



## **Ordinance No. 3064**

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

**Whereas**, RCW 36.70A.130(1) requires that cities and counties take action to review and revise, if necessary, their comprehensive plans and development regulations, including their critical areas ordinances, every eight years; and

**Whereas**, on July 18, 2016, the City Council adopted Ordinance 2982, completing the required periodic review and revision of the Comprehensive Plan; and

**Whereas**, on July 22, 2019, the City Council adopted Ordinance 3040, completing the required review and revision of the development regulations; and

**Whereas**, the Anacortes Planning Commission reviewed proposed amendments to the critical area ordinance consistent with the process outlined in AMC 19.16.080, and subsequent to a public hearing on December 18, 2019, and deliberated on the proposal on January 8, 2020 and January 22, 2020; entered findings of fact, reasons for action, and recommendations to the City Council in a recorded motion dated January 22, 2020; and

**Whereas**, the City Council considered the Planning Commission's recommendation pursuant to AMC 19.16.090 at meetings on February 18, 2020, August 10, 2020, August 17, 2020, August 24, 2020, April 19, 2021, May 3, 2021, May 10, 2021, June 7, 2021, July 19, 2021; and

**Whereas**, an additional public comment opportunity was provided for certain changes to the Planning Commission's recommendation identified during City Council's review; and

**Whereas**, the City Council considered the additional comments received at a meeting on July 19, 2021;

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

With the adoption of this ordinance completing the required review and revision of the critical areas regulations, the City declares the Growth Management Act required periodic review and update under RCW 36.70A.130 complete.

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

- A. The Findings of Fact contained within Section A of the *Anacortes Planning Commission Recorded Motion Regarding Amendments to the Critical Area Regulations* (approved January 22, 2020), analyze the proposal's consistency with the Growth Management Act, Anacortes Comprehensive Plan, and the Anacortes Municipal Code, and are hereby adopted by reference.

- B. The following findings are entered where the Council adopted substantial changes to the Planning Commission's recommendation:
1. Critical Area Mapping. The City Council finds that maintaining an inventory of online interactive critical area maps made available to the public is of great value to both staff and citizens, these maps will be maintained and updated by the City GIS department.
  2. Outdoor Recreation Activities. The City Council finds that it is appropriate to exempt from regulatory oversight outdoor recreation activities that do not involve modifying the land or vegetation, and that will not adversely affect the functions and values of critical areas in general without the specifications of passive or listed by type.
  3. Public Services. The City Council finds that "Public services" include, but are not limited to, water supply, sewer and stormwater management facility; electric power, telecommunication and natural gas lines; and public road and multimodal transportation corridors (e.g., the Tommy Thompson Trail and Guemes Channel Trail). The approval of such amenities are subject to strict performance standards.
- C. In adopting substantial changes to the Planning Commission's recommendation, City Council considered public comments, staff recommendations, and relevant goals and policies of City planning documents, including the 2016 Comprehensive Plan.
- D. Other changes made by the City Council to the Planning Commission's recommendation conform substantially to the proposal as made available for public comment, correct typographical errors, correct cross-references, clarify language without changing its effect, or preserve the status quo.
- E. The amendments to the critical area regulations set forth herein bear a substantial relation to the public health, safety, and welfare.
- F. The amendments to the critical area regulations and critical area map set forth herein are in the best interest of the City of Anacortes residents.
- G. The amendments to the critical area regulations set forth herein have been processed, reviewed, considered, and adopted in material compliance with all applicable state and local procedural requirements, standards and criteria, including but not limited to the requirements of Chapter 36.70A RCW.
- H. All relevant procedural requirements of the State Environmental Policy Act have been satisfied with respect to this ordinance.
- I. Notice of intent to adopt these development regulations has been provided to the Washington Department of Commerce.

- Section 2. The Anacortes Municipal Code is amended as shown in Attachment A.
- Section 3. **Production and Publication of Critical Area Ordinance.** Staff is hereby directed to perform any minor, non-substantive text edits, syntax error corrections, and other minor modifications to the format of the development regulations as necessary to provide for accurate and correct publication of said document both in printed and electronic format for accessibility of the general public.
- Section 4. **Transmittal to State.** Pursuant to RCW 36.70A.106, a copy of this ordinance shall be submitted to the State Department of Commerce.
- Section 5. **Severability.** If any section, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.
- Section 6. **Effective Date.** Consistent with RCW 35A.12.130, this ordinance takes effect on August 9, 2021.

**PASSED and APPROVED this 26th day of July, 2021.**

**CITY OF ANACORTES:**

*Laurie Gere*

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Laurie Gere, Mayor

**Attest:**

*Steve Hoglund*

\_\_\_\_\_  
Steve Hoglund, City Clerk-Treasurer

**Approved as to Form:**

*Darcy Swetnam*

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Darcy Swetnam, City Attorney

## Attachment A Amendments to the Anacortes Municipal Code

Chapter 17.70 Critical Areas Regulations are repealed except that .....

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

Table 19.20.030-1 Permit Processes added.

19.78 Clearing and Grading section reference to Critical Area activities not subject to C&G thresholds.

### Chapter 19.70 Critical Areas

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

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## DIVISION 7 – ENVIRONMENT

### CHAPTER 19.70 CRITICAL AREAS

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#### INTRODUCTION: GENERAL PROVISIONS

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##### 19.70.010 Purpose.

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

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

**19.70.015 Applicability.**

- A. Unless explicitly exempted, the provisions of this chapter apply to all land uses, development activity, and all structures and facilities within the City of Anacortes that are within the critical area, within the maximum buffer distance of, or likely to affect the functions and values of, one or more critical areas. Relationship to other regulations.
  - 1. Shorelines of the state and shorelands as defined in [RCW 90.58.030](#), and critical areas occurring within the jurisdiction of shorelines of the state and shorelands ("shoreline jurisdiction"), are regulated and protected through the Anacortes Shoreline Master Program, (AMC Title 19.72), as amended. Activities occurring within shoreline jurisdiction are reviewed through the shoreline permit review and issuance process; a separate critical areas permit is not required. The Shoreline Master Program incorporates by reference portions of this Chapter (Ch. 19.70); however, certain provisions of this chapter that are not consistent with the Shoreline Management Act, 90.85 RCW and supporting Washington Administrative Code chapters, do not apply in shoreline jurisdiction.
  - 2. These critical areas regulations apply in addition to zoning and other regulations adopted by the City. Notwithstanding AMC 19.12.040(E), in the event of any conflict between these regulations and any other regulations of the City, the regulations apply that provide greater protection to the critical areas' functions and values, as determined by the Director.
  - 3. When any provision of this chapter or any existing easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas applies.
  - 4. Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, or local regulations and permit requirements that may be required. The applicant is responsible for complying with other agency requirements, apart from the process established in this Chapter.

**19.70.020 Identification, classification, and rating of critical areas.**

- A. **Critical Areas Maps.** The general locations of many critical areas in Anacortes are displayed on the City of Anacortes' Critical Areas Maps. The maps are used to alert the public of the potential location of critical areas in Anacortes. As new environmental information related to critical areas becomes available, the City is authorized to make changes as necessary to the Critical Areas

Maps. The City Geographic Information Systems office must maintain an interactive, publicly available online map containing the location of known and potential critical areas and must make pdf maps available to the public upon request.

