the Carbon Dioxide and Vegetation Dieback NWWA 2019 project.

This has been one of the greatest learning experiences of my life, and I truly appreciate you all.

While this autumn may mark the end of this 2019 study, this is clearly only the beginning of changes yet to come. We must band together, for there is much work yet to be done.

And thus concludes this, my love letter to the trees of this world:
May we do no more harm to the flora and fauna in our midst.

-Sherry

Cooper, Tess

From: Joan Magee <joanmagee@gmail.com>
Sent: Wednesday, December 4, 2019 5:22 PM
To: Cooper, Tess
Subject: CAO Update
Attachments: Anacortes CAO Update - Google Docs.pdf

Tess, This is saved as a pdf. Are you still unable to open it?

Joan Magee

To: Anacortes Planning Commission

About: Update to Critical Areas Ordinance

Comments:

Anacortes has a unique resource in its natural areas. We value it for our own recreation and the habitat it offers to wildlife. There has been a rapid decrease in forested area on Fidalgo Island, as privately held land is developed. Our public lands are the last remaining habitat for many of the species we live among. Language in the CAO which allows a decrease in wetland buffers and "mitigation" rather than preservation will disrupt wildlife corridors.

Some of these changes appear to advance bicycling in areas previously available only to walkers. Although I am an avid cyclist, I do not want a bicycle path through the Ship Harbor wetlands. I also do not want the burgeoning meadow at the A Avenue "dump" to become a skills, or thrills?, bicycle park. I am including a picture of the new "bike park" in Bellingham. Is this the direction we want to go? Can't new cyclists learn to navigate on already established trails or even the loop at Washington Park?

Noise, speed, wheels, and now electric bikes all mean fewer critters. Let's keep the wetlands and forests wild for us all.

Joan Magee
11284 Marine Drive

December 1, 2019



Dec 5, 2019

To: The Planning Commission,

I am writing to express opposition to the location of the proposed bike skills park at the old city dump site. I have attached a copy of a letter that was in the Anacortes American on Dec 4th (Barbara Cooper) because it expresses my feelings exactly.

I use the forestlands 2-3 times a week for walking, entering from the A Avenue location. One is immediately taken out of 'city life' so to speak. I would hope you have heard all the concerns about this proposal by now (contamination from the dump water runoff - impact on wildlife etc.). As things stand now, I believe parents can supervise their children on mountainbikes on the existing trails. I think the placement of this usage out of sight of anyone will lead to many public problems. The ACFL appears to accommodate walkers, runners, cyclists, horses, birdwatchers - with minimal problems + impact. I also believe parking has not been adequately or logically thought about.

The City of Anacortes + the Chamber tout the ACFL as the jewel of Anacortes. It is. The city seems to be undergoing significant changes from housing development + commercial proposals so I think it is important to maintain the ACFL as it stands. Many of us have donated money to the ACFL because we value it for the community. This proposed usage does not fit with my vision of what the forestlands are and should be.

Carol Herbert
2217 35th St
Anacortes
360-293-5568

(Sorry - this is old school presentation - no printer at the moment)

Bike park not right choice

I want to remind people that the proposed Bike Skills Park at the old dump site on 37th and A in the Forest Lands is still a very active proposal. This is a multiphased project that will change this site permanently. It will open up that part of the Forest Lands to a new kind of recreational use.

The Anacortes Forest Lands were created to preserve the forest. Thousands of people donated time and money to make this a reality. There are now almost 3,000 acres in the city of Anacortes with multiuse trails for motorcycles, bicycles, horses and hikers. This is unique and rare in a small city and is loved by many and well used.

Currently the Forest Lands are at a critical time. The summer droughts and other weather changes have created a more fragile environment. This is not the time to increase the use. The Forest Lands are being studied because of

concerns about the slow death of some trees and vegetation. This is the time to protect the Forest Lands and focus on preservation.

I am opposed to turning this site into a park for a group of people that claim this is the only site they could find after many years of looking all over Anacortes. If that is the case, maybe a Bike Park isn't appropriate ★
for this city. Do we have to turn this area into a theme park for a small group of people to play?

I am personally opposed. If you have concerns let the Planning Commission, City Council and mayor know. Help preserve this unique treasure — the Anacortes Forest Lands.

BARBARA COOPER
Anacortes

Cooper, Tess

From: Ross O. Barnes <georbarnes@hotmail.com>
Sent: Wednesday, December 11, 2019 4:22 PM
To: Cooper, Tess
Subject: Comments on PLN-2019-0010 SEPA DNS
Attachments: Title 19 draft CAO 12-4-19 comments.pdf; Title 19 draft CAO local signif nominat. - v2.pdf

These are comments on behalf of myself and Evergreen Islands on the SEPA DNS for PLN-2019-0010.

Ross O. Barnes
1004 7th. St., #202
Anacortes, WA 98221
(360) 488-2347

COMMENTS VERSION #4

12/4/19

TO:

Anacortes Planning Commission,
Tess Cooper, Libby Grage, Don Measamer, Planning Dept.

FROM:

Ross O. Barnes, PhD

RE: Work Session on Draft Title 19 CAO, 12/4/19

These comments are also a comment response to the SEPA DNS notice of decision on PLN-2019-0010.

Until the public has time to respond to a stable work product from the Planning Dept. this too for obvious reasons explained in my email of 11/29/19, is a draft comment response to be continued.

These comments are from one of the 16,000 people out there who you do not see or hear in your meetings.

Previous comments.

I have extracted my previous nominations

(1) to retain existing wetlands of exceptional local (regional) significance and wetlands of local significance, and

(2) to retain 15 named stream reaches as FWHCAs of local significance into a separate comment letter for the 12/4/19 PC meeting.

Other than that my previous comments remain as in my 11/20/19 comment letter, but are included here for common reference starting on page 14 below my new comments.

Response to the Public Comments Summary matrix.

Once again, the public is presented in the agenda packet with a DRAFT copy of the Public Comment Summary matrix. We have no idea what will actually be presented at the 12/4/19 meeting. So no useful considered response is possible until after the 12/4/19 version of the matrix is presented and provided to the public.

Contrary to the misrepresentations of Tess Cooper (TC), the draft CAO 19.70 language on wetland buffers ignores or violates the BAS and every recommendation and example concerning wetland buffers provided in the latest guidance and advice from WDOE—Wetland Guidance for CAO Updates: Western Washington Version, 2016, Pub. #16-06-001 (referenced here as WGWW) and associated WDOE guidance documents. PDF paste-ins below are from WGWW and the associated more specific guidance on wetland buffers.

Nor is the draft CAO language on wetland buffers supported by the only other BAS referenced by the City—the ATSI (2016) BAS report on wetlands and FWHCAs. The City decided to concoct some corrupted wetland buffer determination process entirely different than ATSI’s recommendations—no relation at all.

(GeoEngineers provided a belated BAS report exclusively on stream buffers on 10/21/19, long after the Draft CAO was published in May, 2019)

Draft CAO provisions on wetland buffers contrary to all referenced BAS includes:

(1) The draft CAO language on adjacent land use intensity is nowhere supported or suggested by WGWW BAS and associated WDOE guidance documents.

The buffer tables XX.1 and XX.3 do not consider land-use intensity in the buffer calculation, since it is presumed that most urban land uses will be high or moderate intensity. However, if your jurisdiction has an activity that can be considered low intensity, such as a passive recreation area or nature park with undeveloped trails, you may wish to prescribe a smaller buffer **for that area only**. The buffer for an area should be no less than 75% of the otherwise required buffer. Such a “low-intensity” buffer is not appropriate for residential, commercial, or industrial uses. Of course, if your jurisdiction

To see how the draft CAO has corrupted the WDOE BAS approved definitions of intensity of land use, see Table 8C-3 copied below which is the latest 2018 BAS guidance for use with WGWW, and compare with the draft CAO Table 19.70.250 (A) immediately below Table 8C-3.

The draft CAO has split urban residential zones between all 3 intensities. This is contradicted by the BAS behind WGWW, is without environmental justification and totally corrupts the BAS intention and justification for WGWW providing the “3 level land use intensity option” for wetland buffer codes as expressed in Table 8C-3.

An “unpaved trail” such as a hardpack gravel multi-use connector corridor with high levels of use is a vastly different thing than an “undeveloped trail in a nature park”. Because “unpaved trail” is without clear definition in Table 8C-3, WGWW in the quote above provides the intended type of application--“a nature park with undeveloped trails”.

The draft CAO has replaced the “low intensity open space” including illustrative examples of Table 8C-3 by the recently watered down Title 19.12.020 P, definition of passive recreation that permits higher impact uses than “hiking, bird watching, etc.” (See page 10 for discussion of the City’s sneaked in new watered down and broadened definition of passive recreation.)

Latest WDOE guidance on land use intensity - Table 8C-3 below:

Table 8C-3. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations *
High	• Commercial • Urban • Industrial • Institutional • Retail sales • Residential (more than 1 unit/acre) • Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) • High-intensity recreation (golf courses, ball fields, etc.) • Hobby farms
Moderate	• Residential (1 unit/acre or less) • Moderate-intensity open space (parks with biking, jogging, etc.) • Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) • Paved trails • Building of logging roads • Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	• Forestry (cutting of trees only) • Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.) • Unpaved trails • Utility corridor without a maintenance road and little or no vegetation management.
* Local governments are encouraged to create land-use designations for zoning that are consistent with these examples.	

July 2018
 Modified from Appendix 8-C: Guidance on Buffers and Ratios for Western Washington
 Wetlands in Washington State Volume 2 – Protecting and Managing Wetlands
 Ecology Publication No. 05-06-008 5

Draft CAO corruption of WDOE land use intensity guidelines - Table 19.70.250 (A) below:

B. For the purposes of buffer determination below, Land Use Intensity rating is as follows:

Table 19.70.250 (A)

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

(2) The draft CAO reduces "low intensity" buffers to 50% or less of BAS approved buffers for urban land uses whereas WGWW specifies 75% or more (see WGWW quote in (1) above).

(3) Separation of high intensity and moderate intensity buffer standards for urban land uses is not supported by WGWW BAS which specifies the same urban standard buffer for both (see WGWW quote in (1) above for what is BAS approved).

(4) The draft CAO fails to include Table XX.2 on mitigation of adjacent impacts that is required by WGWW BAS for the draft CAO specification of urban standard buffers. (Table XX.1 and Table XX.2 are included on pages 28-29 in prior comments section). The draft CAO further reduces Table XX.1 BAS urban buffer standards which are already reduced for inclusion of Table XX.2 impact mitigation, but does not include Table XX.2.

Table XX.1 requires the use of the minimizing measures in Table XX.2. These measures are intended to reduce the impacts of the adjacent land use on the wetland. If impacts are reduced, the size of the buffer required to protect the wetland's functions can be reduced. The buffer widths in Table XX.1 represent a 25% reduction in our recommended buffers in *Volume 2*.

(5) Use of Table XX.1 BAS buffers (larger than draft CAO buffers—see (4) above) assumes wildlife corridors between wetlands and Priority Habitats are designated and protected, but the draft CAO has no such provisions. Priority Habitats include the surrounding marine waters.

Table XX.1 also requires the protection of a wildlife corridor between wetlands that score 5 or more habitat points and any other Priority Habitat. This requirement is particularly applicable in large or rural jurisdictions where species need to have access to other habitats to meet their life needs. A buffer is the usual means of providing this necessary habitat. However, if buffer reduction is allowed, we cannot ensure that these species will have adequate access to habitat without providing a connective corridor. In urban areas, the best solution is a landscape-based approach that takes into account actual species use and spatial arrangement and connectivity of habitats. Without such an approach, jurisdictions should use the guidance provided in the sample wetland chapter.

(NOTE: the sample wetland chapter referenced is Tables XX.1, XX.2 and XX.3 as presented here, but the draft CAO reduces the applicable buffer standards of these tables. The required alternative "landscape based approach" is not provided in the draft CAO.)

Table XX.3 shows the buffer widths required if the minimizing measures in Table XX.2 are **not** implemented and if a wildlife corridor is **not** protected. These buffers are wider than those in Table XX.1, because the impacts to the wetland functions are potentially greater.

Table XX.3 BAS buffers required in the absence of Table XX.2 impact mitigation and absence of wildlife corridor protection are 33% greater than those shown in Table XX.1, but the draft CAO buffers are **significantly reduced from not increased from** those of Table XX.1.

(6) The draft CAO with its corruption of the "3 levels of intensity" approach fails to provide BAS buffer protection for habitats associated with high quality wetlands such as Ship Harbor, Cannery Pond. (See discussion of Ship Harbor buffer starting on next page.)

forest/shrub vegetation in the range of 20 to 30 feet. However, providing forage and nesting habitat for common wetland-dependent species such as waterfowl, herons, or amphibians in a high-quality wetland adjacent to residential development would require a buffer vegetated with trees and shrubs in the range of 200 to 300 feet. This illustrates the

(7) The draft CAO reduces the WGWW BAS buffer standards, which is a "high risk" strategy, but provides no justification or alternative protection strategy required by WGWW BAS.

Ecology's buffer recommendations are based on a moderate-risk approach to protecting wetland functions. This means that there is a moderate risk that wetland functions will be impacted. Adopting smaller buffers represents a high-risk approach, and you need to be prepared to justify why such an approach is necessary and to offer alternative means of protecting wetland functions that help reduce the risk.

How the draft CAO language will actually destroy the environmental landscape.

Now let us see how the draft CAO language actually works to perniciously destroy wetland habitats in Anacortes, until in the words of Tess Cooper (TC) on 10/23/19, the City is infilled and turned into hard urban landscaping (full exact quote provided on top of page 8).

On 11/13/19 TC said it is important to understand how the proposed language will actually function to protect critical areas better than the previous draft or community proposals. I totally agree, but TC is not telling you the truth here. So let me both repeat and correct her presentation on wetland buffers.

She used the Ship Harbor wetland buffer as her prime case study example, comparing the buffer protection currently provided by Title 17.70 including a special "regionally significant wetland specification" which currently provides a 110' wide buffer, against the supposed buffer protection under 19.70 language. However, she simultaneously narrated the intended destruction while claiming the opposite—quite a bold effort.

Under 19.70, an adjacent "high intensity land use" such as a commercial development gets a nominal 150' buffer, but by adding some sort of "unpaved trail" to the edge of their development, the development gets to reduce the buffer to 75', destroying 50% of the intensity defined buffer. The purpose and use of the trail in Table 19.70.040(050) and Table 19.70.250 (A) is undefined, so a motel could propose **(1)** a little used private 4' wide gravel or even packed dirt "wildlife appreciation trail" for use exclusively by their customers or **(2)** a 6' wide trail structure as part of a regionally connected pathway that might get heavy pedestrian and bicycle traffic.

In case (1) the public gets no benefit and the development gets about 70' more space for their still high intensity use which is obviously a gross reduction of critical area protection from both the nominal high intensity land use 19.70 150' "standard buffer" and the Title 17.70 provision of 110'. But that is not the end of it. By Table 19.70.040(050), the City then gets to build a "pre-approved reasonable use exception" unpaved regional connector trail up to 6' wide a further 18+' into the buffer already reduced by 50%. This additional public trail may carry an intense pedestrian and bicycle use with far greater habitat impact than some landscaping strip with low use narrow private trail in the adjacent high intensity development.

Net result—high intensity adjacent development at 75' not 150', **plus** the additional even greater habitat impact of a regional connector trail 56' from the Category I wetland effectively bisecting the buffer habitat!

In case (2) the high intensity development gets the same buffer reduction benefit as in **(1)**, **plus** there is now the high impact use of a regional connector trail 75' from the Category I wetland which obviously is **an addition to not a subtraction from** the impacts of the development alone and will have an even greater habitat impact than some rustic low use private trail and landscaping strip in the development.