- B. **Actual site conditions.** Regardless of whether a critical area is shown on the Critical Areas Map, the actual presence or absence of the features defined in this code as critical areas will govern. Prior to acting on any development permit the City may require an applicant to submit technical information to indicate whether critical areas actually exist on or adjacent to the applicant's site based on the definitions of critical areas in this code. This will be administered as a critical area identification form AMC 19.70.110 included with appropriate permit forms.
- C. **Classification and rating.** To promote consistent application of the standards and requirements of this chapter, critical areas within the City will be rated or classified using best available science according to their characteristics, function and value, and/or their sensitivity to disturbance.
  - 1. Classification of critical areas will be determined by the City using the following tools:
    - a. Application of the criteria contained in these regulations;
    - b. Consideration of the critical area reports submitted by qualified professionals in connection with applications subject to these regulations; and
    - c. Review of maps and other resources adopted pursuant to this chapter.
  - 2. Rating categories will not change due to illegal modifications. If the development proposal site contains or is within a critical area suspected of illegal modifications the rating will be based on pre-modification conditions of the critical area. Abatement of the unauthorized modification will be required prior to authorization of the current development proposal being processed for the subject site. 19.70.025 Protection of critical areas.
- A. Critical areas and their required buffers may not be altered except as allowed by this Chapter.
- B. Any action taken pursuant to this chapter must result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science.
- C. All actions and development must be designed and constructed in accordance with mitigation sequencing per AMC 19.70.125 to achieve no net loss of critical area functions and values.
- D. Applicants must first demonstrate an actual inability to avoid or reduce impacts before restoration and compensation of impacts will be allowed.
- E. No activity or use may be allowed that results in a net loss of the functions or value of critical areas.
- F. Any individual critical area adjoined by another type of critical area must have the buffer and meet the requirements that provide the most protection to the critical areas involved.



- G. Violations of this chapter are subject to AMC 20, Civil Enforcement and Penalties. Where a violation occurs within a suspected protected critical area or as depicted on city mapping, the property owner must provide an appropriate critical areas report to determine impacts. The report may be subject to third party review at the property owner's expense.

#### **19.70.030 Project Evaluation**

- A. As part of the review, the city will:
1. Verify the information submitted by the applicant;
  2. Evaluate the project area and vicinity for critical areas;
  3. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
  4. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- B. If the proposed project is within, adjacent to, or is likely to impact a critical area, the city will:
1. Require a critical area report from the applicant that has been prepared by a qualified professional, to be reviewed and evaluated;
  2. Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the criteria in AMC 19.70.035, Review criteria;
  3. Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
  4. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.
  5. The City may require third party review of any critical area report, at the expense of the applicant.

#### **19.70.035 Critical Areas Review.**

- A. **When required.** A proposal to modify any critical area and/or required buffer including, but not limited to, clearing, grading, draining, removal or alteration of vegetation, construction of structures, utilities and related infrastructure must require a critical area permit unless it qualifies as an exemption, as provided in AMC 19.70.040. Except for within shoreline jurisdiction, administration of this chapter shall be through the SMP and appropriate Shoreline Permit administration process.
- B. **Best Management Practices.** All activities, including those allowed without critical areas review, must be conducted using the best management practices appropriate for that activity that result in the least amount of impact to the critical areas. Best management practices must be used for

tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The use of best management practices is required to ensure that the activity does not result in degradation to the critical area. Appropriate BMP sources include Ecology's Construction Storm Water General Permit and NRCS Conservation Practices. Any incidental damage to, or alteration of, a critical area and/or buffer must be restored, rehabilitated, or replaced at the responsible party's expense.

- C. Modifications to Existing Nonconforming Structures and Uses.** In these provisions the burden of proof is on the applicant to bring evidence in support of their position. Existing structures, activities, and uses that were established legally but do not meet the current critical area, buffer, or buffer setback requirements may continue in accordance to AMC 19.49.040, and may be modified as follows:
1. Routine maintenance and repairs;
  2. Structural modifications or additions that do not intensify the nonconformity of the structure or increase the area of hardscape lying within the critical area or buffer. The Director may require an updated critical areas report to confirm location of buffers and that the addition is located entirely outside the critical area or buffer;
  3. Vertical additions above the ground floor that do not encroach further into the critical area or buffer beyond the existing exterior walls, except that critical areas review is required for additions in landslide hazard areas or buffers;
  4. Restoration or replacement of a structure that is damaged by fire, natural disaster or other calamity when:
    - a. A complete application for reconstruction or replacement is submitted within one year of the damage; and
    - b. The restoration or replacement is made to conform to the current critical areas regulations, or if such regulations cannot be physically met without reducing the size of the building, the restoration or replacement may not intensify any nonconformity that existed prior to the damage.
    - c. Except that critical areas review is required for restoration and replacement in landslide hazard areas or buffers.
  5. State Ferry Terminal. The existing developed footprint, except for infill between the toll booth area in the lowest parking lot, hillside walking paths, and a hillside side slope along the western side of the main terminal parking lot, and including all associated parking, at the Washington State Ferry Terminal facility. Redevelopment may occur within the existing footprint only, provided there is no net loss of ecological function and value in the adjacent buffer areas for Cannery Pond and Ship Harbor Interpretive Preserve wetlands.
- D. Demolition.** Demolition of structures located within critical areas or their buffers is permitted, excluding demolition of structures necessary to support or stabilize landslide hazard areas and

will be subject to approval of a stormwater pollution prevention plan consistent with the adopted stormwater management manual and clearing limits that will adequately protect the critical area.

**19.70.040 Exempt Activities.**

- A. General requirements for all exempt activities. Activities listed in this section are exempt from the rest of the provisions of this chapter only if they meet the specific terms of this section.
- B. To be exempt from this chapter does not give permission to degrade a critical area or buffer or to ignore risk from natural hazards. All exempt activities must use reasonable methods to avoid potential impacts to critical areas and buffers. In every case, disturbance to the critical area must be minimized through best management practices and the use of low-impact equipment.
- C. Any incidental damage to, or alteration of, a critical area or buffer that is not a necessary outcome of the exempted activity must be restored, rehabilitated, or replaced at the responsible party’s expense.
- D. This chapter may not exempt an activity from the provisions of other City permits such as Clearing and Grading for vegetation removal and ground disturbing activities, or agency permit requirements such as Washington Department of Fish and Wildlife Hydraulic Permit, or Army Corp of Engineers regulatory requirements.
- E. Burden of proof. The burden of proof is on the applicant to bring forth evidence that the activity meets the precise description of Exemption.
- F. Table 19.70.040 Exempt Activities

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

<b>EXEMPT ACTIVITIES: (No review required, must strictly meet standards)</b>	<b>Critical Area</b>	<b>Buffer</b>
<p><b>Emergencies.</b> Alterations in response to emergencies which threaten the public health, safety, and welfare or which pose an imminent risk of damage to private property, and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter, if the following requirements are met:</p> <ul style="list-style-type: none"> <li>a. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property may be authorized by this exemption.</li> <li>b. The alteration undertaken must be reported to the Director no later than 30 days after the alteration has occurred. Once notified, the Director must confirm that an emergency existed</li> </ul>	Yes	Yes

<b>EXEMPT ACTIVITIES: (No review required, must strictly meet standards)</b>	<b>Critical Area</b>	<b>Buffer</b>
<p>and determine what, if any, additional applications and/or measures are required of the property owner to protect the critical area(s) consistent with the provisions of this chapter, and to repair any damage to a pre-existing resource.</p> <p>c. After the emergency, the person or agency undertaking the action must fully fund and conduct necessary site evaluations and critical area reports, mitigation plans, and restoration for any impacts to the critical area and buffers resulting from the emergency action. The person or agency undertaking the action must meet the review procedures contained herein. Mitigation activities must be initiated within one year of the date of the emergency or as directed by the Department.</p> <p>d. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, or any required mitigation, the Director may take action to enforce this chapter consistent with AMC Title 19 and AMC Title 20.</p>		
<p><b>Yard and garden activities.</b> Maintenance or repair activities including, but not limited to, cutting, mowing, weeding, hand removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas; provided, that such maintenance or repair activities are limited to legally existing landscaping improvements and do not further expand into critical areas or associated buffers, do not alter topography, do not destroy or clear native vegetation, do not remove non-hazard trees in the buffer or critical area, and do not diminish water quality or quantity.</p> <p>a. Native growth protection areas, mitigation sites, or other areas protected via permit conditions, conservation easements or similar restrictive covenants (as defined in AMC 19.70.135) are not covered by this exemption.</p> <p>b. If an activity has ceased for one year or more any future use of such land, building or structure must thereafter be in conformity with this chapter and the zone in which it is located.</p>	No	Yes
<p><b>Site Investigation.</b> Minimal site investigative work and studies necessary for preparing land use applications, including, but not limited to, surveys, soil logs and borings, percolation tests, water quality studies, scientific research, wildlife studies, and similar tests and investigations; provided that such activities do not require clearing, fill, construction of new roads, or heavy equipment, and only minimal amounts of excavation and disturbed areas must be immediately restored.</p>	Yes	Yes

<b>EXEMPT ACTIVITIES: (No review required, must strictly meet standards)</b>	<b>Critical Area</b>	<b>Buffer</b>
<p><b>Outdoor Recreation Activities.</b> Outdoor recreation activities that do not involve modifying the land or vegetation, and that will not adversely affect the functions and values of critical areas.</p>	Yes	Yes

Table 19.70.040 (B)

<b>EXEMPTIONS</b> That require a letter of exemption be obtained from the Director prior to construction or initiation of activities. Subject to conditions by the Director to ensure compliance with this chapter.	<b>Critical Area</b>	<b>Buffer</b>
<p><b>Utility Operation, Maintenance, Repair, or Replacement.</b> Public water, electric, and natural gas distribution, public stormwater and sewer collection, cable communications, telephone, utility and related activities undertaken pursuant to City-approved best management practices, and best available science with regard to protection of threatened and endangered species, as follows:</p> <ul style="list-style-type: none"> <li>a. Normal and routine maintenance or repair of existing utility structures or rights-of-way; when the activity does not involve the expansion of facilities or improvements into a previously unimproved portion of critical areas or required buffers;</li> <li>b. Replacement, operation, repair, modification, installation or construction in an improved City road right-of-way or City authorized private roadway of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; to include relocation only when required by the City of Anacortes, which approves the new location of the facilities;</li> <li>c. Relocation of public sewer or stormwater local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by the City of Anacortes, which approves the new location of the facilities;</li> <li>d. Replacement, operation, repair, modification, relocation, installation or construction of public sewer or stormwater local collection, public water local distribution, natural gas, cable communication, or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or City-authorized private roadway;</li> </ul>	Yes	Yes

<b>EXEMPTIONS</b> That require a letter of exemption be obtained from the Director prior to construction or initiation of activities. Subject to conditions by the Director to ensure compliance with this chapter.	<b>Critical Area</b>	<b>Buffer</b>
<ul style="list-style-type: none"> <li>e. Repair and maintenance of existing private connections to public utilities and private stormwater management facilities;</li> <li>f. Regular maintenance of stormwater facilities that are within a segment of a regulated stream, such as conveyance ditches/swales within the right of way or within public drainage easements</li> </ul>		
<b>Transportation Infrastructure Operation, Maintenance, Repair, or Replacement.</b> Maintenance, operation, repair, modification, or replacement of publicly improved roadways or City-authorized private roadways, including the road prism and associated stormwater management systems; as long as any such alteration does not involve expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way, and does not alter a critical area or required buffer, or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. Retention and replanting of native vegetation must occur whenever possible along the right-of-way improvement and resulting disturbance	Yes	Yes
<b>Recreation Areas Operation, Maintenance, Repair, or Replacement.</b> Maintenance, operation, repair, modification, or replacement of existing trails, and existing facilities within publicly improved recreation areas, such as the Anacortes Community Forest Lands and public parks, may be performed subject to the following: <ul style="list-style-type: none"> <li>a. The activity does not involve the expansion of facilities and disturbance to adjacent areas is minimized and disturbed areas must be immediately restored;</li> <li>b. Work is conducted using best management practices;</li> <li>c. Flow and circulation patterns and biological characteristics are not impaired and adverse impacts are minimized;</li> <li>d. Where trail relocation is the least impactful method of repair, trail relocation further away from the Critical Area is not to be considered a new trail but is included in the exemption for operation, maintenance, repair, or replacement.</li> </ul>	Yes	Yes
<b>Vegetation Management, including:</b> <ul style="list-style-type: none"> <li>1. Removal of noxious weeds or invasive vegetation, as identified by the Washington State or Skagit County Noxious Weed Control Board, in a wetland buffer, stream buffer, other fish and wildlife habitat conservation areas and buffers, is allowed when:</li> </ul>	Yes	Yes

<p><b>EXEMPTIONS</b> That require a letter of exemption be obtained from the Director prior to construction or initiation of activities. Subject to conditions by the Director to ensure compliance with this chapter.</p>	<p><b>Critical Area</b></p>	<p><b>Buffer</b></p>
<ul style="list-style-type: none"> <li>a. Undertaken with hand labor, including handheld mechanical tools, and integrated pest management;</li> <li>b. Plants that appear on the Washington State or Skagit County Noxious Weed Control Board lists must be handled and disposed of in accordance with the best management practices appropriate to that species and approved by the City when permit review is applicable;</li> <li>c. Areas cleared by removal of noxious and/or invasive plant species must be revegetated with site-appropriate native species at natural densities and the site must be stabilized against erosion in accordance with the stormwater manual adopted by the City;</li> <li>d. All work performed is above the ordinary high water mark and above the top of a stream bank; and</li> <li>e. The following limits may not be exceeded: Within City-owned property, no more than 3,000 square feet of soil may be exposed at any one time; and within private property, not more than 500 square feet of area may be cleared, as calculated cumulatively, over one year, without a permit and critical area report prepared by a qualified professional.</li> </ul> <p>2. Vegetation management consistent with a previously approved critical area mitigation, restoration, remediation, or enhancement plan that requires ongoing maintenance and vegetation management beyond final inspection and the required monitoring period for the permitted project.</p> <p>3. Hazard Trees.</p> <ul style="list-style-type: none"> <li>a. The felling of hazard trees may be permitted when necessary to: <ul style="list-style-type: none"> <li>i. Control fire; or</li> <li>ii. Halt the spread of disease or damaging insects consistent with 76.09 RCW; or</li> <li>iii. Avoid a threat to existing structures, above ground utility lines or other facilities.</li> <li>iv. Remove an actual threat to life or property from slope instability that would be caused by toppling.</li> </ul> </li> <li>b. Unless there is an emergency pursuant to Emergency Exemptions above, the landowner must first obtain prior written approval from the Department. A tree risk assessment prepared by an ISA certified Arborist must be</li> </ul>		