The end result is that every adjacent development of whatever intensity can easily qualify for a reduction to the minimum low intensity buffer standard on any and every wetland in Anacortes. And once the larger buffer is destroyed the development is not going away. The minimized buffer remains if the adjacent land use intensity increases.

But that is still not the end of the intended environmental destruction. What is left of the buffer and wetland can in many cases be chewed thru by "pre-approved reasonable use exception residential development" 2800 sq ft at a time, or any "pre-approved public service reasonable use exception" (see Table 19.70.040(050)). Such pre-approved public services can include trails of any kind, roads up to freight truck routes and utility corridors--basically any "public service" project any public agency or utility can dream up as "necessary".

Perhaps you think that the public or Planning Commission or City Council can way in on and stop egregiously destructive use of these provisions described above, but you would be wrong. All of what is described above and much more are Type 2 Administrative decisions with minimal input from anyone outside of City staff, for which any appeal to the Hearing Examiner is useless because the vast loopholes to environmental protection in Anacortes are buried in the code that the HE administers. And the Planning Commission and City Council are entirely out of the review and appeal loop. This calculated elimination of effective community, PC and CC input into critical areas protection decisions violates the intent of GMA: RCW 36.70A.020 (11) policy requirement:

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

On 10/23/19, TC said to look at the big picture "forest" to see where all of this is intended to go. I have briefly addressed above just one of the loopholes built into but cleverly disguised as much as possible within all of the nice sounding but meaningless protective language of the code—meaningless because it is intentionally subverted by the loopholes.

Perhaps you think Planning Dept. would never be so irresponsible with the environment in Anacortes, but you would again be wrong. TC, in her CAO introduction speech, was quite

frank on 10/23/19 about how Planning Dept. intends to use their "forest" of verbiage in the CAO.

"However, what we have to accept is the other part of that, that the rest of the City is meant for development to be infilled and to turn into hard urban landscaping in order to preserve again the rest of the natural environment outside of our City limits and within those conserved and preserved areas and the rest of Puget Sound.... So that brings us really to what "reasonable use" and the "reasonable use exception" mean...."

But enough of this corruption of the GMA mandated balance of development and environment required of the City....

Planning Dept. is well aware that GMA mandates a preservation of functions and values of critical areas (no net loss), and even preservation of landscape level ecosystems beyond the limits of specific critical habitat areas (see quote below). And they are well aware that the City has no identified areas outside of those already "conserved and preserved areas" (i.e. - ACFL, Ship Harbor, Cannery Pond, etc.) where they can place the GMA mandated mitigation for all of the critical areas destruction that is intended as hard landscape infill occurs.

From Dept. of Commerce, Critical Areas Handbook, 2018, Chapter 1, page 15:

"The Western Washington and Central Puget Sound Growth Management Hearings Boards have found that, under the statutory definition of "critical areas"⁴⁶, counties and cities must protect "areas and ecosystems". In these decisions, the Boards found that development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.⁴⁷"

And they are well aware that pretending to improve the already high quality natural habitats in those already "conserved and preserved areas" as mitigation for destruction elsewhere is bastard faux science (**BFS**).

And they are well aware that they have no direct control over areas outside of City limits and in the "rest of Puget Sound", and thus cannot mandate that the required mitigation and preservation of landscape level functions and values occur "outside of our City limits".

And they are well aware that Skagit County and its residents are under their own obligations to preserve and enhance the environment in rural Skagit County and are under no obligation to accept the City's attempts to push mitigation required for City development projects into the County.

And the brief discussion above is just a bare introduction to the gratuitous destruction they have planned for our high quality "conserved and preserved areas" thru the buffer degradation permitted by the bastardized buffer standards (**BFS**) and intrusion of "pre-approved reasonable uses exceptions" as permitted by section 19.70.050.

No, we do not "have to accept" any of this dangerous nonsense, and GMA requires that we not accept it.

Contrary to the misstatements of TC, the GMA specifically refuses to make urban development and sprawl reduction a higher priority for cities than environmental protection and natural open space.

RCW 36.70A.010

Legislative findings.

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state.

RCW 36.70A.020

Planning goals.

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

....

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

....

And from the MRSC:

"Under RCW 36.70A.020, the GMA establishes a series of 13 goals that should act as the basis of all comprehensive plans. The legislature added the goals and policies of the Shoreline Management Act as the fourteenth GMA goal (RCW 36.70A.480). The shoreline goals may be found at RCW 90.58.020. GMA Goals (RCW 36.70A.020):

Concentrated urban growth

Sprawl reduction

Regional transportation

Affordable housing

Economic development

Property rights

Permit processing

Natural resource industries

Open space and recreation
Environmental protection
Early and continuous public participation
Public facilities and services
Historic preservation
Shoreline management (RCW 36.70A.480)."

Who is confused here, and why?

TC says that the current language for Ship Harbor wetland is confusing--Category I wetland with category II buffer. Contrary to TC's confusion, this is a plain and simple statement easily understood by a 4th grader, and my nomination to retain the special designation for the Ship Harbor wetland provides the specific reason and justification for that easily understood simple sentence. So TC is disclosing that no one in the Planning Dept. has the intellectual reasoning capacity of a 4th grader, nor can they be bothered to actually read public comments. Heaven help us all from the consequences of that.

Misstatements/misrepresentations of code language on "passive recreation".

On 11/13/19 TC read the definition of passive recreation in former 17.06.723 to you as though it was the current applicable definition of passive recreation. However, Planning Dept. is well aware that 17.06.723 was deleted on 8/5/19 and replaced with a different less specific definition in 19.12.020 P. I refer you to Stacey Curtis' two comment letters of 11/21/19 and (not dated but sent on 11/27/19). She uncovered this definition deceit and explains some of the problems. The less specific definition will allow "ministerial interpretations" that can significantly increase environmental impacts in violation of the SEPA unconditioned DNS and the universally accepted intentions of the now obsolete passive recreation definition.

To illustrate how the Planning Dept. intends to use the degraded definition of "passive recreation", I will compare the WGWW BAS for trails in wetland buffers with the Draft CAO version from Table 19.70.040(050) – Permitted Alterations.

First the WGWW wetland buffer version for wetland permits:

2. Passive recreation facilities designed and in accordance with an approved critical area report, including:
 - a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.

And now the Draft CAO critical area buffer "pre-approved reasonable use exception" Table 19.70.040(050) version:

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

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

Note the difference. The draft CAO removes the concept of a "minor crossing" and provides no limit on the length of the trail intrusion into the buffer, removes the "no impact on water quality", raises the width from 5' to 6', and perhaps most significantly eliminates the pedestrian use only for public trails. The draft CAO version is tailor made not to protect the environment, but to allow the City to shove their high use regional non-motorized trails thru wetland buffers where the high impacts of bicycles and intense "passing thru" foot traffic do not belong period.

Section 19.70.050 no longer a standard 17.70.390ff type permit process.

Section 19.70.050 – Permitted Alterations, changes the previous standard wetland permit of 17.70.390ff and similar provisions of Title 17.70 for other critical areas into a looser easier to get “pre-approved” variety of the “reasonable use exception variance” of Section 19.70.055 with pernicious environmental consequences as explained in the example of the Ship Harbor buffer fiasco narrated above. The key difference is the Title 17.70 permit is a standard wetland/critical area use permit, not a “pre-approved reasonable use exception” loophole, and requires more justification, higher standards of permit review, higher standards of appeal, City Council in the loop, and better opportunity for public and agency input and comment.

In order to comment on a Title 19.70.050 “pre-approved reasonable use exception/permited alteration” decision, the public or agency must manage to see a public notice published or posted, has only 14 days to research and comment before an “administrative decision”, and no open record public hearing. To get an open record hearing an appeal must be filed to the Hearing Examiner based on a code with all the desired loopholes built into the code. There is no Planning Commission or City Council review.

In contrast, a Title 17.70 type wetland permit provides a pre-application neighborhood meeting, 21 day comment period (frequently longer with a hearing), an open record decision hearing, an appeal to City Council, and no “pre-approved reasonable use exceptions” built into the code.

Other administrative level decisions in 19.20.030 involve lower level decisions within the normal built environment. In contrast, critical area permit decisions involve the GMA mandated balance between development and environment and speak to a higher standard of review. TC’s 10/23/19 introduction speech and her 11/13/19 analysis of how the draft Title 19.70 would apply to the Ship Harbor wetland buffer, makes abundantly clear that the Planning Dept. intends to use every trick buried in the CAO code to destroy that balance.

It is obvious that the Planning Dept. has designed their

- (1) BFS “variable wetland buffer” process,
- (2) Section 19.70.050 “pre-approved reasonable use exception/permited alteration”,
- (3) watered down definition of “passive recreation”,
- (4) etc. as a destructive sneak attack on critical areas in Anacortes, to which TC’s notorious quote on page 8 gives affirmation.

Misrepresentation of public comment.

In both oral and written presentations, TC has a bad habit of misrepresenting, misstating or even ignoring public comment or pretending we are stuck in the language of 17.70. I will discuss this more in my future response to the Public Comment Summary matrix when the actual 12/4/19 version is presented and made available to the public.

I will present just one example here based on staff presentations and documents as of the 11/27/19 agenda packet, minus the DRAFT Public Comment Summary matrix for which no reasoned response is possible until the full 12/4/19 version is produced.

{The statement of my proposal to retain the 15 named streams with appropriate updates to Title 17.70 language has been moved to my nominations of local significance letter of 12/4/19. See that letter for the details and justification for the proposal.}

To the extent my comments on FWHCA streams are recognized at all they are misrepresented. “Disappointed that stream names have been removed”, in no way recognizes or responds to my detailed comments and suggested code language on streams.

TC explains that Title 17.70 contains two different standards for stream measurement and protection—true enough. If 17.70 contains two different standards for stream regulation, that is the fault of the Planning Dept. because no one in the community had anything to do with those specifications—again a below 4th grade error.

Nowhere do I suggest that the two standards be retained. My comments say “*Stream protections as specified in Section 19.70.340 shall apply*” which are exactly the same standards for the 15 named streams and all of the other streams in Anacortes needing protection under 19.70.340. The more general standards of 19.70.340 (or prior 17.70.570 C.) are also needed to protect the numerous unnamed streams in the ACFL and possibly out of it, as well as the ditched and culverted portions of the 15. .

Nothing in my proposal to retain the designation of the 15 named streams in a new subsection **19.70.310 A.11.d.** prevents the standard stream typing from being applied to these streams as suggested by TC on 11/13/19. In fact the draft stream map does exactly that with both names and stream type shown.

Identifying only those portions of the 15 streams not in ditches or culverts as habitats of local importance is not confusing at all and would be understood by a 4th grader, but apparently not by the Planning Dept. Why would the community want to designate flowing water in ditches and culverts as locally important habitat?--that is total nonsense. So the ditched and culverted portions are still protected under the provisions of 19.70.340 with no objection from anyone.

TC suggests that current special local designations for streams and wetlands should be removed, but provision can be made to re-introduce such at a later date. This is a blatant violation of RCW 36.70A.020 (11) quoted above.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

The “public” already made such nominations which were duly analyzed and approved 14 years ago. What kind of ego dominance power trip is TC on that she thinks she has the unjustified right to force the “public” to do this all over again??

On to a more glorious future.

It is quite possible to change the ignominious future of municipal conflict portended by the City’s Draft 19.70 proposal into a more glorious one by restoring the GMA mandated balance between development and environmental protection that can be generally found in Title 17.70 with appropriate updates to current BAS processes and standards. The environmental community has always been willing to make reasonable and balanced compromises with development. I note that such compromises have already been built into the WDOE BAS guidelines of WGWW as quoted above on pages 5-6, item (7). WGWW BAS guidance is already a “moderate risk” that environmental functions will be negatively impacted and desired protections not obtained (moderate risk means compromise has been made). **By 12/18/19 a counter proposal will be provided to the Planning Commission that consolidates community comment and restores that balance destroyed by the City’s Draft Title 19.70.**

Previous comments as combined in 12/20/19 comment letter are below.

Suggested new code language is highlighted in italics.

Sections of this letter are:

- I. New comments on general issues;
- II. New comments on Geologically Hazardous Areas;
- III. A. to F. 10/23/19 and 11/13/19 comments consolidated;
- Appendix 1.

I. New comments on general issues.

Unnecessary conflicts between Chapter 19.70 and the rest of the Title 19 Development and Zoning Code.

One of the key provisions of the old Titles 16 and 17 that provided essential flexibility to accommodate and protect critical areas in the landscape while maintaining overall development density and thus land value was the Planned Unit Development. The PUD provided for re-arranged or smaller lots and developed areas in exchange for placing and protecting critical areas in open space or NGPE tracts. This proved especially valuable, even essential, in the R1 zone.

However, the PUD provisions were removed from Titles 16 and 17 three years ago, and I cannot find any equivalent in Title 19. On 11/14/19 I sent an email to the Planning Dept asking why the PUD or equivalent was deleted or showing me where I missed it. I have received no reply (see **Appendix 1** for email message).

The absence of PUD type flexibility begs for an explanation of why Title 19 unnecessarily sets critical areas protection in direct conflict with the rest of Title 19, making reasonable use or takings claims inevitable and destroying either the critical areas or the development potential and value of the land. The new CAO code should not be approved until this senseless conflict is removed.

Where does the ACFL fit in the CAO code?

I am not opposed to Bob Barry's proposal for a whole new CAO category for the ACFL. However, until the Planning Dept (PD) withdraws the current not-ready-for-prime-time draft CAO and stops pushing it thru hearing process and SEPA, I must respond to the deficiencies of the draft as presented to the Planning Commission, City Council and public. I hope the Planning Commission will persuade or direct the PD to such withdrawal.

I note that if the ACFL is put in a new separate category, the rest of the draft 19.70 CAO must be reanalyzed and adjusted accordingly.

Official recognition and protection of the ACFL as a FWHCA is seriously deficient.

A. Current CAO Section 17.70.010 should be retained, relocated and revised as discussed below. One of the revisions should be correction of an error replicated in other City documents because it creates erroneous impressions and negative consequences. The impression is created that all of the ACFL is within the City limits. This has been incorrect at least since the Willettes, many years ago, donated land to the City west of Sharpes Corner. There are 85 nominal acres managed as part of the ACFL that are located in adjacent Skagit County and this acreage is likely to increase in the future.

- West of Heart Lake Road - 40 acres,
- Southeast of Mount Erie summit - 20 acres,
- East of Whistle Lake - 20 acres,
- South of Whistle Lake in a Skagit County plat - about 25 acres.

B. Also, except for part of the 160 acre Mount Erie Park, Skagit County iMap does not recognize any of the ACFL south of the Little Cranberry Lake section as designated and protected park and forest reserve. The Anacortes CAO designation of the ACFL as a habitat of local significance probably has no legal application outside of the City until it is formally recognized as such by Skagit County. Until all of the ACFL, both inside and outside of the City limits, is recognized and mapped by Skagit County and recognized by Skagit County as a designated critical area under the County CAO, there is no recognition of this fact when reviewing applications for adjacent development in Skagit County.

New definitions.

The failed attempt to conflate all types of critical areas into one common specification for exempt and permitted uses produces nonsense results as discussed below. The definitions provided here are appropriate for critical areas such as wetlands and FWHCAs and their buffers where habitat disturbance and fire hazard are of paramount concern. On the other hand, does anyone care if motorized bikes ride thru Frequently Flooded Areas?

1. *Bicycling* as used in Chapter 19.70 means human powered bicycling. It does not include bicycles known as E-bikes or any bicycles with battery powered motors which present a potential wildfire hazard on unpaved trails in natural areas, or combustion powered motors and engines.

Explanatory note. With the advent of motorized electric bikes and scooters and who knows what in the future, **bicycling** as a passive recreation activity needs a carefully constructed and specific definition appropriate to a critical area use.