<b>EXEMPTIONS</b> That require a letter of exemption be obtained from the Director prior to construction or initiation of activities. Subject to conditions by the Director to ensure compliance with this chapter.	<b>Critical Area</b>	<b>Buffer</b>
<p>submitted by the applicant to the Department that includes the following information:</p> <ul style="list-style-type: none"> <li>i. Identification of the tree(s) proposed to be removed;</li> <li>ii. A conclusion that the condition constitutes an actual threat to life or property;</li> <li>iii. An assessment of whether a portion of the tree suitable for a snag for wildlife habitat may be safely retained.</li> <li>iv. If a tree to be removed provides priority habitat, such as an eagle perch or occupied nest, a description of timing and methods of removal that will minimize and mitigate impacts.</li> <li>v. If a tree to be removed is located within a landslide hazard area or buffer, an evaluation of potential impacts on slope stability must be completed by a qualified professional, including recommendations for replanting and other measures to avoid adverse impacts to slope stability.</li> </ul> <p>c. All work must be done using handheld implements only, unless the property owner requests and the Director approves otherwise in writing.</p> <p>d. Any removed tree or vegetation must be replaced in-kind, with similar or appropriate native species, within 1 year in accordance with an approved restoration plan including species, size, and maintenance plan including species, size, and maintenance plan.</p>		
<p><b>Clearing, grading, and the construction of fences and arbors</b> are allowed within the required 10-foot stream setback for a piped stream segment if no other critical area or buffer is present.</p>	<p>No</p>	<p>Yes</p>

**19.70.045 Permitted Alterations.**

- A. **Applicability.** An applicant may seek an alteration of a critical area and/or critical area buffer through a permitted alteration when application of the standards in this chapter would result in the denial of all reasonable and economically viable use of the property and the proposed development meets the specific terms of this section.
- B. **General requirements.** The actions in the permitted alteration table below, must be considered permitted alterations, unless as otherwise specified under AMC 19.70.240 Specific Wetland



Category Development Standards, and provided they are consistent with the general standards for mitigation sequencing and other applicable requirements established in this chapter.

**C. Review Process:**

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

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

1. Special circumstances applicable to the subject property, including size, shape, or topography, and the strict application of this chapter is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, that the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this chapter may not be the sole basis for granting approval;
2. The issuance of a variance to zoning requirements (setback, height, coverage, etc.) by itself will not provide sufficient relief to avoid the need for a permitted alteration to the critical area and/or buffer and other requirements for the critical areas regulated by this Chapter;
3. Mitigation sequencing per AMC 19.70.125(A) has been applied;

- 4. The proposed alteration is supported by best available science; and
  - 5. The proposed alteration allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property.
- E. Conditions may be required. In granting any approval, conditions and safeguards may be prescribed as are necessary to secure adequate protection of critical areas from adverse impacts, protect adjacent property, and to ensure conformity with this chapter.
- F. Table 19.70.045 Permitted Activities.

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

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
<b>Buffer Modifications, including:</b> increased buffer width, buffer averaging, and buffer alterations as described specifically in this chapter.	No	Yes
<p><b>Public Services.</b> To protect wetlands, streams, wildlife habitat and other sensitive critical areas while allowing services when the strict application of the standards in this Chapter would otherwise unreasonably prohibit the provision of public services and amenities.</p> <ol style="list-style-type: none"> <li>1. “Public services” include, but are not limited to, water supply, sewer and stormwater management facility; electric power, telecommunication and natural gas lines; and public road and multimodal transportation corridors (e.g., the Tommy Thompson Trail and Guemes Channel Trail).</li> <li>2. Public services may be allowed to alter critical areas and buffers when:               <ol style="list-style-type: none"> <li>a. Mitigation sequencing per AMC 19.70.125(A) has been applied;</li> <li>b. The application of the critical areas regulations would unreasonably restrict the ability to provide public services;</li> <li>c. There is no other practical alternative to the proposed development with less impact on the critical area;</li> <li>d. The proposed development does not create a health or safety hazard on or off the development site, and must not be detrimental to the properties or improvements in the vicinity;</li> <li>e. Where feasible, development is located on existing road grades, utility corridors, or previously disturbed areas.</li> <li>f. Designs for crossings, boardwalks, bridges, and culverts are consistent with Washington Department of Fish and Wildlife and National Marine Fisheries Service best available science for the protection of fish and wildlife habitat. These structures shall not interfere with fish passage, the flow and circulation of water, or other wetland or stream processes,</li> </ol> </li> </ol>	Yes	Yes

<b>Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)</b>	<b>Critical Area</b>	<b>Buffer</b>
<p>and shall be located at a 90-degree angle, or as close as possible thereto, to the stream, wetland, or buffer. In streams with salmonid habitat, bridges, bottomless culverts, or other alternatives that will allow for fish passage are required. Bridge piers or abutments may not be placed within wetlands, streams, or stream banks unless there is no feasible alternative.</p> <ul style="list-style-type: none"> <li>g. Construction of crossings will occur during work windows and time limits established by state and federal agencies with jurisdiction to decrease impacts to protected species.</li> <li>h. Any alterations permitted to the critical area and buffer are mitigated in accordance with AMC 19.70.135 and relevant mitigation standards for the impacted critical areas(s) type;</li> <li>i. The proposal is consistent with the Anacortes Comprehensive Plan and other applicable regulations.</li> <li>j. Conditions authorized. Conditions may be established as necessary to mitigate impacts to critical areas and to conform to the standards required in this Chapter.</li> </ul> <p>3. It will be a condition of any alteration granted a public agency and services exception that only the portion of the alteration that must be located in a critical area may be so located.</p>		
<p><b>Conservation, Restoration, and Fish Habitat Enhancement Projects.</b> Conservation or restoration activities aimed at protecting or enhancing the soil, water, vegetation, or wildlife; including voluntary fish, wildlife, and wetland restoration or enhancement activities not required as project mitigation that have been approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction and/or that meet the criteria of RCW 77.55.181(1) and that are reviewed and approved according to the provisions of RCW 77.55.181. A Biological Evaluation Report is required to determine whether the proposal would conserve, preserve, or enhance critical area functions in the long-term to minimize temporary environmental impacts.</p>	Yes	Yes
<p><b>Chemical Applications. Chemical applications.</b> The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary for the control of nuisance weeds and algae; except that their use will be restricted in accordance with the State Department of Ecology and State Department of Fish and Wildlife Management recommendations, and regulations of the State Department of Agriculture and the U.S. Environmental Protection Agency.</p>	Yes	Yes

<b>Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)</b>	<b>Critical Area</b>	<b>Buffer</b>
<p><b>Recreational Areas / Facilities.</b> Low impact activities which are consistent with the purpose and function of the critical area buffer (not to include the ACFL) and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the critical area.</p> <ol style="list-style-type: none"> <li>1. Limited public park or public recreational access including trails, viewing platforms, fishing access (no wider than 6 foot), and foot bridges, provided that all of the following are satisfied: <ol style="list-style-type: none"> <li>a. The area/facility is part of a public park that is dependent on its location for recreational function; and</li> <li>b. The area/facility is limited to the minimum necessary to accomplish the recreational function; and</li> <li>c. The removal of trees and native vegetation is minimized; and</li> <li>d. The balance of the development is consistent with other requirements of this chapter; and</li> <li>e. The project is identified in the Anacortes Comprehensive Plan or Parks Master Plan.</li> </ol> </li> <li>2. Private pedestrian walkways and public trails must meet the following standards: <ol style="list-style-type: none"> <li>a. The trail is generally parallel to the perimeter of the critical area;</li> <li>b. The trail is located in the outer 25% of the buffer area and is designed to avoid removal of trees and native vegetation;</li> <li>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</li> <li>d. The trail may be subject to closure during critical spawning, migration or breeding time periods of sensitive species that are present.</li> </ol> </li> <li>3. Informational signs. Construction and placement of informational signs or educational demonstration facilities no more than 9 square feet surface area and 4 feet high, as long as there is no permanent infringement on hydrology or stream flow and non-treated wood is used;</li> <li>4. Limited excavating and filling necessary for the repair and maintenance of piers, walkways, observation decks, wildlife management shelters, boathouses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the critical area.</li> </ol>	No	Yes
<p><b>Single family Residences and Normal Appurtenances.</b> New single family dwellings on existing legal lots may intrude into critical areas or their buffers when all of the following conditions are met:</p>	Yes	Yes

Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)	Critical Area	Buffer
<ul style="list-style-type: none"> <li>a. It is demonstrated that it is not feasible to avoid the critical area or buffer through avoidance or buffer averaging, or reconfiguration of lots in the same ownership at the date of adoption of this Ordinance, and the development is the minimum necessary to achieve reasonable use of the lot as determined by the Decision-maker; and</li> <li>b. Alteration of critical areas and their buffers including all clearing, grading, structures, and appurtenances, has not and will not exceed cumulatively 2800 square feet of disturbance; and</li> <li>c. This action does not allow critical areas or their buffers to be converted to lawn or residential landscaping beyond a minimal area needed to maintain an approved structure; and</li> <li>d. Mitigation sequencing provided in this Chapter under AMC 19.70.125 is applied and the proposal includes on-site mitigation to the extent feasible as determined by the Critical Area Report.</li> <li>e. Normal appurtenances included in this provision include garages, decks, and walkways incidental to residential living and that do not constitute a special privilege.</li> </ul>		
<p><b>Anacortes Community Forest Lands.</b> Given the unique qualities of the community forest, all properties designated as ACFL have been nominated as a regulated critical area. Any and all new uses and development of new facilities within the ACFL must meet the requirements of the Conservation Easements/Deed Restrictions of the land, Anacortes Comprehensive Plan, The ACFL Comprehensive Plan, AMC 19.70 Critical Areas, and AMC 12.18 ACFL.</p>	Yes	Yes
<p><b>Critical Area Aquifer Recharge Areas.</b> All regulated activities listed under AMC 19.70.540.</p>	Yes	Yes

#### 19.70.050 Reasonable Use Exception and Critical Area Variance.

- A. Applicability.** If the application of this Chapter would result in denial of all reasonable and economically viable use of a property, and if such reasonable and economically viable use of the property cannot be obtained by consideration of a permitted alteration pursuant to AMC 19.70.045, then a landowner may seek a reasonable use exception from the standards of this Chapter. Reasonable use exceptions are considered a critical area variance and are intended as a last resort and only when a variance can meet the requirements of this Chapter.
- B. General Requirements.** Reasonable use is a legal concept articulated by federal and state courts in regulatory takings cases. Within the context of these cases and for the purposes of this title, reasonable use means uses allowed by the underlying zoning designation and subdivision of property is not allowed. When no possible alternative exists, a reasonable use

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

**C. Procedures for Review:**

1. A variance permit must be required for all reasonable use exceptions. Requests for such permits must be reviewed using the procedures applicable to Type 3 Hearing Examiner decisions outlined in chapter AMC 19.20.030. A permit may not be issued unless it can be shown that the proposed development is fully consistent with the variance approval criteria enumerated in AMC Section 19.38.040 (variance criteria) as well as all of the requirements of this chapter.
2. In addition to other project related documents, all critical area variances must require a critical area assessment report per section AMC 19.70.115 to evaluate the proposed disturbance. The report must include:
  - a. A description of the function and condition of the critical area and or buffer that would be altered;
  - b. An analysis of the effect of the development proposal on the critical area and or buffer;
  - c. A description of actions that can be taken to modify the development proposal to avoid or reduce the alteration of the critical area and/or buffer and a discussion of whether these modifications are practical and reasonable;
  - d. A mitigation plan as required by this chapter.
3. Burden of proof. The burden of proof is on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.
4. Public Comment. Consistent with AMC 19.20.030 The City must ensure the opportunity for public comment, including that from appropriate Federal, State, and Tribal natural resource agencies, to ensure the use of best available science before a decision is made.

**D. Variance criteria.** A reasonable use exception may be granted only if the applicant demonstrates that all of the requested action is consistent with all of the variance approval criteria as set forth:

1. The application of this chapter would deny all reasonable economic use of the property and that there is no reasonable economically viable use with a lesser impact on the critical area than that proposed; and
2. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands subject to the provisions of this chapter; and

3. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition, after the effective date of the ordinance codified in this Chapter; and
  4. Any proposed modification to a critical area will be evaluated through consideration of a critical areas report and mitigation plan prepared by a qualified professional pursuant to the requirements of this Chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property. The critical areas report and mitigation plan must be prepared utilizing best available science; and
  5. Mitigation sequencing per AMC 19.70.125(A) has been applied, and the proposal mitigates impacts on the critical area to the maximum extent possible, while still allowing reasonable use of the lot; and
  6. The proposed development does not pose a threat to adjacent property or to the public health and safety; and
  7. The applicant has demonstrated that the criteria in AMC 19.38.040 (variance criteria) are met; and
  8. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances; and
  9. The granting of the variance is consistent with the general purpose and intent of the Anacortes Comprehensive Plan, and planning policies.
- E. **Conditions.** Conditions of approval may be included as part of the decision, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers and mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible utilizing best available science.
- F. **Variations – Geologically hazardous areas.** A variance must not authorize development within a geologically hazardous area or required setback or buffer from a geologically hazardous area unless a Qualified Professional has determined the development will not pose a threat to public safety or property.

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## **PART 1: CRITICAL AREAS REVIEW PROCEDURES**

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### **19.70.110 Critical area identification form.**

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

**19.70.115 Critical Area Report.**

- A. Report required.** When the Director determines a proposed development is within, abutting, or is likely to adversely affect a critical area or buffer pursuant to the provisions of this chapter, the Director may require a critical areas assessment report that is prepared by a Qualified Professional. The assessment of critical areas and analysis of impacts must be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity. This provision is not intended to expand or limit an applicant's other obligations under [WAC 197-11-100](#).
- B. Third Party Review of Critical Area Reports.** The Director may require, at the applicant's expense, a third-party review of a critical area report by a Qualified Professional under contract with or employed by the City in any of the following circumstances:
1. The project requires a critical area permit, or critical area variance; or
  2. Third party review is specifically required by the provisions of this chapter for the critical area(s) or critical area buffer(s) potentially being impacted; or
  3. When the Director determines that such services are necessary to demonstrate compliance with the standards and guidelines of this chapter or other appropriate regulations.
- C. Critical Area Report Types or Sections.** Critical area report requirements may be met in stages through multiple reports or combined in one report. A critical area report must include one or more of the following sections or report types unless exempted by the Director based on the extent of the potential critical area impacts. The scope and location of the proposed project will determine which report(s) alone or combined are sufficient to meet the critical area report requirements for potentially impacted critical area type(s). The typical sequence of required sections or reports that will fulfill the requirements of this section include:
1. **Reconnaissance.** The existence, general location, and type of critical areas on, adjacent to, or likely to be impacted by activities on a project site. Determination of whether the project will adversely impact or be at risk from the potential critical areas based on maximum potential buffers for the particular critical area type. Possible application of exemptions should also be addressed;
  2. **Delineation.** The extent, boundaries, rating or classification, and applicable standard buffers of critical areas where the project area could potentially impact the critical area or its buffer including an assessment of the characteristics of or functions and values of the critical area and buffers identified;
  3. **Analysis.** The proposal and impact assessment report documenting the potential project impacts to the critical area and buffers including a discussion of the efforts taken to avoid, minimize, and reduce potential impacts to those areas per AMC 19.70.125(A);



4. **Mitigation.** The measures that prevent or compensate for the potential impacts of the project designed to meet the requirements of this chapter, AMC 19.70.125, Mitigation Plan Requirements, and the standards for the specific critical areas impacted. Mitigation includes, but is not limited to, adjustments to required buffer sizes, best practices to minimize impacts, and critical area or buffer enhancement, restoration, or preservation plans. Mitigation plans include but are not limited to habitat management plans, revegetation or replanting plans, and restoration plans;
5. **Maintenance and Monitoring.** The goals of the mitigation proposed, performance standards for success, monitoring methods and reporting schedule, and contingency actions. Maintenance and monitoring plans must be consistent with the mitigation performance standards and requirements of this chapter, including the specific mitigation plan requirements outlined in each critical area type section.