One very important issue regarding battery bikes in the ACFL and other natural areas is the potential fire hazard posed by a defective exploding/flaming lithium battery. Battery scooters, cell phones, bikes, etc. have had real problems with bursting into flame. If someone's bike battery bursts into flame, an involuntary reaction of the rider may well be to shove the bike away and off the trail into flammable vegetation and there goes the woods up in flame. Who is going to vet safe vs unsafe equipment if that is even possible? Bike batteries are susceptible to damage from bike mishaps and upsets on rough trails--damaged batteries packs are more likely to explode and flame than undamaged packs.

The pedal assist vs self-propelled (throttle propelled) distinction often presented by E-bike advocates is a false dichotomy impossible to police and intended to confuse and mischaracterize the issues. Some E-bikes offer both modes of use. Both modes present the same battery safety issues.

Advocates of E-bikes as passive recreation often picture riders as old geezers needing E-pedal assist to get along. There is obviously no way to impose or police an age limit, and off-road E-bikes especially are designed to enhance the fun and enjoyment of hot dog trail bikers by pushing beyond the limits of mere human powered trail antics; clearly an active sport, not passive recreation.

The only safe option is to ban lithium battery and other flammable battery "bikes" (are there any other kind?) from all natural areas unpaved trails--ACFL, Washington Park, etc. There only needs to be one flaming battery accident to be managing a charred landscape.

2. *Non-motorized and non-motorized trails* as used in Chapter 19.70 exclude battery or combustion powered motors or engines.

Explanatory note. With the advent of motorized electric bikes and scooters and who knows what in the future, **non-motorized** and **non-motorized trails** need carefully constructed and specific definitions appropriate to a critical area use. See also explanatory note under definition of **bicycling** above.

II. New comments on Geologically Hazardous Areas.

For almost 30 years, the City has been under obligation by the GMA to use reasonable effort to disclose the presence of critical areas on critical areas maps available to the public as part of the CAO. I addressed disclosure problems for streams in my comments for the 11/13/19 PC meeting (see below). Here I address serious deficiencies in the City's disclosure of known geologically hazardous areas. The latest map of Anacortes' geologically hazardous areas I am aware of is the Critical Areas map prepared by The Watershed Company in 2009. Lots are identified below by Skagit County P#s.

A. Very recently active shoreline landslides of major significance not identified.

Three shoreline landslides of major significance have occurred in Anacortes since 1991, are well known or should be well known to the Public Works and/or Planning Depts., but are not identified in any way as Geologically Hazardous Areas.

1. Lot P32475 just south of Croatian Way--recently active landslide most recently activated and expanded since 2000 by inappropriate earth movement activities; well documented in City files and hearings; potential threat to Anaco Beach Road such that the City resolved not to ever vacate the unopened southern end of Tyler Way as a potential alternative route south out of West Anacortes.

2. Lot P31575 east of Edwards Way cul-de-sac, Ship Harbor area—massive historical rotational slump landslide extending from tidelands to about 300' inland from the shoreline and historically about 300' along the shore; reactivated about 1991 by inappropriate massive excavation adjacent to shoreline; well documented in City files and hearings; elevated the land and subsequent Guemes Channel Trail east of the cul-de-sac by about 3' as easily seen from the cul-de-sac; broke a large water line creating a large water excavated crater.

3. Lot P31570 west of Anacopper Road—massive rotational slump landslide occurred in mid-1990s extending from shoreline about 350' inland to the shoulder of Oakes Ave. and extending several 100' along shore; WSDOT had to massively rebuild the Oakes Ave. shoulder. Deposited large pile of dirt on shoreline railroad track ROW with over 20 trees lying horizontally across track ROW with crowns suspended over the beach below. Massive dirt pile and trees on tracks still there, and are shown on topographic and engineering drawings for the

trail, when GeoEngineers inspected track ROW for the Guemes Channel Trail construction, but they failed to flag the area as unstable or further investigate the obvious signs of massive recent slide (one wonders what it takes for City's geotechnical consultant to recognize a landslide???).

All 3 of these recently massive slides should have been flagged as URS or ULS on the 2009 map, but none received any map recognition whatsoever.

B. Well known unstable steep sided old municipal dump at Kansas Ave. north of Oakes Ave. spills into and occupies much of the adjacent Lot P58139 to the east. Steep dump side slope is trash strewn with exposed dump trash on surface and underlain by unstable dump trash fill. This lot should be flagged as unstable slope on CAO map with reason why.

3 of the above 4 lots currently display for sale signs. How are potential buyers to know about the geological hazard lurking under the surface if they consult the City geological hazard map and there is nothing there??

III. 10/23/19 and 11/13/19 comments consolidated and slightly revised.

These comments may seem overly critical to some, but please note that the vast majority of the draft text passes by without substantive criticism.

Whoever drafted some of this proposed CAO language, especially that which is not lifted from other models, has problems with grammar and sentence construction which leads to ambiguous interpretation, etc. Someone competent in writing the English language needs to work this document over before it is finished.

There are numerous typographical errors including unfinished and thus meaningless sentences that must be corrected, but that is detail beyond the substantive purpose of my current comments unless I am making substantive comments on the specific section.

There are numerous incorrect references to other sections of this chapter. All such references must be reviewed and corrected as necessary. I got tired of being an unpaid proof reader and gave up trying to list all such occurrences.

The text should be reviewed to identify the need for additional definitions of specific technical terms or words with potentially vague or ambiguous meanings. For instance, CAO appropriate definitions of **bicycle** and **non-motorized** are provided in the new comments section because technology is rapidly changing what can be called a "bicycle" and rendering the term "non-motorized" ambiguous without specific definition.

A. Other sections of Title 19.

19.38.020 B.6. - Variances

Reference needs to be changed from ~~17.70~~ to 19.70.

B. Title 19.70 - General comments.

Unjustified deletions of critical areas of special significance.

Much of the original local natural environment has been lost to development. Thus, certain high quality and locally unique wetlands and habitats have a special function and importance to the local environment and natural ecology that transcend the one-size-fits-all state and national standards that are contained in the State Model Ordinance which cannot recognize or adequately protect these unique environmental assets.

14 years ago the Anacortes community identified certain local critical areas as requiring special recognition and protection. Following appropriate review and approval, these wetlands and wildlife and riparian habitat areas were incorporated into the 2005 major revision of the Anacortes CAO as wetlands and habitats of special local and regional significance with special management criteria compatible with the general protection standards of the CAO.

WDOE publication 16-06-001 Wetland Guidance for CAO Updates, Western Washington Version--the latest WDOE guidance for local CAO wetland updates--makes no recommendations against incorporation of local knowledge, information, values and interests into a local CAO. In fact this guidance at the very beginning on page 2 specifically recognizes the importance of "locally appropriate" standards. There are no specific requirements that locally important content be eliminated from a CAO as long as the regulations meet the minimum requirements of applicable state and federal rules.

Thus, it is incomprehensible why the draft Title 19 CAO unnecessarily and gratuitously proposes to eliminate most of these critical areas of special significance from the new CAO. Who is responsible for this and with what justification? Has anyone placed any evidence on the record that any of these special designations are invalid or inappropriate?--NO. Has anyone refuted the local knowledge, values and interests responsible for these special designations?--NO.

The Planning Dept memo provides no justification for the eliminations. In fact, the Planning Dept memo purporting to highlight the significant changes from the current AMC 17.70 CAO text ignores these deletions as though they are trying to cover up and hide the omissions.

It is shocking and disturbing that the Anacortes Planning Dept and perhaps their CAO consultants apparently fail to comprehend and appreciate the essential importance of recognizing and protecting these unique elements of our local environment by maintaining the special designations and protections long included in our CAO codes.

Gone are the Category I wetlands of exceptional local and regional significance nominated by the community, approved and added to the COA in 17.70.320B.1.a.iii. and 17.70.320D.

Gone are the Category II wetlands of local significance nominated by the community, approved and added to the COA in 17.70.320B.b.iv. and 17.70.320E.

Gone are the special buffer standards negotiated for the Ship Harbor and Cannery Pond Category I wetlands of exceptional local and regional significance codified in 17.70.500B. & C.

Gone are the 15 specifically named streams nominated and named by the community, approved and added to the COA in 17.70.540A.7.a. These stream nominations were investigated and approved by the City's critical areas consultant ATSI for the 2005 CAO major code revision.

Gone is the essential description of the justification for designating the whole of the ACFL as a FWHCA found in 17.70.010 (see discussion above).

ATSI (2016) may be biased against certain "local" information additions to a CAO code such as wetlands of special significance, but provides no coherent explanations or justifications for this in their 11/1/16 "Best Available Science (BAS) recommendations report". The one-size-fits-all critical area standards and wetland ratings found in the Washington Model Ordinance certainly are not capable of recognizing the unique status of certain local critical areas. ATSI references WDOE publication 16-06-001 Wetland Guidance for CAO Updates, Western Washington Version as a principal basis for their recommendations. However, as stated above, this guidance publication does not support ATSI's bias against local information and standards.

Former section 17.70.010 should be retained with revisions.

It is totally appropriate, even essential, to explain the unique local nature of the ACFL and why it plays such a prominent role in the purposes and goals of the CAO and in the retention and protection of complex environments and habitats in Anacortes. Thus, existing section 17.70.010 should be retained in Title 19, but it does not need to be the introduction to the CAO and can be somewhat pruned and relocated as discussed below.

The ACFL is a complex habitat containing other critical areas, but that is by no means a unique situation. Wetlands and streams are frequently co-located, overlap, and exist in a

variety of wildlife habitats. Geologically hazardous areas can be located throughout the landscape. Almost by definition, aquifer recharge areas, frequently flooded areas, wetlands, and streams can overlap in various mixes when the hydrogeological and topographic drivers of each converge in the landscape. The CAO recognizes this by specifying that the most restrictive conditions apply when critical areas overlap.

The ACFL is a large and largely intact interconnected complex of natural habitats which is a special and unique local asset. The Anacortes CAO would be uniquely deficient if it did not recognize the whole of the ACFL as a FWHCA of local importance.

I think it is appropriate at this time to do some pruning of this introduction and place it in an Appendix referenced in 19.70.310 A.11.a. which is the designation of the ACFL as a FWHCA of local importance. And I noticed places where a factual correction is needed, some due to the passage of time.

For instance, one paragraph could be characterized as mostly understandable “comparative boasting”. Some of the repetitions from the ACFL Comprehensive Plan (assuming those sections don't disappear from the revised ACFL Comp Plan) might be appropriate to prune or shorten with supplemental reference to the ACFL Comp Plan, but the existing text is well written and phrased. It is certainly appropriate to keep some version of the Appendix D: Vulnerable Species in Anacortes because, as explained in the text, protection of those species is an integral part of and justification for designation of the ACFL as a FWHCA.

I may provide a revised version of 17.10.010 in the future.

C. Title 19.70 CAO – Common CAO procedures sections.

19.70.010 D. - “Flexibility statement”

Research shows what CAO “flexibility statements” are intended to do, but the draft CAO uses language of uncertain interpretation and application. Other jurisdictions adopt “flexibility statements” to indicate that the provisions of the CAO, as strictly interpreted, provide flexibility in dealing with the relationship between development and critical areas, not that the language itself is to be flexibly interpreted to suit the agenda of some party or official.

Provision of exemptions, reasonable use exception variance, permitted alterations and activities, provisions for existing development and nonconforming structures and uses, a variety of approaches provided for dealing with buffers and mitigation (within stated limits), professional judgment in the writing of required reports and analyses (within stated limits), etc. provide significant flexibility that is often not recognized by project applicants, and so a “flexibility statement” near the beginning of the CAO highlights the inherent flexibility of the ordinance. As for “flexibility of interpretation”, the provisions of AMC 1.04.030, 1.04.080,

19.12.040, 19.12.080 control interpretation and additional confusion should not be attempted here.

Here is suggested language for 19.70.010 D. to replace what is in the current draft to remove the ambiguity of the current language noted in my previous comments.

This ordinance provides a flexible approach to protecting critical areas while making provision for appropriate development. There are exemptions, reasonable use exception variance, permitted alterations and activities, provisions for existing development and nonconforming structures and uses, a variety of options available for buffers and mitigation, and other options available to an applicant.

19.70.015 – Applicability.

Item A. The words “unless explicitly exempted” are unnecessary and redundant and should be deleted because the “provisions of this chapter” include specifications of what is exempted.

Item B. 3. “When any provision of this chapter...conflicts with this chapter” is a logical absurdity and should be changed to “*...conflicts with other provisions of this chapter*”.

19.70.020 C. - Classification and rating.

Add at the end of the sentence “*...and/or their unique and recognized position or value in the local environment*”. This makes provision for critical areas of local and regional significance as recognized within the CAO (see discussion above).

19.70.025 - Protection of critical areas.

Item A. Change “may” to “*must*”.

Item E. Change “No activity or use may be allowed that results in a net loss...” to “*Any activity or use permitted or exempt under the provisions of this chapter must result in no net loss...*” Sentence structure needs to change to accommodate change of “may” to “must”.

Item 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....” should be changed to “*Any individual critical area adjoined, overlapping or co-located with another critical area must have the buffer and meet the requirements that provide the most statutory protection...*” This needs to cover all potential cases of this type, but not “over-protect” beyond the requirements of this chapter.

19.70.035 - Critical Areas Review.

Add a new subsection C. to accommodate the language of 17.70.500 D. which I cannot find elsewhere and seems like an important provision for existing development. Here is 17.70.500 D. with appropriate revisions.

Final plat approvals, conditional use permits, and building permits issued after the adoption of the city's first wetland ordinance (Ordinance #2131, adopted January 2, 1990) but before the effective date of the ordinance codified in this chapter must continue to be controlled by the version of the critical areas ordinance in effect at the time of their final approval/permit issuance with respect to approved structures and uses outside of the critical area and buffer established at that time. Such structures approved and in compliance at that time must not be considered as nonconforming. Approved structures and uses within the critical area and buffer must be considered nonconforming under the provisions of subsection D. of this section.

Existing subsections C. and D. to be re-lettered D. and E.

Table 19.70.040 - Exempt Activities -

Passive Outdoor Activities.

(See also comments below on Table 19.70.040(050) – Permitted Alterations.)

Bicycling is not an appropriate passive recreation activity in some critical areas and their buffers such as wetlands. This section of the Table needs to be reworked and possibly separated out to the specific types of critical areas as for Permitted Alterations – Recreational Areas/Facilities.

With the advent of motorized electric bikes and scooters and who knows what in the future, **bicycling** as a passive recreation activity needs a carefully constructed and specific definition appropriate to a specific type of critical area--see suggested definition above on pages 2-3.

Different types of critical areas have different land use sensitivities. Impacts of concern to Wetlands primarily relate to hydrology, water quality and habitat. Impact to FWHCAs primarily relate to habitat plus any included wetlands. Impacts to Geologically Hazardous Areas primarily relate to ground and soil stability. Impacts to Aquifer Recharge Areas and Frequently Flooded Areas would typically be dealt with on a case by case basis, as would any buffering.

Recreation Areas Operation, Maintenance, Repair, or Replacement.

With the advent of motorized electric bikes and scooters and who knows what in the future, **non-motorized trails** needs a carefully constructed and specific definition appropriate to a critical area use--see suggested definition above on page 3.

What about maintenance in privately improved recreation areas, such as Skyline Beach Club and other homeowners association facilities, etc.?

What about areas that are not specifically designated recreation areas?

19.70.050 - Permitted Alterations.

Under Section A. - Applicability "...when application of the standards renders compliance with these provisions as infeasible and the proposed development meets the specific terms of this section and can be considered a reasonable use." What standards are specifically referenced here and why does the application of whatever standards render compliance infeasible when the provisions of the chapter create conditions of feasibility?

The wording is grammatical and logical nonsense. This section on CAO permits typically begins without the nonsense statement in Subsection A. which is superfluous and unnecessary and should just be eliminated. 19.70.050 should begin with current subsection B. with sections re-lettered in sequence.

Table 19.70.040 - Permitted Alterations - Recreational Areas/Facilities.

(should be Table 19.70.050?)

As currently worded, this Table section, a key part of the permit process, is unworkable in practice, full of nonsense, and must be totally re-thought and re-worked.

Whoever drafted this section of the Table obviously never bothered to try to understand the meaning and the application of the gobbledygook they put in it. And simply changing the Critical Area column from no to yes will not solve the problem—it just changes the nature of the gobbledygook.

The attempt to conflate into a one-size-fits-all table (OSFAT) what might be appropriate and permitted in a wetland buffer with what might be appropriate and permitted for various FWHCAs and other critical areas is the source of much but not all of the nonsense and gobbledygook.

Different types of critical areas have different land use sensitivities. Impacts of concern to Wetlands primarily relate to hydrology, water quality and habitat. Impact to FWHCAs primarily relate to habitat plus any included wetlands. Impacts to Geologically Hazardous Areas primarily relate to ground and soil stability. Impacts to Aquifer Recharge Areas and Frequently Flooded Areas would typically be dealt with on a case by case basis, as would any buffering.

For instance, low impact activities that would be acceptable with appropriate restrictions in a place like the ACFL would generally not be acceptable in a wetland—bicycles in the ACFL, OK with definition provided on page 2 above, riding thru a stand alone wetland or dividing its buffer, NO.

The only solution is to unbundle the table section and make specific regulations appropriate for each type of critical area. Until that is done more specific suggestions for improvement cannot be made at this time.

Specific examples of the nonsense and gobbledygook are listed below.

1. Under the current wording and restrictions of this section none of the listed activities or alterations or anything else would be permitted in the ACFL because ALL of the ACFL is a designated critical area, not a buffer. This is what happens when you try to force all types of critical areas into a one-size-fits-all permit process and don't actually think about what you are doing.
2. I note that under the current wording of Table 19.70.040 050, much of the current Ship Harbor Interpretive Trail and the proposed additions, as located in both the wetlands and wetland buffers, would be illegal and not permitted.
3. Item A. "Public park or public recreational access" needs a more precise definition of what is and is not appropriate and permitted in a buffer. What is active vs passive recreation and what is appropriate and permitted in specific critical areas and buffers is an endless controversy in Anacortes because the existing definitions are vague and the terms are twisted and manipulated into logical and factual absurdities by persons pushing their pet activities.
4. Item A. Of what use is fishing access in a buffer? As far as I know, fish that live around here live in water not adjacent buffers. The current language does not allow bridges or raised walkways (in Item B.) in or over streams, wetlands and wetland ponds--where else would they be useful?
5. Item B. The stated restrictions/allowances on walkways and trails are logical and practical nonsense. What if the purpose of the trail is to cross thru a buffer with the minimal linear and areal impact, such as the non-functional fishing access of Item A?--NOT ALLOWED. But a trail that gratuitously, destructively and endlessly wanders in sub-parallel manner thru the outer 25% of a buffer might be OK in certain circumstances!

For instance, the Guemes Channel Trail access trail and staircases at Kansas Ave would be illegal and not permitted under Item B. because (1) the trail cuts thru the whole unstable slope buffer and (2) the staircases are constructed on the actual unstable slope critical area, neither of which are permitted by item B.

6. Item B.b. It is essentially impossible to build a trail in a native vegetation buffer without removing native vegetation!
7. Item B.c. The trail width and construction must not exceed that necessary for the intended purpose which may be less than the maximum 6 feet.

8. Item C. Could someone please tell me what this is supposed to be about? What is an “educational demonstration facility?” How would signs or whatever potentially infringe on hydrology or stream flow if they are not allowed to be in the actual stream in the first place? Perhaps they could block overbank flood flow, but that suggests this is a poorly thought out cut and paste job from some very un-Anacortes like place such as a river flood plain regulation.

9. Item D. The sentence is not finished and thus meaningless. Like fishing above, of what use are boathouses, piers, etc. in buffers, but not allowed over water which is generally by definition in the critical area not the buffer? Item D. attempts to mix maintenance and repair activities with specifications on how and where the structures must be built in the first place--the result is meaningless confusion.

19.70.055.

Item A. “19.70.040” should be changed to “19.70.050”.

D. Title 19.70 CAO - Section on Wetlands

(The proposal to retain (1) provisions for designation, and (2) existing designations for wetlands of locally significant function and value in the CAO code has been moved to my nominations of local significance letter of 12-----/19. See that letter for the details and justification for the proposal.)

Add a new subsection to 19.70.230 to contain the **permitted activities** appropriate to wetlands unbundled from the impossibly conflated section of Table 19.70.040(050) - Permitted Alterations - Recreational Areas/Facilities.

19.70.250 – Wetlands – Required buffer areas.

Subsection A. states that the wetland buffer requirements are based on best available science (BAS) as required. However, the buffer width standards presented in subsections B. and C. bear no relationship to the BAS on wetland buffers presented in the latest CAO guidance from WDOE for local CAO updates (WDOE publication 16-06-001 Wetland Guidance for CAO Updates, Western Washington Version, June, 2016, referenced as WGWW). The staff memo at the top of the 10/23/19 PC agenda packet attempts to justify what is proposed, but provides no reference to any BAS justifying this approach while the Draft CAO ignores the BAS it does reference, namely WGWW and ATSI (2016). ATSI (2016) is included in the 10/23/19 PC agenda packet.

WGWW BAS buffer width standards do not differentiate between high and moderate intensity land use (urban land uses). However, buffer standards in 19.70.250 C. reduce moderate intensity buffers by 20-27%.

Subsection B. - Table 19.70.250 (A) incorrectly lists the R1 residential zone as low adjacent land use intensity which contradicts the explicit BAS on page 12 last paragraph of WGWW. There is no significant difference in impacts from land use activities on a 15,000 sq ft residential lot compared to R2 and R3 zones. In fact, the larger yard may encourage more intense use and manipulation. Many developments in the R1 zone are PUDs with R2 and R3 size lots in exchange for open space tracts (Fir Crest, The Orchards, etc.).

WGWW page 12 last paragraph specifies a buffer reduction for low intensity adjacent land use to no less than 75% of the buffer for more intense land uses. However 19.70.250 C. provides 50% or more buffer reductions contrary to WGWW BAS.

WGWW, page 29, Table XX.2 - Required measures to minimize impacts to wetlands is removed from this CAO draft although it is present and required in the current CAO chapter 17.70 (see Table below). This 19.70 draft includes none of the BAS requirements of WGWW if Table XX.2 minimizations are eliminated. I note that the City's wetland BAS consultant ATSI (2016) recommends and assumes that Table XX.2 will be retained.

It is impossible here to parse out in itemized detail all of the problems with the buffer specifications in 19.70.250 C. However, the buffers specified in 19.70.250 C. are all less than the WGWW minimum BAS standards presented in Table XX.1 (see below) which assumes that the impact minimizations of Table XX.2 are required, but this draft CAO proposes no such minimization. The wetland buffers specified in 19.70.250 C. also differ in unexplained ways from the buffer recommendations of the City's wetland BAS consultant ATSI (2016). What is the purpose of contracting for expert BAS advice and then ignoring it?

The short of it—the wetland buffer standards proposed in 19.70.250 B. and C. are not supported by the referenced BAS and are not acceptable for Anacortes whatever some other jurisdictions may find expedient to do.

Table XX.2 Required measures to minimize impacts to wetlands
(Measures are required if applicable to a specific proposal)

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

**Table XX.1 Wetland Buffer Requirements for Western Washington
if Table XX.2 is Implemented and Corridor Provided**

	Buffer width (in feet) based on habitat score			
Wetland Category	3-4	5	6-7	8-9
Category I: Based on total score	75	105	165	225
Category I: Bogs and Wetlands of High Conservation Value	190			225
Category I: Coastal Lagoons	150		165	225
Category I: Interdunal				225
Category I: Forested	75	105	165	225
Category I: Estuarine	150 (buffer width not based on habitat scores)			
Category II: Based on score	75	105	165	225
Category II: Interdunal Wetlands	110		165	225
Category II: Estuarine	110 (buffer width not based on habitat scores)			
Category III (all)	60	105	165	225
Category IV (all)	40			

E. Title 19.70 CAO - Section on Fish and Wildlife Habitat Conservation Areas (FWHCAs).

(My proposal to retain 15 streams specifically named in current 17.70.540 A.7.a. with appropriate updates to language has been moved to my nominations of local significance letter of 12-----/19. See that letter for the details and justification for the proposal.)

(original notes kept here)

Note. On 10/21/19 two days before the 10/23/19 PC meeting, the City received a new 27 page BAS stream buffer report from GeoEngineers, Inc. The City already commissioned a BAS stream report from ATSI in 2016. Ironically, the new GeoEngineers report mostly analyzes the 15 named streams that were removed from the 1st draft of the CAO more than 2 years ago. This new report has not been included in any Planning Commission agenda packet. Could someone explain what this new GeoEngineers report is for and how it relates to the draft CAO under discussion which is dated May, 2019, 5 months before the GeoEngineers report?? Also creating confusion, this report appears to refer to numbered sections of a previous draft of this CAO, not the current 2nd draft now under discussion.

Note. The Anacortes Critical Areas Map seems to have disappeared from easy access on the City website. I can't find it anywhere.

(I just emailed GIS with a request to add this map to the GIS web page. In response, GIS emailed me 2 versions of this map, dated 2009 and 2010. The new 10/21/19 GeoEngineers report Figure 2 adds yet another version of the critical areas map. All 3 of these maps contain positional or naming errors for streams, but each has different errors, some seriously wrong. I shall be communicating directly with GIS and Planning Dept to get these errors corrected.

Why does every out-of-town consultant sitting at an out-of-town desk the City hires to work on this map think they know better than the actual facts-on-the-ground where water will flow! For example, the 10/21/19 GeoEngineers Report mistakenly shows Whistle Creek as connected to Whistle Lake which is an unexplainable reversion to an earlier error corrected on the 2009 and 2010 maps. There is a drainage divide between the lake and the creek which is clearly visible on topographic maps and clearly evident to anyone who walks to the lake on Trail 20. It has been common local knowledge since the days of the pioneers that Whistle Lake drains south by a stream into Lake Campbell, which can also be clearly discerned by looking at a topographic map.)

Add a new subsection to 19.70.330 to contain the **permitted activities** appropriate to FWHCAs unbundled from the impossibly conflated section of Table 19.70.040(050) - Permitted Alterations - Recreational Areas/Facilities.

19.70.340 and a new 19.70.310 A.11.d. (see above) **are both required** since there are many significant unnamed streams and headwater reaches of some of the 15 in the ACFL needing CAO protections that are not specifically named or located on the Critical Areas Map.

There may also be unnamed seasonal streams outside of the ACFL that meet the stream criteria of 19.70.340 A. Typically these would also be designated and protected as flowing waters within wetlands, but perhaps not all of them. AMC 17.70 recognized this by having both named streams and standard riparian protections in the code since the 2005 major CAO update and this must be continued.

Table 19.70.340-1 Stream Buffers

The new 10/21/19 GeoEngineers report on pages 13-15 contains BAS recommendations required to support the proposed 50' stream buffers.

At minimum, GeoEngineers BAS recommendations must be incorporated into Section 19.70.340 if the 50' stream buffers remain.

19.70.340 C. - Buffer Reduction Standards

This whole subsection is either redundant with or contradictory to subsection 19.70.360 – Buffer Width Averaging. Also, item 3. is not supported by facts or logic. A disturbed buffer with reduced buffer functions should not be allowed a greater reduction than a buffer with undisturbed natural function which contradicts the intent of subsections 19.70.340 B.3.a. - Increased Stream Buffer Widths and 19.70.360 A.1. - Buffer Width Averaging.

Delete all of the current language of **19.70.340 C.** and replace with the following simple sentence.

See subsection 19.70.360 – Buffer Width Averaging for stream buffer reduction standards.

F. Definitions.

I presume it is understood that the draft of the definitions section is by no means complete or adequate.

Mitigation is defined twice. These 2 definitions need to be appropriately combined.

Qualified professional needs the standard definition typical of CAOs. The Anacortes CAO is reverting to the previous use and definition of qualified professional valid for all types of critical areas.

Reasonable use needs a specific legal definition or reference here in addition to section 19.70.055.

Recreation, passive or low impact.

Recreation, active.

Develop more specific and appropriate definitions of active and passive recreation in the Parks and Recreation and ACFL Comprehensive Plans, CAOs and SMP that are appropriate to

environmentally sensitive and critical areas and that are resistant to manipulated and corrupted interpretations by special recreational interests with no demonstrably serious concern for environmental impact. There may need to be definitions specific to particular plans as discussed in my comments above.

Appendix 1.

From: Ross O. Barnes

Sent: Thursday, November 14, 2019 1:46 PM

To: Libby Grage <libbyb@cityofanacortes.org>; Don Measamer <don@cityofanacortes.org>

Subject: What happened to the PUD or equivalent in Anacortes??

The City is currently reviewing and deciding on a new revision of the Anacortes Critical Areas Code after spending years on a complete makeover of the Comprehensive Plan and development regulations. One of the key provisions of the old Titles 16 and 17 that provided essential flexibility to accommodate and protect critical areas in the landscape while maintaining overall development density and thus land value was the PUD. The PUD provided for re-arranged or smaller lots and developed areas in exchange for placing and protecting critical areas in open space or NGPE tracts. This proved especially valuable, even essential, in the R1 zone.

As part of my review of the draft CAO I looked for PUD type provisions in the new Title 19. Perhaps because of the horrible and confusing complexity of Title 19, I could find no such PUD-like provisions for flexible development design. All I could find were project design specifications focused on provision of active use areas with inflexibly rigid space/area requirements that could not possibly accommodate the natural areas protections required for critical areas and their buffers. Have I missed some essential PUD-like flexibility in Title 19? Please show me where it is and how the City intends to accommodate critical areas in the developed landscape without destroying the development potential and value of the land.

I received a further shock to discover that the PUD provisions of Titles 16 and 17 essential to accommodating critical areas in the landscape were removed from the code 3 years ago in December, 2016. This early elimination of PUD flexibility suggests the apparent absence in Title 19 was intentional for some reason I do not comprehend. What was the justification and reason for removing the PUD provisions from Title 16 and 17?

I am looking forward to you leading me (and perhaps many others) out of my current puzzlement and confusion.

Ross O. Barnes, PhD
1004 7th St., #202
Anacortes, WA 98221
(360) 488-2347

TO:

Anacortes Planning Commission,
Anacortes Department of Planning, Community & Economic Development

FROM:

Ross O. Barnes, PhD

RE: Work Sessions/Hearings on Draft Title 19 CAO -- Nominations of Wetlands of Exceptional Local (Regional) Significance, Wetlands of Local Significance, FWHCAs of Local Significance, and a New Critical Area Category of Local Significance.

These comments are also a comment response to the SEPA DNS notice of decision on PLN-2019-0010.

I note that several nominations and proposals regarding (1) wetlands of exceptional local (regional) significance, (2) wetlands of local significance, (3) FWHCAs of local significance, and (4) a proposal to re-codify the ACFL as a new 6th type of critical area have been made in public comments.

These are significant nominations in their own right under the terms of the current CAO code Title 17.70, but for obvious reasons are folded into the current hearings on revising and re-codifying the City's CAO. A similar process occurred in the hearings leading up to the 2005 major CAO update.

However these nominations may be in danger of being somewhat overlooked within the blizzard of comments on the new Title 19.70 draft CAO, so I wish to highlight them here so they can be clearly seen and considered on their own merits.

If additional nominations are made they will be added to this list.

1. Evergreen Islands in a comment letter on 11/20/19 nominated the Smiley's Bottom natural area in total as a FWHCA of local significance.

2. Evergreen Islands in the same letter nominated the Smiley's Bottom wetland(s) as a Category I wetlands of exceptional local (regional) significance.