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

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

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

project scope, potential impacts or to changes to applicable regulations that have been made subsequent to existing, valid critical area reports, or other circumstances.

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

1. In some cases, such as when it is determined that no specific critical area is present, a full report may not be necessary to determine compliance with the critical area regulations, and in those cases a letter or reconnaissance only report may be required.
2. Limitations to study area. The Director may limit the required geographic area of the critical areas report as appropriate if:
  - a. The applicant, with assistance from the City of Anacortes, cannot obtain permission to access properties adjacent to the project area; or
  - b. The proposed activity will affect only a limited part of the project site.

**19.70.120 Application Requirements.**

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

1. The name and contact information of the applicant;
2. Adequate information to determine compliance with the requirements of the critical area regulations, including a critical area report, impact and hazard assessment, and mitigation requirements specific to each critical area type, as indicated in the corresponding sections of this chapter;
3. Identification of the development permit(s) requested and all other local, State, and/or Federal critical area-related permits required for the project;
4. Site plan, a scaled drawing of the development proposal including:
  - a. Property and project site boundaries.
  - b. An accurate depiction of all critical areas, including off-site critical areas and buffers that extend onto the project site, a desk survey is acceptable when access to the adjacent property has been denied.
  - c. The development proposal, including grading and clearing limits and areas of proposed impacts to critical areas and/or buffers (include square footage estimates).

- d. A scaled depiction and description of the proposed stormwater pollution prevention plan consistent with the adopted stormwater manual, for the development and consideration of impacts to critical areas due to drainage alterations;
  - e. An assessment of probable impacts to the critical areas resulting from the proposed development of the site based upon identified findings;
  - f. A description of reasonable efforts made to apply mitigation sequencing pursuant to AMC 19.70.135, Mitigation requirements, to avoid, minimize, and mitigate impacts to critical areas; and
  - g. Plans for mitigation required to offset any critical areas impacts, in accordance with AMC 19.70.140, Mitigation plan requirements, and the corresponding mitigation performance standards sections of this chapter, including a discussion of the applicable development standards and cost estimates for determination financial guarantee requirements.
- B. Additional Requirements.** The Director may require additional information to be included in the critical areas permit submittal when determined to be necessary to the review of the proposed activity in accordance with this chapter. Additional information that may be required includes, but is not limited to:
- 1. Historical data, including original and subsequent mapping, historical aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
  - 2. Grading and stormwater management plans; and
  - 3. Information specific to the type, location, and nature of the critical area.

#### **19.70.125 Mitigation requirements.**

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

- A. Mitigation sequencing.** This section applies to mitigation required with all critical areas reviews, approvals, and enforcement pursuant to this chapter. This section is supplemented with specific measures under parts for particular critical area types. Mitigation for specific development proposals may include a combination of the measures below and must be designed and constructed in accordance with the provisions of this section. Before impacting any critical areas, an applicant must demonstrate that the following actions have been taken in the following sequential order:
- 1. Avoiding the impact altogether by not taking a certain action or parts of actions;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
  3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment or by restoring or stabilizing the critical area through natural, engineering, or other methods;
  4. Reducing or eliminating the impacts or hazard over time by preservation and maintenance operations during the life of the action;
  5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
  6. Monitoring, measuring and reporting the impact to the Decision-maker and taking appropriate corrective measures.
- B. Applicants must first demonstrate an inability to avoid or reduce impacts before the use of actions to mitigate potential impacts will be allowed. No activity or use may be allowed that results in a net loss of the functions or values of a critical area.
- C. **Type, Location and Timing of Mitigation.** Unless it is demonstrated that higher level of ecological functioning or greater reduction of hazard risk would result from an alternative approach or as otherwise allowed in this chapter, mitigation for adverse impacts must be based on best available science and must be in-kind, on-site, and prior to the activities that will disturb the critical area. Mitigation measures that cannot be implemented prior to the critical area impacts must be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects must be timed to reduce impacts to existing fisheries, wildlife, and flora.
1. The Decision-maker may authorize a one-time temporary delay in completing construction or installation of the mitigation when the applicant provides a written explanation from a Qualified Professional as to the rationale for the delay and satisfactory financial guarantee that the installation will occur. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g. project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay must not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay must not be injurious to the health, safety, or general welfare of the public.
  2. **Alternative mitigation approaches.** If the applicant can demonstrate that off-site concurrent or advance mitigation would provide a higher level of ecological function or a greater reduction of hazard risk, off-site mitigation that occurs on Fidalgo Island will be considered by the Decision-maker.

### 19.70.130 Mitigation plan requirements

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

**A. Environmental Goals and Objectives.** The mitigation plan must identify environmental goals and objectives of the mitigation proposed and including:

1. A description of the anticipated impacts to the critical areas, the mitigating actions proposed, and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives must be related to the functions and values of the impacted critical area; and
2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed.

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

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

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

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

1. The mitigation plan must include a monitoring program to be implemented by the applicant to determine the success of the mitigation project and any necessary corrective

actions. This program must determine if the original goals and objectives of the mitigation plan are being met.

2. A contingency plan must be established for indemnity in the event that the mitigation project is inadequate or fails. Contingency plans include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met. Corrective measures must be taken when the qualified professional indicates, in a monitoring report, that the contingency actions are needed to ensure project success by the end of the monitoring period. A performance and maintenance bond, or other acceptable financial guarantee, is required to ensure the applicant's compliance with the terms of the mitigation agreement consistent with AMC 19.70.160, financial guarantee requirements.
3. Monitoring programs prepared to comply with this section must include the following requirements:
  - a. Best available scientific procedures must be used to establish the success or failure of the project. A protocol outlining the schedule for site monitoring (for example, monitoring must occur in years zero (as-built), one, three, and five after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met.
  - b. For vegetation determinations, permanent sampling points must be established.
  - c. The monitoring program must include measurable specific criteria, or performance standards, for evaluating whether or not the goals and objectives of the mitigation plan have been successfully attained.
  - d. A monitoring report must be submitted as needed to document milestones, successes, problems, and contingency actions of the mitigation project. Monitoring reports on the current status of the mitigation project must be submitted, consistent with Subsection (e) of this section, to the City on the schedule identified in the monitoring plan, but not less than every other year. The reports are to be prepared by a qualified professional and reviewed by the City, or a qualified professional retained by the City, and should include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, as applicable.
  - e. Monitoring programs must be established for a period necessary to establish that performance standards have been met, but not for less than a minimum of five years without approval from the Decision-maker. A longer monitoring period may be required depending on the mitigation goals.
  - f. If necessary, failures in the mitigation project must be corrected.
  - g. Dead or undesirable vegetation must be replaced with appropriate plantings.