3. In a comment letter on 11/17/19 Mr. Barry proposed to re-codify the ACFL in a new section separate from other FWHCAs which better recognized its nature and local significance.

4. In a comment letter on 11/13/19 Mr. Barnes proposed to retain and upgrade the status of the reaches of the 15 named streams not in culverts or ditches to a FWHCA of local significance, and multiple other commenters have supported this. Since this is my proposal I will re-state it with revised introduction here.

Justification and summary:

Add a new subsection to 19.70 to retain 15 streams specifically named in current 17.70.540 A.7.a. with appropriate updates to language. It seems appropriate to add this to subsection 19.70.310 A.11. because the natural or restored channels of these 15 streams

- (a) were nominated as the most significant and important stream segments in Anacortes and Anacortes' UGA outside of the ACFL,
- (b) reflect the expressed wishes and values of the community to highlight their protection,
- (c) were professionally validated and approved accordingly for the 2005 major CAO update,
- (d) retain the characteristics justifying their specific names and significance, and
- (e) as so designated, in no way interfere with the uniform application of section 19.70.340 regulations to all streams in Anacortes.

The "not in culverts or artificially created ditches" was retained because obviously water flowing in pipes and storm drainage ditches are not habitats of local significance, and as stated by Planning staff and consultants, the whole stream length is otherwise designated and protected under the terms of section 19.70.340.

Other modifications to 17.70 language include –

- (a) The specific language about Anaco Bourn is eliminated as redundant with the general wording of this section and other sections of this ordinance, as the same situation pertains to many of the streams named here.
- (b) The "two separate regulation criteria" present in 17.70 have been eliminated.
- (c) I considered updating the date from 2003 to 2019 to capture any new stream channel restorations, but decided to retain 2003 because stream channel restoration projects may have specific permit conditions that would be incompatible with a "local significance" designation such as reduced buffers, etc.

Proposal:

Add a **new subsection 19.70.310 A.11.d.** as follows.

The following fifteen streams are hereby designated as FWHCAs of local importance for those reaches that are not in culverts or artificially created ditches as of December 31, 2003: 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. Nominal stream locations are shown on Anacortes Critical Areas Map. Stream protections as specified in Section 19.70.340 must apply.

Related comment:

19.70.340 and a new 19.70.310 A.11.d. (see above) **are both required** since there are many unnamed streams in the ACFL needing CAO protections that are not specifically named or located on the Critical Areas Map. There may also be unnamed seasonal streams outside of the ACFL that meet the stream criteria of 19.70.340 A. Typically these would also be designated and protected as flowing waters within wetlands, but perhaps not all of them. AMC 17.70 recognized this by having both named streams and standard riparian protections in the code since the 2005 major CAO update and this must be continued.

5. Mr. Barnes has made proposals to retain both the designation process and existing designations of

- (a) Category I wetlands of exceptional local (regional) significance, and
- (b) Category II wetlands of local significance,

as codified in 2005, and multiple other commenters have supported this. Since these designations are now 14 years old, it is totally appropriate to retain the designations which reflect the expressed values of the community, but update the management standards to reflect the new general code language while retaining at least the same level of buffer protection now provided under Title 17.70. Again, since this is my proposal I will restate my previous comments in revised form here.

Justification and summary:

Retain (1) provisions for designation and (2) existing designations for wetlands of locally significant function and value in the CAO code because these locally significant wetlands

- (a) were nominated as significant and functionally important wetland habitats in Anacortes deserving special recognition,
- (b) reflect the expressed wishes and values of the community to highlight their protection,
- (c) were approved accordingly for the 2005 major CAO update,
- (d) retain the characteristics justifying their special significance, and
- (e) as so designated, except for retention of the special buffer standards of the original designation as a minimum, in no way interfere with the uniform application of the standard wetland protections provided by Chapter 19.70.

Planning Dept and consultants have argued that the new wetland rating system makes "local significance" obsolete. However, rating systems and buffer standards change

and the local significance designation provides a more stable recognition of local community wishes and values as a supplement to the changing criteria.

Standard Category buffer widths of Chapter 19.70 shall apply except these must not fall below

- (a) the existing minimum standard buffer widths of 110' as stated and documented by Tess Cooper on 11/13/19 for Ship Harbor and the Anacortes Airport, or
- (b) as stated by the special provisions of existing section 17.70.500 as transferred to **a new 19.70.210 F.** which is part of the proposal below.

Proposal:

Add new sections to Title 19.70.210 CAO code on wetlands as follows.

19.70.210 B.1. - Category I wetlands

Retain "*Wetlands of exceptional local or regional significance.*" from 17.70 as a new item g.

19.70.210 B.2. - Category II wetlands

Retain "*Documented wetlands of local significance.*" from 17.70 as a new item d.

Add new subsections to 19.70.210.

Add **new subsections D. and E.** for language retained from 17.70.320 D. and E. regarding wetlands of local value and significance nominated and approved for the 2005 CAO major update, appropriately revised as follows.

D. Wetlands of Exceptional Regional Significance. Pursuant to subsection B.1.g. of this section, the following wetlands are designated as Category I wetlands:

1. Cannery Pond (West of the State Ferry Terminal), with provisions of 19.70.210 F.;

2. Ship Harbor Interpretive Preserve (East of the State Ferry Terminal), with provisions of 19.70.210 F., and standard buffer widths must not be reduced below those existing on December 31, 2019, which are 110 feet;

(Justification note: original Category II buffer specification recognizes the preponderance of existing development surrounding the wetland.)

3. Any otherwise regulated Category II wetland, as rated under subsection B.2. of this section, that is within the watersheds of Little Cranberry Lake, Whistle Lake and Heart Lake and that drains by natural seasonal surface water connection into those lakes or their upstream associated wetland systems.

E. Locally Significant Wetlands. Pursuant to subsection B.2.d. of this section, the following wetlands are designated as Category II wetlands:

1. The wetlands on or adjacent to the Port of Anacortes owned property at the Anacortes Airport, and standard buffer widths must not be reduced below those existing on December 31, 2019, which are 110 feet.

(Justification note: there is a complex of wetlands on and adjacent to the airport that together have greater local ecological significance than individual wetland ratings provide, and the original Category III buffer specification recognizes the constraints of existing development and FAA rules.)

Retain specifications in existing 17.70.500 - Nonconforming activities, which were part of the original 2005 special criteria for the Ship Harbor and Cannery Pond wetlands of exceptional regional significance, in a **new subsection F**.

(Justification note: wetland buffers are constrained by existing development, or for Cannery Pond, partially available in expanded form in the Shannon Point natural area/study reserve.)

F. *Nonconforming uses with respect to wetlands of exceptional regional significance in 19.70.210 D.*

1. Nonconforming uses relative to the provisions of Chapter 19.70 must be governed by Chapter 19.49 and the provisions of sections 19.70.035 and 19.70.050, except as specifically authorized in subsections 2. and 3. of this section.

2. State Ferry Terminal. The existing developed footprint, except for infill between the toll booth area and 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 and redevelopment may occur provided there is no net loss of ecological function and value in the adjacent buffer areas for Cannery Pond and Ship Harbor Interpretive Preserve wetlands.

3. Shannon Point Marine Center. The buffer area surrounding Cannery Pond must conform to the following distances: two hundred twenty-five feet along the western boundary of the wetland to its southwestern corner, with this line extending southward parallel to, and one hundred feet east of, the access road to a point four hundred feet south of the southern edge of the wetland; the southern edge of the buffer will be an east-west line perpendicular to the east property boundary connecting with the west buffer boundary as described above. Where the access road falls within the buffer boundary (west side of wetland), SPMC may undertake maintenance and repair of the road and underground utilities as specified in Section 19.70.040 of this chapter.

Thank you for considering these important nominations and proposals.

Ross O. Barnes, PhD
1004 7th St., #202
Anacortes, WA 98221
(360) 488-2347

Cooper, Tess

From: Kyle Loring <kyle@loringadvising.com>
Sent: Monday, December 9, 2019 4:44 PM
To: Cooper, Tess
Cc: Tom Glade (EvergreenIslands)
Subject: PLN-2019-0010 CAO Update -- DNS comments
Attachments: PLN-2019-0010 -- Anacortes CAO update -- EI DNS cmts.pdf

Dear Ms. Cooper,

Please find attached comments on behalf of Evergreen Islands to address the Determination of Non-Significance issued for Anacortes' CAO update.

Sincerely,
Kyle Loring

Kyle A Loring

LORING ADVISING PLLC

PO Box 3356 | Friday Harbor, WA 98250

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Cooper, Tess

From: tom.glade@comcast.net
Sent: Tuesday, December 10, 2019 5:11 PM
To: Measamer, Don
Cc: Evergreen Islands Board of Directors; Kyle Loring (LoringAdvising); Grage, Libby; Cooper, Tess
Subject: FW: PLN-2019-0010 CAO Update -- DNS comments
Attachments: PLN-2019-0010 -- Anacortes CAO update -- EI DNS cmts.pdf

Don,
Here's the e-mail that Mr. Loring e-mailed to Tess Cooper yesterday (12/9/2019).

I don't understand how Ms. Cooper failed to receive it, especially after I checked the City's Planning Department webpage which posted Ms. Cooper's e-mail address as :

mailto:tessc@cityofanacortes.org

As you can see by inspection, both addresses are identical.
Perhaps, the City's website is wrong.

Thank you for the time you took to discuss the CAO with Evergreen Island boardmembers,
Tom Glade
President, Evergreen Islands

From: Kyle Loring <kyle@loringadvising.com>
Sent: Monday, December 09, 2019 4:44 PM
To: tessc@cityofanacortes.org
Cc: Tom Glade (EvergreenIslands) <tom.glade@comcast.net>
Subject: PLN-2019-0010 CAO Update -- DNS comments

Dear Ms. Cooper,

Please find attached comments on behalf of Evergreen Islands to address the Determination of Non-Significance issued for Anacortes' CAO update.

Sincerely,
Kyle Loring

Kyle A Loring
LORING ADVISING PLLC
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By Email

December 9, 2019

Tess Cooper, Associate Planner
Planning, Community & Economic Development Department
PO Box 547
Anacortes, WA 98221
tessc@cityofanacortes.org

Re: PLN-2019-0010: Evergreen Islands Comments -- SEPA Determination of Non-Significance for City of Anacortes Critical Areas Ordinance Update

Dear Ms. Cooper,

I'm writing this letter on behalf of Evergreen Islands ("Evergreen") to request that the City of Anacortes ("City") withdraw the Determination of Non-Significance ("DNS") that it issued November 27, 2019, for the City's Critical Areas Ordinance Update ("Update"). Evergreen Islands' ("Evergreen") mission is to promote, protect, and defend the unique ecosystem involving the saltwater islands of Skagit County and their environs as it relates to the built and natural environments. Evergreen has spent a considerable amount of time over the past forty years protecting locally significant treasures like the Ship Harbor wetland and the Anacortes Community Forest Lands that would be exposed to new risks by the Update. Evergreen asks that the City withdraw the DNS because the SEPA Checklist did not identify or evaluate likely significant impacts that the Update would allow to critical areas like those or through the reasonable use exception. Although the comments below suffice to identify the areas of concern for Evergreen, the group welcomes the opportunity to sit down with City representatives to discuss and address these concerns.

I. BACKGROUND

The text below identifies Update provisions that would allow impacts, the City's threshold determination, and SEPA Environmental Checklist deficiencies.

A. The Update Would Allow Impacts from Passive Outdoor Activities, Recreational Facilities Like the Guemes Channel Trail, Public Services, and the Reasonable Use Exception.

The Update would allow impacts due to a variety of activities, some of which would trigger the need to attempt to compensate for impacts through the mitigation sequence.

1. Recreational Areas/Facilities.

The Update would authorize construction of recreational facilities like public park or public recreational access and private pedestrian walkways and public trails in critical area buffers.¹ For some trails, viewing platforms, fish access, foot bridges, and other limited public park or public recreational access facilities, the Update would authorize development and the removal of trees and native vegetation limited only by the amount desired to “accomplish the recreational function.”² Similarly, the Update would authorize private pedestrian walkways and public trails of unlimited length as long as they paralleled the critical area, were developed in the outer 25% of the buffer area, and spanned up to 6 feet. These trails could be paved as long as the pavement qualified as “permeable pavement,” or “pervious concrete, porous asphalt, permeable pavers, or other forms of pervious or porous paving material intended to allow passage of water through the pavement section. It often includes an aggregate base that provides structural support and acts as a stormwater reservoir.”³

2. Public Services.

The Update would authorize “public services” in both of critical areas and buffers.⁴ These public services include, but are not limited to, water supply, sewer and stormwater management facilities, electric power, telephone, cable television, gas, and transportation for persons and freight.⁵ Although these developments would warrant application of the mitigation sequence, they would ultimately be allowed. We believe that the City has characterized the Guemes Channel Trail at least in part as a transportation project.

3. Reasonable Use Exception.

The Update authorizes development of critical areas and buffers where the application of the Update would otherwise result in denial of all reasonable and economically viable use of a property.⁶ The Update does not define “all reasonable economic use.”

4. Passive Outdoor Activities.

The Update also authorizes exempt activities in critical areas and buffers that likely will

¹ Draft Critical Areas Update, AMC 19.70.050 (Permitted Alterations), 18 (May 2, 2019) (“Update”).

² Update, AMC 19.70.050 (Permitted Alterations), at 18.

³ Update, AMC 19.70.050 (Permitted Alterations), at 18; AMC 19.12.020.

⁴ Update, AMC 19.70.050 (Permitted Alterations), at 16.

⁵ *Id.*

⁶ Update, AMC 19.70.055 (Reasonable Use Exception Variance), at 19.

impact them. For example, activities labeled “passive outdoor activities” would be allowed in critical areas and buffers, including “educational activities, scientific research, interpretive field trips, bird watching, public beach access, water-related activities, bicycling, and hiking.”⁷ Although the Update includes language that those activities are permitted “[w]hen it can be demonstrated that there will be no adverse effect,” it exempts those activities from any public review process that could require such demonstration.⁸

B. The SEPA Environmental Checklist Does Not Evaluate Impacts From These Exemptions and Permitted Alterations.

The SEPA Environmental Checklist (“Checklist”), prepared October 25, 2019, does not evaluate the impacts from activities like those allowed pursuant to the provisions identified above, including impacts from paving the Guemes Channel Trail. It also does not identify the number of parcels that might be fully restricted by the Update and thus seek to take advantage of the reasonable use exception. Instead of addressing impacts to those projects in response to question A.9, “Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal?” the Checklist responds that “This non-project action affects all of Anacortes city limits and the adjacent Urban Growth Area within Skagit County. There are many pending development proposals, however the changes will only impact new development proposals after the ordinance is adopted.”⁹ And in response to questions about impacts to Environmental Elements under Section B, the City states that “ITEMS 1 THROUGH 16 RESPONSES ARE GENERAL IN NATURE BECAUSE THIS IS A NON-PROJECT ACTION.”¹⁰ The most common general response to questions about impacts to earth, air, water, plants, plants, and more is a variation of the following:

Development that is proposed will be consistent with the City’s development regulations and will be required to comply with City, State, and Federal requirements regarding animals in regulated critical areas and Fish and Wildlife Habitat Conservation Areas. The intent of the update is to provide an overall increase in environmental protections to sensitive animal species.¹¹

The Supplemental sheet for nonproject actions likewise omits an evaluation of environmental impacts. The City responds to the first question about increases in discharge to water, emissions to

⁷ Update, AMC 19.70.040 (Exempt Activities), 11 (May 2, 2019).

⁸ *Id.*

⁹ SEPA Environmental Checklist, 2 (Oct. 25, 2019).

¹⁰ *Id.*

¹¹ *Id.* at 6.

air, production, storage, or release of toxic or hazardous substances and noise production that, ***“[i]n general, new development creates additional hard surfaces, traffic, and noise, but it is anticipated the draft amendments would limit growth and development in sensitive environmental areas and is therefore not likely to increase the above listed actions.”***¹²

In response to the proposal’s likely effects on plants, animals, fish, or marine life, the Checklist states that, ***“[p]lanned growth enabled under this proposal is limited in environmentally sensitive areas and is therefore primarily focused within already developed areas such that impacts to plants, animals, fish or marine life are not likely to significantly increase as compared to existing land use plans.”***¹³ The Checklist avoids investigating the Update’s broad authority to develop recreational facilities in and near critical areas, responding that measures to protect or conserve plants, animals, fish, or marine life are ***“[e]xisting Federal, State laws and City development regulations have been adopted to protect and conserve plants, animals, fish, and marine life. The City has adopted a Shoreline Master Program that aims to protect shoreline resources. Specifically, future development under this proposal would be subject to critical area buffer restrictions and mandatory mitigation in environmentally sensitive areas including wetlands, fish and wildlife conservation areas, protections for endangered and threatened species, and priority habitats.”***¹⁴

Perhaps most pertinent here, the Checklist responds to questions about impacts to critical areas and shorelines with misleading suggestions that the Update would protect them. Regarding critical areas generally, the response states that, ***“[t]he proposal is specifically for the purpose of the protection all [sic] of the above environmentally sensitive areas. This amendment addresses environmental evaluation requirements, prohibits certain uses and activities, establishes protective buffers, and mandates no net loss through mitigation standards. The language in the document has been strengthened, the mistakes have been corrected, and unclarities have been clarified.”***¹⁵ In response to shorelines, the City states that ***“[t]he amendment integrates the shoreline master program requirements and provided environmental protection to sensitive shoreline resources. The regulations prohibit incompatible uses in the shoreline critical areas and implement protective buffers.”***¹⁶

Thus, nowhere does the Checklist that formed the basis for the DNS acknowledge or evaluate likely impacts from the Update.

¹² *Id.* at 12.

¹³ *Id.*

¹⁴ *Id.* at 12.

¹⁵ *Id.* at 13.

¹⁶ *Id.* at 13.

C. The City Issued the DNS Without Evaluating Impacts.

On November 27th, the day before Thanksgiving, the City issued a Determination of Non-Significance for the Update. The DNS describes the proposal as a non-project legislative action to amend the Critical Areas regulations in accordance with Growth Management Act ("GMA") requirements and notes that those regulations address activities and development in and near wetlands, streams, and fish and wildlife habitat. The DNS notes that review of an environmental checklist and other unspecified information have led to the conclusion that the Update "does not have a probable significant adverse impact on the environment" and that an Environmental Impact Statement is not required.

II. DISCUSSION

Under SEPA, the City must identify for evaluation the probable significant impacts of the Update identified above. The basic purpose of SEPA is to require local government agencies to consider the total environmental and ecological factors to the fullest extent when taking "major actions that significantly affect the quality of the environment." *Sisley v. San Juan County*, 89 Wn.2d 78, 82, 569 P.2d 712 (1977). In issuing a threshold determination of a proposal's impacts, the local government must consider the various environmental factors even if it concludes that the action does not significantly affect the environment and therefore does not require an EIS. *Sisley v. San Juan County*, 89 Wn.2d 78, 83-84, 569 P.2d 712 (1977) (citing *Juanita Bay Valley Cmty. Ass'n v. Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973)). Conversely, a threshold determination made in the absence of complete information thwarts the SEPA purpose to ensure that the full disclosure of environmental information informs the government's decision-making process. *See id.* at 84. And "[t]he SEPA policies of full disclosure and consideration of environmental values require actual consideration of environmental factors before a determination of no environmental significance can be made." *Sisley*, at 87 (citing *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976)). An agency that issues a DNS must demonstrate "that environmental factors were considered in a manner sufficient to amount to *prima facie* compliance with the procedural requirements of SEPA." *Juanita Bay*, 9 Wn. App. 59, at 73.

Non-project actions like the Update are not exempt from adequate SEPA review of potential impacts. WAC 197-11-055(2)(a)(i) (the fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts). As the Washington Court of Appeals held in *Alpine Lakes Protection Society v. DNR*,

jurisdictions may not defer SEPA review to later stages of actual development if they have adequate information for review. 102 Wn. App. 1, 16, 997 P.2d 373 (1999). In reviewing SEPA challenges to non-project actions, the Growth Management Hearings Board has stated that

Thus, when a city amends its Comprehensive Plan or changes zoning, a detailed and comprehensive SEPA environmental review is required. SEPA is to function “as an environmental full disclosure law,” and the City must demonstrate environmental impacts were considered in a manner sufficient to show “compliance with the procedural requirements of SEPA.”

Ass’n of Citizens Concerned About Chambers Lake Basin, et al. v. City of Olympia, GMHB No. 13-2-0014, Final Decision and Order, 15 (Aug. 7, 2013).

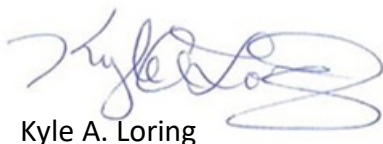
In issuing the DNS, the City has not demonstrated that it considered environmental factors in a manner sufficient to demonstrate *prima facie* compliance. As explained at Section I.B above, the Checklist rested on the assumption that the Update would increase overall environmental protections and thus refrained from identifying and evaluating provisions that would allow impacts. It also rested on the assumption that general responses would suffice for a non-project action. However, as explained at Section I.A above, it allows public and recreational development and activities variously in critical areas and/or their buffers, as well as a reasonable use exception throughout the city. Regardless of the wisdom of those provisions, they merit environmental review before issuing a DNS under SEPA.

Thus, nowhere does the Checklist that formed the basis for the DNS acknowledge or evaluate likely impacts from the Update.

III. CONCLUSION

The DNS issued without adequate evaluation of the Update’s likely impacts for public recreational development and the application of the reasonable use exception. Consequently, Evergreen requests that the City withdraw its DNS and evaluate those impacts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle A. Loring", with a stylized flourish at the end.

Kyle A. Loring

Cooper, Tess

From: Bob Barry <babarryness@gmail.com>
Sent: Sunday, December 8, 2019 7:33 PM
To: Cleland-McGrath, Christine; Doll, Andrea; McNett, Jeremy; Cooper, Tess
Subject: Passive Recreation
Attachments: Passive Rec meaning Comment Submittal.pdf

I hope that the attached information will help clear up the confusion regarding the term "Passive Recreation".

Public Comment on the proposed CAO Ordinance Update, Draft 2.

To: City of Anacortes Planning Commission
From: Robert Barry Resident: 1914 22nd Street, Anacortes WA 98221
Date: December 8, 2019
Subject: Meaning of “Passive Recreation” term.

Passive Recreation Activities ???

The explosive growth of public outdoor recreation in the 1960s combined with passage of legislation such as the Wilderness Act and the Land and Water Conservation Act forced federal and state public lands managers to address the issue of what recreation uses should be allowed in undeveloped wildland areas. At first the various agencies tried to just list allowable uses on their lands. It didn't work. There was no consistency between agencies on allowed uses, and the minute an agency published its allowed use list, the public would ask about uses which hadn't even been considered.

Fairly quickly a consensus evolved that activities allowed in undeveloped wildlands would be limited to for non-motorized, low-impact, dispersed, activities which required essentially no facility development. Then in the late 1960s the Federal Bureau of Outdoor Recreation (BOR) slapped the label “Passive Recreation” on this loosely defined package of uses.

Because the primary function of the BOR was to distribute grant funding to state and federal agencies engaged in providing outdoor recreation opportunities, “Passive Recreation” became established as part of the professional jargon understood by wildland recreation managers.

The precise definition varies among the agencies which use it, but the nearly universal delineation of the factors which are necessary and sufficient for an activity to be considered “Passive” is that the use be:

- Non-motorized;
- Does not significantly impact natural, scientific, or educational values so as to maintain the resource base for long term use;

- Does not require site development, facilities, or services other than trails for access and basic provision for public safety;
- Offers constructive, restorative, and pleasurable human experiences and fosters appreciation and understanding of natural systems and their value;
- Does not degrade or impair the experience of other area uses;
- Does not require setting aside areas for the exclusive or primary use by a particular group or for a specific activity.

Among professional who are aware of its exact meaning the term “Passive Activity” is convenient shorthand for this listing of criteria. The definition does provide a clear, consistent basis for determining what activities are allowable in a given situation or area, but it does require being specific in defining the activity under consideration.

The confusion over whether or not bicycling is an allowable use in the Anacortes Community Forest Lands provides a perfect example. Bicycling as it has occurred over the years in the ACFL fits all of the criteria to be considered a passive use. It is a dispersed, low-impact activity requiring no development other than the forest trails providing access for all users, and it does not set aside an area primarily for bicycle use. A bicycle skills training park is a different matter. It concentrates use, requires facility development, and does nothing to enhance appreciation of natural systems and their value.

There is no reason to use the term “Passive Recreation” in the CAO update. Keeping it there will only serve to confuse the City Council’s review. The concept only appears three of four times in the CAO Update Draft 2 document, and it could easily be dispensed with by just some minor rewording. On November 12th I submitted proposed wording changes which would accomplish that purpose, and also pointed out that the wording in question should actually apply to “public use” (scientific, educational , and recreational) rather than just recreation.

Bob Barry
December 8, 2019

Cooper, Tess

From: Cynthia Richardson <richrson@cnw.com>
Sent: Monday, December 9, 2019 5:36 PM
To: Cooper, Tess
Cc: Measamer, Don
Subject: Critical Areas update

Tess,

The discussion at last week's Planning Commission meeting regarding how to include the Anacortes Community Forest Lands in the municipal code was very encouraging.

Staff's suggestion to create a new section focusing on the ACFL, separate from the Critical Areas regulations, seems like a good solution. It will allow the Critical Areas section 19.70 to focus on the development-related regulations, while developing a more complete section under Title 12 which can go into more detail regarding the Forest Lands.

This will create an appropriate hierarchy of documents related to the ACFL:

- The Critical Areas chapter will mention the ACFL under both 19.70.310 - Habitats of Local Importance, and 19.70.350 - Fish and wildlife habitat - Specific Standards for Other FWHCAs (as it does now)
- The new Chapter 12.18 will go into more specifics regarding the significance and purposes of the ACFL and the important guiding regulations.
- The (hopefully adopted soon) ACFL Comprehensive Plan will cover goals, uses, management areas, the Conservation Easement Program, trail maps, fire protection, history, and other specific details.

Bob Barry's draft language is a good start for the new code section, and I hope that staff, citizens, and planning commissioners will refine and enhance that language to be more comprehensive.

In addition, I would encourage modification of the two areas in section 19.70 which already specifically mention the ACFL.

Expand the text of the following section to *clarify the importance of the ACFL* as follows:

19.70.310.A.11. The following Habitats and Species of Local Importance have been designated by the City:

- a. The Anacortes Community Forestlands.

Over 2,800 acres of City-owned forest lands containing three lakes along with their watersheds, and many individually important critical areas including wetlands, streams, steep bluffs, old growth forests, aquifer recharge areas, and others, which together constitute an amazingly diverse and irreplaceable ecosystem which is one of the most unique and complex natural environments in the Puget Sound Region.

b. The March Point Heronry.

Add a little more description here too, including size, location, and importance.

c. The one and one-half acre "Park Reserve" at Cap Sante bounded by 3rd Street, East Park Drive, and Curtis Drive.

Review the following section to be sure that it includes all of the important topics that need to be in the *development* section, and perhaps move any that are not development-related to the new ACFL Chapter 12.18. Reference the new section, so people know to look there for more information.

19.70.350 Fish and wildlife habitat – Specific Standards for Other FWHCAs City-Designated Habitats and Species of Local Importance

C. Anacortes Community Forest Lands.

a. Recreation and Recreation-Related Facilities. Construction of public recreation-related facilities such as trails, benches, interpretive displays, and viewing platforms, may be allowed in fish and wildlife habitat conservation areas or buffers

b. Proposed alterations must be consistent with the adopted Anacortes Community Forest Lands Comprehensive Plan, as amended, **and with Chapter 12.18 of the Anacortes Municipal Code.**

c. Noxious and Invasive Plants. The Skagit County noxious weed ordinance and the ACFL invasive plant control program must be carefully considered in any adjacent development decision. Nonnative plants known to be invasive into the ACFL must be prohibited in landscaping plans of adjacent developments. Where such developments have CC&Rs, reference to this requirement must be included therein.

d. Right of Way Vacations. In the case of street or alley vacations contiguous with an ACFL boundary, the half of the area vacated which is adjacent to the ACFL must be incorporated into the ACFL and subject to all ACFL related requirements.

e. Private Access to ACFL. No new accesses will be established to the ACFL without prior request for such access to the parks and recreation department and the forest advisory board and approval by the city council.

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

g. Boundary Identification. City staff will work closely with property owners and developers to ensure that survey lines adjacent to the ACFL boundary are clearly and correctly marked before any timber and/or vegetation is removed from adjacent property. The forest manager will be involved in the final inspection of boundary lines.

h. ACFL Buffers. City staff will work closely with builders to secure thirty-foot ACFL buffers using all available incentives.

Thank you for all of your hard work on these new regulations, and for listening to the concerns of citizens and planning commissioners. By spending a little more time to develop new ACFL-specific wording, we will be taking an important step forward in protecting this amazing city asset.

Cynthia Richardson
315 V Ave
Anacortes, WA 98221
360-299-9081

Cooper, Tess

From: wetlands2save@frontier.com
Sent: Wednesday, December 11, 2019 2:15 PM
To: Cooper, Tess; Measamer, Don
Subject: CAO Comments So Far
Attachments: Document.pdf

Dear Ms. Cooper and Mr. Don Measamer,

I have attached my comments, so far, with regards to the CAO for Anacortes. I have not seen all the necessary documents, changes, literature, updates/changes to the CAO thus far. There are quite a few documents to wade through and I believe the City needs to slow down the pace on putting out a CAO that doesn't do our Critical Areas justice.

Please provide me with the necessary updates/changes to my email, and public comments as well.

Thank you,

Carol Bordin
POB 3034
Anacortes, WA 98221
360-333-4128 c.

December 11, 2019

Anacortes Planning Commission,

Anacortes City Council,

Anacortes Planning, Community & Economic Development Department

Attention: Ms. Tess Cooper, Associate City Planner

POB 547

Anacortes, WA 98221

Dear City of Anacortes:

I am providing a brief, but concise overview of my comments with regards to the City of Anacortes Critical Areas Ordinance (CAO) that is up for review and revisions. I was unable to attend the former meetings held in the city council chamber due to various familial reasons, but I have been watching the meetings on Channel 10 when they have been available. The following are my comments for the time being.

First of all, I believe that the employees, being the four of them that have been working on the CAO have had a lot of work to do trying to keep things going and keep their jobs secure. I surely appreciate all their effort to work diligently on this complex and important document. They work tirelessly, but are tired, and have their plates full trying to come up with various formats that may not be in the document's or public's best interest to follow, yet work long days and then go to meetings after 8-hour days to be there to help facilitate these meetings in the Council Chambers at 5pm these past winter months. I appreciate your hard work and hope that ***the City slow way down and take the time necessary*** to develop a CAO that we can all accept and be very proud of here in Our Anacortes.

Secondly, I believe that the CAO for the City of Anacortes should not be taken lightly and should have **6 months to one year** of deliberation necessary, starting in January 2020 to come up with a CAO that makes complete sense which protects critical areas from land development since that is what this

ordinance is all about. Why the need to rush through such an important document when it's **not** necessary. The time it takes should be the time it takes to come up with a CAO that protects just that, critical areas that we love and cherish here in our beautiful town and area of Anacortes.