- h. Damage caused by erosion, settling, or other geomorphological processes must be repaired.
  - i. The mitigation project must be redesigned (if necessary) and the new design must be implemented and monitored, as in subsection (D)(3)(d) of this section.
  - j. Correction procedures must be approved by the Decision-maker; the Decision-maker may request review by a qualified professional.
  - k. If the mitigation goals are not obtained within the initial monitoring period, the applicant remains responsible for restoration of the impacted values and functions or hazard risk reduction until the mitigation goals agreed to in the mitigation plan are achieved.
- E. **Monitoring Reports.** Monitoring reports must be submitted to the City consistent with the approved monitoring plan.
- 1. The as-built report, required prior to final inspection, must, at a minimum, include documentation of the following:
    - a. Departures from the original approved plans;
    - b. Construction supervision provided by the qualified professional;
    - c. Approved project goals and performance standards;
    - d. Baseline data for monitoring per the approved monitoring methods;
    - e. Photos from established photo points; and
    - f. A site plan showing final mitigation as constructed or installed, monitoring points, and photo points.
  - 2. Subsequent monitoring reports must, at a minimum, include:
    - a. Monitoring visit observations, documentation, and analysis of monitoring data collected;
    - b. Photos from established photo points;
    - c. Determination whether performance standards are being met; and
    - d. Maintenance and/or contingency action recommendations to ensure success of the project at the end of the monitoring period.
  - 3. The applicant is responsible for reimbursement of the cost of review of monitoring reports and site inspections during the monitoring period which are completed by the City or a qualified professional under contract with or employed by the City.
- F. **Cost Estimates.** The mitigation plan must include cost estimates that will be used by the City to calculate the amounts of financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project,

monitoring program, and any contingency measures must be posted in accordance with AMC 19.70.160, financial guarantee requirements.

- G. Approved Mitigation Projects – Signature.** On completion of construction, an as-built report for any approved mitigation project must be prepared and signed off by the applicant’s qualified professional and approved by the City. Signature of the qualified professional on the required as-built report and approval by the Director indicates that the construction has been completed as planned.

**19.70.135 Title Notification.**

**A. Generally.** A critical area notice on title is required, as a condition of permit issuance or project approval, when a permit or development application is submitted for development on any property containing a critical area or buffer. The purpose is to inform subsequent purchasers of real property of the existence of critical areas.

1. The title notice requirement can be met through recording of a title notice on forms prepared by the City, establishment of a critical area tract, or recording of a native growth protection area easement, consistent with AMC 19.70.145(B) through (D) below, as applicable.
2. The following must be noted on all critical area title notice documents:
  - a. Identification of ownership and long term maintenance responsibility of critical areas, buffers, and permanent field markings (e.g. fencing, signage);
  - b. Restrictions on development, vegetation removal, and application of hazardous substances (pesticides, herbicides, fertilizers) within the critical areas and buffers;
  - c. The right of the City to enforce the terms of the restrictions.

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

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



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

**19.70.140 Field marking.**

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

**B. Permanent field marking.** The Decision-maker may require installation of permanent signs, markers, and fencing along the outer perimeter of a critical area or its buffer when it is determined necessary to protect the critical areas’ functions and values. Permanent markings must be installed prior to final project approval or occupancy, as determined by the Decision-maker.

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

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

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

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

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

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

**19.70.145 Construction plan review, monitoring, and inspection.**

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

**19.70.150 Financial Guarantee Requirements.**

When determined necessary by the Director, bonds, and other financial guarantees, and associated performance agreements or maintenance/defect/monitoring agreements are required for projects with required mitigation or restoration of impacts to critical areas or critical area buffers consistent with the following:

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

**19.70.165 Unauthorized Critical Area Alterations.**

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

**B. Requirement for Restoration Plan.**

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

**C. Minimum Performance Standards for Restoration.**

1. For alterations to critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards must be met for the restoration:
  - a. The pre-violation function and values of the affected critical areas and buffers must be restored, including but not limited to hydrologic, water quality and habitat functions;
  - b. The pre-violation soil types and configuration must be replicated;
  - c. The critical area and buffers must be replanted with a native vegetation community that reproduces the structure, species content and condition of the pre-violation vegetation community. Based on the historical or pre-violation vegetation community, native plant species must be replaced at minimum of a 5:1 ratio or installed at a density of 5 foot-on-center unless approved by the Decision-maker. The pre-violation functions and values should be replicated at the location of the alteration; and
  - d. Information demonstrating compliance with the requirements in AMC 19.70.125, Mitigation plan requirements, and the applicable mitigation sections for the affected type(s) of critical area(s) and their buffer(s) must be submitted to the Decision-maker with a complete site development permit application.
  - e. These standards may be modified by the Decision-maker when it can be demonstrated that greater functional and habitat values can be obtained.
2. For alterations to special flood hazard and geologically hazardous areas, the following minimum performance standards must be met for the restoration of a critical area:

- a. The hazard must be reduced to a level equal to, or less than, the pre-violation hazard;
- b. Any risk of personal injury resulting from the alteration must be eliminated or minimized; and
- c. The hazard area and buffers must be replanted with native vegetation sufficient to minimize the hazard.
- d. These standards may be modified by the Decision-maker if the violator can demonstrate that greater safety can be obtained.

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

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

1. A square footage cost of \$3.00 per square foot of impacted critical area buffer; and a square footage cost of \$15.00 per square foot of impacted critical area; and
2. A per tree penalty in the amount of \$3,000 per non-significant tree and \$9,000 per Significant Tree, for trees removed, or otherwise damaged, within a critical area or buffer in violation of the provisions of this chapter.

#### **19.70.170 Final Decision and Appeals.**

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

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## PART 2: WETLANDS

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### 19.70.210 Wetlands – Description and Purpose.

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

### 19.70.215 Wetlands - Designation and Rating.

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

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

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

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

#### 19.70.220 Wetlands – Mapping and delineation.

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

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

#### **19.70.225 Wetlands – General Development Standards.**

- A. All development activities and uses are prohibited in wetlands and wetland buffers, unless administered through the permit procedures above, and the performance standards described herein, and only when it is demonstrated that the activity will not result in a loss of the functions and values of the wetland through the application of mitigation sequencing in AMC 19.70.135.
- B. **Exemptions.** Exemptions to this chapter are listed in the provisions established in AMC 19.70.040 Exemption activities.
- C. **Subdivisions.** The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:
  - 1. Land that is located wholly within a wetland and/or its buffer may not be subdivided; and
  - 2. Land that is located partially within a wetland and/or its buffer may be subdivided; provided each lot will meet all zoning standards in AMC 19.42 without encroaching into the wetland or buffer.