Thirdly, the CAO should and could have strong community support from all its citizens throughout year 2020 before a third and/or 4th draft goes before the Planning Commission for finalization. Holding these meetings thus far have been at the wrong time of year, November and December when families and friends are winding down the year and gearing up for the holidays with one another. No one wants, nor has the time, nor can get away to these meetings because they are coming home from work, preparing meals, tending to children, and all other responsibilities that come with the holiday season. This was bad planning and timing. (It feels like the same old 11th hour tactics to rush important things through for the sake of land development and money-making ventures. I hope this is not the case for the CAO of Anacortes, the City, the Council, and the residents (both people, wildlife and their habitats) of Anacortes.)

Forth, the format of the CAO document should be in a fairly easy-to-follow format. People should not have to go from one part of a document to another and to cross check or cross reference and get stuck in the complexity of several documents. I do so hope that the city will be able to make this one document easy to follow for everyone concerned without undue stress and complications. One good document for ***all*** to understand and utilize makes the best common sense. No need for bells and whistles, cross-checking or labor-intensive complexity even though the CAO is complex in its own right.

Now, you have to ask yourself this question. Do we want to make Anacortes look like another Seattle or Everett, Lynnwood--concrete jungles where there is only concrete and steel with little in the way of green spaces, wetlands, riparian habitats, complex forests—ecosystems in their own right? Or do we want to keep Anacortes forests protected, wetlands and streams protected, keep critical areas for wildlife and their habitats protected—at least what is left for them currently, and, protect, restore, and create more for them, and allow the people of Anacortes and those that tour our area the ability to enjoy its inherent beauty? If we choose the latter, then we need to make sure our Critical Areas Ordinance is strongly in favor of protection, restoration, and enhancement. Let's not build in any of our wetlands, streams, critical areas that should be saved and not developed for the almighty dollar. IF, these critical areas for

wildlife *are* allowed to be destroyed by land development, we won't be able to recover them and they would be truly lost by our hands and our actions, and we all will be worse off without acting to protect them.

Any and all efforts to decrease the size or nature of wetlands, streams, and forests in Anacortes will be a detriment to our area's critical habitats for wildlife. Our town is already fragmented enough, there are no safe corridors for deer, otters, or other wildlife to cross our busy paved road and streets. Pockets of lesser wetlands and large wetlands have already been filled, encroached upon, and eliminated from our city. Why? Streams that once had names, now don't have names and/or have been encroached upon? Why? To bring more people into our limited-capacity island, to have busier roads and traffic, to further eliminate the remaining wildlife by destroying their much needed and life-sustaining habitats is simply called "Progress"? Yes, it is "*progress*" in the sense that we are still progressing **backwards** towards not learning the lessons we have needed to learn to wisely protect our critical areas from development, encroachment, destruction, and elimination. By the way, Southern Resident Killer Whales are also a part of our CAO in the sense that what we do to our critical areas, wetlands, streams, and shorelines effects them in our Salish Sea. They need our voice to protect our Critical Areas as well. Let's take a stand for them as well!

Also, I have not seen all the documents that may still not be available to the public for review. I have not had the time to wade through all the changes to the CAO that have been happening thus far by the City Planning Department on the CAO. There are a lot of missing pieces, and, missing and necessary professionals educated in critical areas and habitats to help lead us and guide us towards a wonderful CAO that we are proud to have developed and implemented here in Anacortes. And, it's going to take time to do this the right way and Not be rushed for the sake of "*getting it done and over with*".

I believe one way to help the City employees and City Council is to ask that citizen committees and or advisory groups be put together---for example like the Govenor's task force for the Southern Resident Killer Whales---that have expertise to work on the many facets of the Critical Area Ordinance such as: wetlands and uplands, streams and riparian areas, forests, forested wetlands and shorelines, shorelines, aquifers and groundwater, geo-hazardous areas, cliffs/bluffs and unstable areas, and others. In this way we would have people right here in our City who have education, training, and experience in CAO development and implementation. I think this would lessen the stress of the tired and drained City employees, Council members, and upset residents and citizens of Anacortes that need to wade through this very important and significant work and document. This is a win-win proposal to the City here and now.

Please, *please* be courageous enough, brave enough, concerned enough, and professional enough to give time to this process of putting together a CAO document that works! One that we can live with and one that protects our critical areas for wildlife, and one that we can hold up that says “no” when we need to say “no” to any development in these critical areas of Anacortes. ***Please slow down!*** Please take some time to be with your family and friends this time of year, a time to draw close to one another and enjoy the holidays in the true sense of the word.

Finally, the areas that need our concern are the following: Smiley’s Bottom wetlands and forested area, Copper pond and forested wetlands, Ship Harbor wetlands and forested shorelines, the Forests of Anacortes in totality, and all those small fragmented areas that need protections by our City CAO, and all those critical areas that I have not mentioned here that I am simply not aware of that *are* critical areas in Anacortes.

Thank you for allowing me to briefly comment on my concerns and questions. I appreciate your time and utmost, deeply, heartfelt concerns for our City of Anacortes and Our Critical Areas Ordinance deliberation. I would like to help the City employees should there be a need for someone with my background in habitat restoration, grant writing, permitting, and environmental education. Also, I’d be happy to help form citizen/advisory committees that would meet and discuss and guide us towards a CAO that truly works and is implemented on behalf of all the remaining Critical Areas and Habitats, and Habitat Areas, Conservation Areas, as they are known in Anacortes.

Respectfully Yours,

Ms. Carol Bordin

POB 3034 (mailing)

3934 W. 12th St. (physical)

Anacortes, WA. 98221

Wetlands2save@frontier.com

(360) 333-4128 cellphone

Cooper, Tess

From: mollyd skagitlandtrust.org <mollyd@skagitlandtrust.org>
Sent: Wednesday, December 11, 2019 4:40 PM
To: Cooper, Tess
Cc: Anne Winkes; Carolyn Gastellum (cgastellum67@gmail.com); Kirk Johnson
Subject: Heronry - draft 2 Critical Area Regulation Update
Attachments: SLT Anacortes CAO Second Comment FINAL & Submitted March 7 2018.pdf; Skagit Land Trust Anacortes Letter Heronry CAO 12.11.2019.docx

Hi Tess

Here is a comment letter from Skagit Land Trust regarding: Draft 2, Anacortes Critical Areas Regulations Update; Great Blue Herons - 19.70.350 Fish and Wildlife Habitat, Great Blue Heron Nesting and Breeding Areas – Year Round Buffers

I have attached

- Skagit Land Trust's comments on year-round buffers for Mach Point dated December 11, 2019
- Skagit Land Trust's original letter submitted March 7 2018 which references the year-round buffers recommended in the above letter.

Please call me if you need this material submitted in another fashion

Thank you

Molly Doran
Executive Director, Skagit Land Trust
360. 428.7878 ext. 202

1020 S 3rd Street
Mount Vernon WA
98273



Skagit Land Trust
PO Box 1017
1020 S 3rd Street
Mount Vernon WA
98273

Tess Cooper
Associate Planner
Planning, Community and Economic Development Dept.
City of Anacortes
PO Box 547
Anacortes WA 98221

December 11 2019

Re: Draft 2, Anacortes Critical Areas Regulations Update; Great Blue Herons - 19.70.350 Fish and Wildlife Habitat, Great Blue Heron Nesting and Breeding Areas – Year Round Buffers

Dear Tess,

Skagit Land Trust wants to clarify our earlier recommendations for Great Blue Heron Nesting Colonies in the Anacortes Critical Area Ordinances. A copy of our March 7, 2018, letter is attached.

Skagit Land Trust believes that the City of Anacortes needs to recognize the unique status of the March Point Heronry as a mega-colony, including using a site-specific year-round buffer of 300 meters (984 feet).

A Great Blue Heron mega-colony is a collection of two hundred (200) or more Great Blue Heron nests. March Point heronry with over 700 nests is the only active mega-colony in Skagit County, and the largest mega-colony in the Salish Sea.

We continue to believe that the City of Anacortes should base its CAO regarding Great Blue Heron colonies on the Washington Department of Fish and Wildlife (WDFW) Management Recommendations for Washington's Priority Habitats and Species: Great Blue Heron (2012), as well as on our more than 20 years of experience stewarding the March Point Heronry. This experience includes information and data

collected by our volunteer citizen scientists who monitor the heronries throughout the breeding and nesting seasons.

We would like to point out a number of reasons why the March Point mega-colony requires a site-specific year-round buffer of 300 meters (984 feet).

WDFW's recommendations stress the uniqueness of individual heronries, and emphasizes that colony size, location, relative isolation, and degree of habituation to human disturbance varies from heronry to heronry. **Skagit Land Trust believes these individual characteristics of a heronry must be considered when establishing a year-round buffer. This is backed up by WDFW guidance.**

- **LOCATION:** The March Point Heronry, is located on a hilltop partially situated in Skagit County and partially in the City of Anacortes, with nearby daytime industries (not housing) below it. It lies in a 15-acre forest between two large undeveloped marine bays. There is no other forest like this in Northern Puget Sound, which is why over 700 nests are found here. The mature isolated forest next to productive foraging habitat is rare. The size of the forest without any development in it, allows the birds to move around as they nest, and to expand the nesting area as needed. The best way to protect this colony is to protect the forest.
- **RELATIVE ISOLATION:** March Point Heronry sits high on a hill without human access or construction of any kind. The background noise of Hwy 20 acts as white noise-- it is relatively quiet in the heronry itself. To a heron, this area is **"undeveloped"**. No one comes near it. Extremely large numbers of herons find sanctuary here precisely because it is isolated topographically with easy access to food sources on the vast tidelands of Padilla and Fidalgo Bays. This relative topographical isolation must be protected. Removing any of the trees or allowing building in the small remaining hilltop forest would decrease auditory and visual isolation and could be catastrophic for the March Point Heronry.
- **DEGREE OF HABITUATION TO HUMAN DISTURBANCE:** Over the past 25 years we have observed that this heronry is particularly sensitive to humans. Citizen science monitors have noted that herons flush whenever they approach the heronry during nesting season. For this reason, we have not allowed monitors to observe from sites within the colony itself or nearby forest.

Finally, it is important to note that this recommendation is backed by science. Washington Department of Fish and Wildlife takes unusual situations such as those found at the March Point Heronry into account in their year-round buffer recommendations. In the abbreviated version of WDFW's management recommendations, Year-Round Buffers, Table 1 (as shown below and also in appendix C on page 5 in our attached letter, dated March 7, 2018) **WDFW states, "When birds in an urban area exhibit behavior of a low tolerance to people, assign the 300-meter buffer regardless of setting."**

Table 1

Year-round Buffers		
Feet	Setting	% built within 1/4 mile of the nest colony
984	Undeveloped	0 - 2%
656	Suburban/Rural	2 - 50%
197 a	Urban	≥ 50%

a When birds in an urban area exhibit behavior of a low tolerance to people, assign the 300 meter buffer regardless of setting.

As noted by our citizen science monitors over the years, the herons at March Point exhibit very low tolerance of humans.

WDFW Management Recommendations clearly state that if a colony is sensitive – even in an urban or suburban environment – greater buffers are justifiable.

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, its protection must be a site-specific 300 meters (984 feet). This will continue to give the herons protection of the majority of the available habitat within the contiguous nest stand. The surrounding forest stand on the hilltop is needed for nesting, buffer, screening and protection (including wind, extreme weather and maintaining micro-climate) of the colony as a whole

The March Point colony is internationally significant for maintaining the current regional resident population of Great Blue Heron in the Salish Sea, so its protection and management should not be compromised.

Thank you for allowing us to comment



Molly Doran

Executive Director, Skagit Land Trust

Skagit Land Trust



March 7, 2018

Libby Grage
City of Anacortes
Planning, Community & Economic Development Department
904 6th Street
Anacortes, WA 98221

RE: Great Blue Heron Critical Areas Ordinance Update

Libby,

Thank you for the opportunity to provide further input on the new Critical Areas Ordinance (CAO) draft regarding Great Blue Herons. The urgency of protecting our local heron colonies and habitat was heightened last spring when the nearly century-old heronry on Samish Island was abandoned midway through the breeding season. Though the cause of the abandonment cannot be narrowed down to one specific trigger, the abandonment highlighted the need to look carefully at local land-use and zoning policies to ensure that protections for this iconic species are as strong as possible.

Skagit Land Trust's suggestions outlined below are based on a number of factors: First, we have relied on the March 2012 Washington Department of Fish and Wildlife management recommendations for Great Blue Herons that have been used by other cities, including Seattle, when developing their management plans. (WDFW's guidelines can be accessed on-line here: <http://wdfw.wa.gov/publications/01371/wdfw01371.pdf> and also see a summary in this letter's Appendix C). In addition to being listed as a priority species to be monitored by the State of Washington, Great Blue Heron nesting sites have been identified by Skagit County as a Habitat and Species of Local Importance (Skagit County Code 14.24.500(4)(a)).

Second, we have called upon more than 20 years of experience stewarding two of the largest Great Blue Heron colonies on the west coast – the March Point heronry and the recently abandoned Samish Island heronry. SLT has conducted annual nest counts at each site for many years, as well as behavioral monitoring during nesting season.

Lastly, a team of volunteers and citizen scientists has been investigating the locations and histories of additional heronries and foraging ground in the Anacortes area. Their work has yielded new information for future planning and critical-areas implementation.

CAO Priority Habitat and Species

The previous CAO lists under A.10.e. as priority habitats and species "Great blue heron nest sites and breeding areas." We suggest that this list be modified to include the following range of habitat types, and the CAO be made consistent with WDFW's management recommendations for each habitat type:

- Nesting colony areas: Identified nesting sites, such as March Point and others as shown



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on, but not limited to, the WDFW heron colony map in Appendix A.

- Former nesting colonies: The habitat of former small colonies should be protected, but especially former larger colony sites.¹
- Pre-nesting habitat or staging areas: Gathering sites used by herons about two weeks before entering a colony to choose mates and build nests.
- Breeding season foraging habitat: Areas that provide the nutrition needed by parents and young for healthy growth and ultimately successful reproduction. Examples include tidal mudflats and nearby uplands along Fidalgo and Padilla bays as well as the Ship Harbor lagoon and wetland area (which includes a proposed location of the Guemes Channel Trail). See Appendix B.
- Non-breeding season foraging habitat: Skagit County herons are year-round residents and identified key non-breeding season foraging habitats should also be protected. See Appendix B.
- Alternate forest potential nesting stands that provide relocation possibilities for herons, which periodically move their nests and colonies. WDFW's recommendation for alternate nesting sites calls for protection of suitable habitat within one kilometer of existing colonies. An example of this is the intact coastal forest of places like Shannon Point, which is in close proximity to an existing colony.

In sum, Skagit Land Trust recommends the City incorporate the specific WDFW management recommendations for Great Blue Herons and apply them to all areas in the City, including smaller colonies, pre-nesting habitat, foraging habitat, alternate forest potential nesting areas and abandoned heronries. Great Blue Heron success is dependent not just upon protection of colony sites occupied during the nesting season, but also the full range of other habitat areas that sustain the city's heron population throughout the year. Doing so is also essential for sustaining the conservation values and ecological functioning at SLT's March Point property as well as other heron nesting areas.

Thank you very much for the opportunity to comment. Please let us know if you have questions or would like to discuss any of the above suggestions.

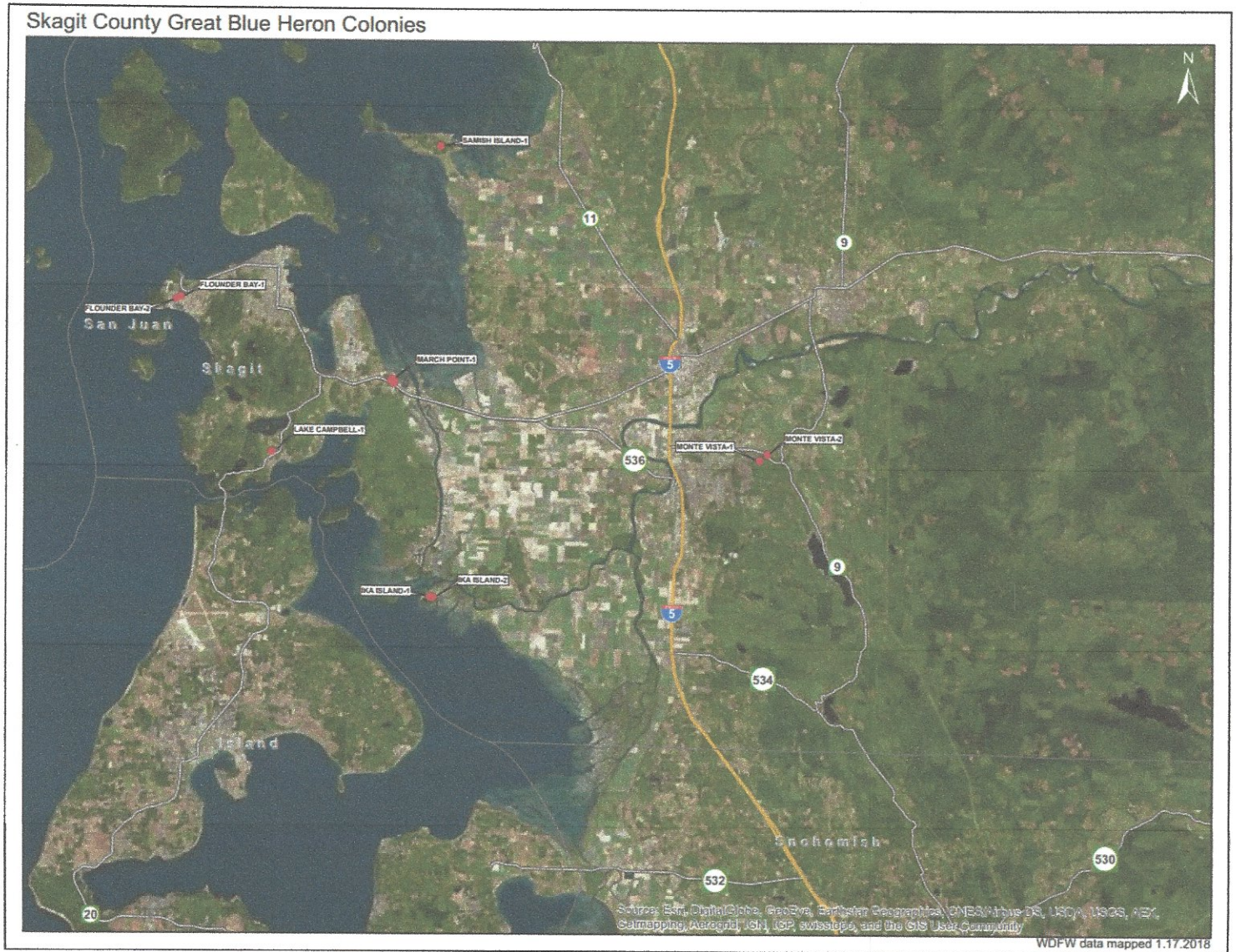
Sincerely,



Michael Kirshenbaum
Conservation Director

¹ From WDFW's *Management Recommendations for Washington's Priority Habitats and Species: Great Blue Herons* (March 2012) "The following guidelines will help you identify, map, and manage an entire HMA. We suggest you use the guidelines to protect any colony, no matter its size or status. Although you should not underestimate the value of smaller colonies, larger colonies generally merit highest priority. Give colonies with at least 20 nests close to coastal and estuarine habitat or along large rivers that drain into an estuary high priority (30). Since colonies inland tend to be smaller, regard all inland nesting aggregations as high priority."

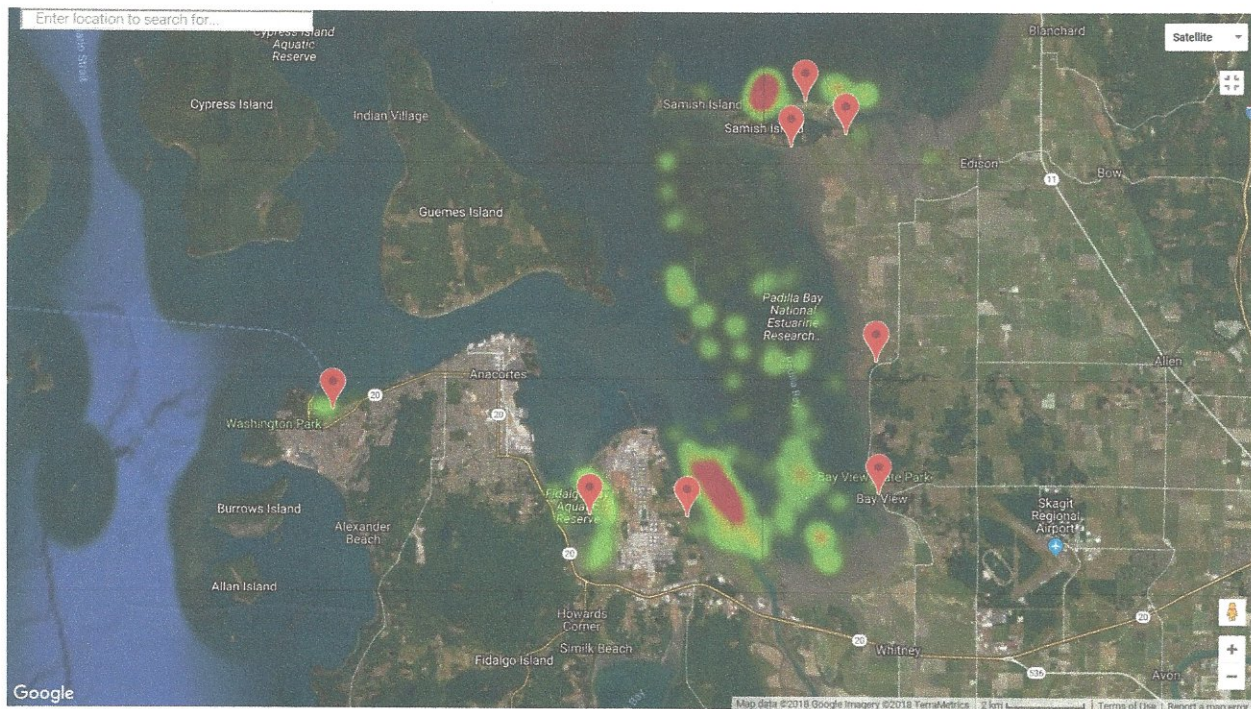
Appendix A: WDFW Known GBH Colonies



Appendix B: Skagit Heron Forage Study and Map

Because Skagit County is home to the greatest concentration of nesting Great Blue Heron in the Salish Sea, an effort was launched in 2014 to document heron foraging near the two largest colonies located on Samish Island and March Point. The Skagit Heron Foraging Study is a Citizen-Science project, led by heron biologist Ann Eissinger, utilizing trained volunteers to record heron numbers from specified shoreline observation points at Samish Bay, Padilla Bay, Fidalgo Bay and Ship Harbor.

The heron foraging has continued over four seasons with data collected over 4-5 months each year to coincide with the heron nesting season. The data collected are expressed in a spatial format using a “heat map” of the study area. Concentrations of herons are visible on the map in a color gradient from green to red – with red as the highest concentration. The results are both visually useful for tracking heron feeding movement over the study area, and for identifying feeding concentrations. In addition, the underlying numerical data provide the actual number of heron at each location indicated on the map. For example, for one site near March Pt., 631 heron were recorded in one observation. High numbers like these reflect both significant heron aggregations, and also high concentrations of marine fish and other organisms that support the heron’s reproduction. As an ecological indicator, the Great Blue Heron serves a vital role.



Skagit Heron Foraging Study Observation Map 2016
Red balloons = observation points

The Skagit Heron Foraging Study is supported by the Wildlife Conservation Trust in cooperation with Oregon State University Department of Biological and Ecological Engineering.

Appendix C: WDFW Recommendations

A streamlined version of the WDFW's recommendations follows. It can also be accessed online at wdfw.wa.gov/publications/00026/abbreviated_great_blue_heron.pdf

“ ... Where applicable, these recommendations should be put into practice consistently across a landscape to be most effective. The following recommendations are not site-specific. Where available, a professional in a relevant field (e.g., wildlife biologist) should evaluate the site and surrounding landscape when applying these recommendations.

INITIAL PLANNING TO PROTECT A GREAT BLUE HERON COLONY:

- Begin by identifying 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.
- All survey activity such as nest tree identification and flagging **should occur in the non-breeding (mid- September to mid-February) season**, and preferably right after breeding season ends.
- 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.
- Map outer perimeter of year-round buffer. The width of this buffer depends on the setting within a 1/4 mile of the nesting colony (Table 1). Using the buffer as a radius, draw a circle around each peripheral nest tree. The outer edge of each circle will serve as the perimeter of the year-round buffer (Fig. 1).

Table 1. Recommended year-round buffers.

Year-round Buffers		
Feet	Setting	% built within 1/4 mile of the nest colony
984	Undeveloped	0 - 2%
656	Suburban/Rural	2 - 50%
197 ^a	Urban	≥ 50%

^a When birds in an urban area exhibit behavior of a low tolerance to people, assign the 300 meter buffer regardless of setting.

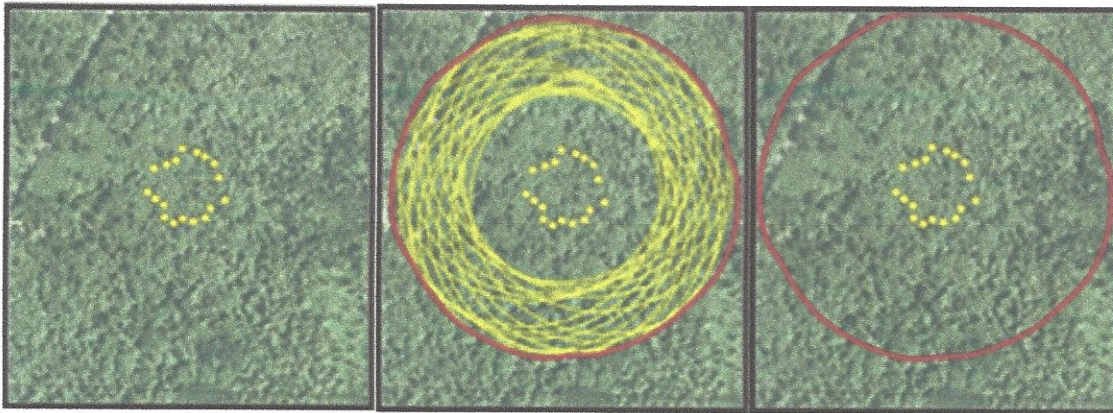


Figure 1. The left diagram shows the outer perimeter nest trees in a colony. In the middle each outer perimeter nest tree was given a 300 m buffer. The right diagram shows the final colony buffer area.

- Map seasonal buffer (Table 2) if any unusually loud activities will occur during breeding (i.e., February – September). These activities should not occur inside of the seasonal buffer during this period. Measure the seasonal buffer starting at the outer edge of the year-round buffer.

Table 2. Recommended seasonal buffers.

Seasonal Buffers ^d		
Meters	Feet	Land Use Activity
200	656	Any unusually loud land use activity
1,000	3,280	Blasting

- Locate potential foraging habitat by mapping all waterbodies within a 1.9 mile radius of the colony. The perimeter and shallow portions are especially important for foraging. [L] [SEP]
- In some colonies outlying satellite nests can be found. These usually are represented by no more than a handful of active or inactive nests located far from the nearest neighboring nest in the heart of the colony. Although these are a part of the larger nesting colony and should be protected, do not use them to map the colony's outer boundary. A satellite nest is any nest located a distance of no less than twice the length of the colony's year-round buffer from its nearest neighboring nest.

MANAGEMENT RECOMMENDATIONS:

COLONY AND YEAR-ROUND BUFFER [L] [SEP]

- Avoid any entry into an active nesting colony or year-round buffer **during breeding season (mid- February to mid-September)**. [L] [SEP]
- Avoid clearing vegetation, grading, and construction. [L] [SEP]

- Direct trails away and close access during the breeding season (February to September). [L] [SEP]
- Allow low impact recreation, like hiking, only during the non-breeding season (mid-September to mid- February). [L] [SEP]
- Limit vegetation removal to enhance wildlife habitat (e.g., eradicating invasive vegetation) or to treat a fire-prone stand. Perform these activities in the non-breeding season under careful supervision of a wildlife biologist. When removing vegetation, avoid noticeable loss of visual screening to the nests. [L] [SEP]
- When feasible, exclude human entry into the nesting colony and year-round buffer by use of fencing or by planting dense thickets of vegetation (see Fencing with Wildlife in Mind). [L] [SEP]

INCURSIONS INTO A COLONY OR YEAR-ROUND BUFFER

- We discourage most activities in the nesting colony and year-round buffer, especially during breeding season. After all options to protect a colony or buffer have been exhausted, you should follow these recommendations:
 1. Avoid all disturbances during in the breeding season (February to September).
 2. Avoid any clearing, grading, or construction in the year-round buffer (and especially in the colony proper). When unavoidable, keep the activity as far as possible and out of the line of sight of active nests. We encourage screening by way of vegetation or topography. [L] [SEP]
 3. Mitigate project impacts. [L] [SEP]

SEASONAL BUFFER, PRE-NESTING AREAS, AND ALTERNATE NEST SITES

- Avoid unusually loud activities in the seasonal buffer area during the breeding season. [L] [SEP]
- Minimize disturbance in pre-nesting congregations when herons are present. Pre-nesting congregations are generally close to the nesting colony (≤ 1 km) and are discernable by an aggregation of birds out- side the nesting colony from February to March, and as early as January. [L] [SEP]
- Protect several alternate nesting sites of at least 10 acres with dominant trees of at least 56 feet high within one kilometer of the colony. Options for finding ideal alternate nesting stands include:
 1. Centering a stand on a satellite nest when outlying satellite nests are present.
 2. Using the site of a former colony. Do not use a former nesting site if it likely was vacated due to nearby permanent (e.g., homes) or long-term (e.g., clear cut) disturbance. [L] [SEP]
 3. Find a forest stand with similar tree structure and species makeup to the active nest stand. [L] [SEP]

FORAGING HABITAT [L] [SEP]

- Do not disturb potential foraging habitat between March and September.
- Establish adequate riparian buffers such as those recommended in the PHS Riparian Guidelines. [L] [SEP]
- Minimize the following activities where herons feed:
 - removal of aquatic vegetation, especially native eelgrass. [L] [SEP]

- use of all watercraft within 590 feet of shallow waters where herons forage. [L] [SEP]

- logging mature forest close to nearshore foraging habitat. [L] [SEP]

- removing perch trees adjacent to foraging areas. [L] [SEP]

- draining, filling, or dredging wetlands or marshes. [L] [SEP]

- building close to riparian shorelines.

[L] [SEP] **FORMER NESTING COLONIES** [L] [SEP]

- All recommendations applying to an active colony should remain in effect for 10 years after nesting ended at former colony, with the exception of entering a former colony when herons are absent for uses that will not alter the habitat, like hiking or dog walking.

MANAGEMENT OF URBAN COLONIES

- Avoid new activities that add to the intensity of disturbance a colony has historically tolerated (see Page 11 of the full-length recommendations for guidance). [L] [SEP]
- Avoid further infringement where development exists in the recommended year-round buffer. When more infringement will occur, avoid it happening during breeding, and large or novel events are not recommended at any time. A plan should be written to mitigate for habitat loss.

[L] [SEP] **HABITAT MANAGEMENT PLAN** [L] [SEP]

- You should develop a habitat management plan whenever a proposal is submitted for an area in or near an HMA. This detailed report outlines where there is habitat, any planned incursions or habitat impacts, and a strategy for limiting impacts. See Page 12 of the full-length recommendations for more guidance.”