#### **19.70.230 Wetlands – Specific Wetland Category Development Standards.**

- A. **Category I Wetlands.** Development activities and uses that result in alteration of Category I wetlands and their associated buffers are prohibited, unless the denial will prevent all reasonable economic use of the property. The development may be permitted through a Critical Area Variance if it is determined to be the minimum impact possible and a Reasonable Use as prescribed in AMC 19.70.045.
- B. **Category II, III and IV Wetlands.** Development activities that result in alteration of Category II, III or IV wetlands may be permitted upon demonstration, through a critical areas report meeting the requirements of this Chapter, that:
  - 1. Mitigation sequencing has been applied per AMC 19.70.125(A);
  - 2. The proposed alteration will not degrade the quantitative and qualitative functioning of the wetland, or that any degradation can be adequately mitigated to protect or compensate for the wetland functions that are lost;
  - 3. Small, Hydrologically Isolated Category IV Wetlands (less than 1,000 sq. ft.). The Decision-maker may allow small, hydrologically isolated Category IV wetlands to be exempt from the requirement to avoid impacts (AMC 19.70.125(A)(1) Mitigation requirements) and allow alteration of such wetlands if all of the following conditions are met:

- a. The remaining mitigation sequencing actions of AMC 19.70.125(A) (2)-(6) are followed;
- b. The wetland is less than 1,000 square feet in area;
- c. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices.
- d. The wetland is a low quality Category IV wetland with a habitat score of less than 5 points in the adopted rating system;
- e. The wetland does not provide significant suitable breeding habitat for native amphibian species. Suitable breeding habitat may be indicated by adequate stable and seasonal inundation that is persistent from February to at least through April and presence of thin-stemmed emergent vegetation and/or clean water;
- f. The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance which are regulated as fish and wildlife habitat conservation areas in Part 3 FWHCA;
- g. The wetland is not associated with shorelines of the state or their associated buffers;
- h. The wetland is not associated with riparian areas or buffers;
- i. The wetland is not part of a wetland mosaic; and
- j. A mitigation plan to replace lost wetland functions and values is developed, approved, and implemented consistent with AMC 19.70.125.
- k. In order to verify that the wetland meets these exemption conditions, a critical area report for wetlands meeting the requirements in this chapter must be submitted.
  - 4. Small, Hydrologically Isolated Category IV Wetlands (less than 1,000 sq. ft.). Wetlands less than 1,000 square feet that meet the criteria in subsection (B)(3) of this section (above) and that do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter. In order to verify that the wetland meets this exemption, a critical area report for wetlands meeting the requirements in this chapter must be submitted.

#### **19.70.235 Wetlands – Required buffer areas.**

- A. **Buffer Requirements.** Wetland buffers must be established to protect the integrity, functions and values of the wetland. The standard buffer widths in Tables 19.70.235 (B) (C) and (D) have been established in accordance with the best available science. The buffer widths must be determined based on the category of wetland, surrounding land use



intensity, and the habitat score as assigned by a qualified wetland professional using the most up to date version of the Washington State Wetland Rating System for Western Washington.

1. Measurement of Wetland Buffers. All buffers must be measured horizontally from edge of the wetland boundary as surveyed in the field. The width of the wetland buffer must be determined according to Tables 19.70.235(B), (C) and (D).
2. Buffer Standards. The buffer standards required by this chapter presume the existence of a dense vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the Decision-maker may increase the standard buffer, require buffer planting or other enhancements, and/or deny a proposal for buffer reduction or buffer averaging.

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

**Table 19.70.235 (A)**

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

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

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

**Table 19.70.235 (B).**

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

<b>Category III</b>	150	110	75
<b>Category IV</b>	50	40	25

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

**Table 19.70.235 (C).**

<b>Wetland Category</b>	<b>Buffer Width (feet)</b>		
	<b>High Intensity</b>	<b>Moderate Intensity</b>	<b>Low Intensity</b>
<b>Category I</b>	150	110	75
<b>Category II</b>	150	110	75
<b>Category III</b>	150	110	75
<b>Category IV</b>	50	40	25

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

**Table 19.70.235 (D).**

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

#### **D. Reducing Buffer Widths.**

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

as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist.

2. The measures in Table 19.70.235(E) are implemented, where applicable, to minimize the impacts of the adjacent land uses.
3. For wetlands that score 3-5 habitat points, only the measures in Table 19.70.250(E) are required for the use of moderate intensity buffer widths.
4. If an applicant chooses not to apply the mitigation measures in Table 19.70.250(E), or is unable to provide a protected corridor where available, then high intensity buffer widths must be used

**Table 19.70.235 (E)**

<b>Disturbance</b>	<b>Required Measures to Minimize Impacts</b>
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• 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</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 ft of wetland</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use Low Intensity Development techniques (for more information refer to the stormwater manual)</li> </ul>
Change in water regime (increase or decrease in the frequency, duration, timing, extent, depth or variability of water in a wetland)	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>

Disturbance	Required Measures to Minimize Impacts
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>

- E. Increasing buffer widths.** Buffer widths may be increased, on a case-by-case basis, as determined by the Decision-maker. This determination must be supported by appropriate documentation showing that it is necessary to protect wetland functions and values. Documentation must include, but is not limited to, any of the following:
1. The wetland is used by a plant or animal species listed by the Federal government or the State as endangered, threatened, candidate, sensitive, monitored, or documented priority species or habitats, or the wetland is essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
  2. The adjacent land has slopes greater than 15 percent and is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
  3. The adjacent land has minimal vegetative cover on slopes greater than 30%. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, development and implementation of a wetland buffer restoration/enhancement plan in accordance with AMC 19.70.270 may be substituted.
- F. Averaging buffer widths.** The Decision-maker may allow averaging of wetland buffer widths on a case-by-case basis when the critical areas report demonstrates that the following criteria are met:

- a. There is not a feasible alternative to the site design that could be accomplished without buffer averaging;
- b. The buffer averaging improves the functions or values of the wetland, either through preservation of total buffer area or enhancement of buffer areas including the creation of connectivity and corridors;
- c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer.
- d. The wetland contains variation in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrow buffer in other places;
- e. The buffer width at its narrowest point is not reduced to less than 75 percent of the standard width, for Category I and II. For Category III and Category IV is no less than 75 percent unless for the purpose of creating connectivity and corridors, in which case no less than 50 percent.

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

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

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

**J. Buffer impacts.** When buffer impacts occur, compensatory mitigation must be provided at a minimum ratio of 1:1 for the area impacted. The mitigation must occur on the same site when feasible or within the same wetland system preferably. The mitigation must ensure that the wetland functions and values are not diminished due to the buffer impacts.

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

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

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

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

**M. Functionally Separated and Isolated Buffers.** Consistent with the definition of “buffer” AMC 19.12.020, areas that are functionally isolated and physically separated from a wetland due to existing, legally established roadways, railroads or other legally established structures or paved areas eight feet or more in width that occur between the area in question and the wetland must be considered physically isolated and functionally separated buffer. Once determined by the Director, based on a submitted critical area report, to be a physically separated and functionally isolated wetland buffer, development proposals are allowed in these areas.

**19.70.240 Wetlands - Critical areas report additional requirements**

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

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

**B. Additional Information.** When appropriate due to the proposed impacts or the project area conditions, the Director may also require the critical area report to include:

1. A request for consultation with the Washington State Department of Fish and Wildlife (DFW), Washington State Department of Ecology (Ecology), local Native American tribes, and/or other appropriate agency;

2. Copies of the Joint Aquatic Resource Permit Application (JARPA) and related approvals, such as a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW), when applicable to the project; and
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

**19.70.245 Wetlands – Compensatory mitigation performance standards and requirements.**

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

1. Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on wetland ratings (AMC 19.70.210(B));
2. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession);
3. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, categories of wetlands, and mitigation ratios applied (if ratio approach used);
4. A description of the proposed mitigation construction activities, construction/installation notes, and timing of activities;
5. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands);
6. Proof of establishment of notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas; and
7. The scaled plan sheets for the compensatory mitigation must contain, at a minimum



- a. An accurate depiction of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions;
- b. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be impacted and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation;
- c. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions;
- d. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes;
- e. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter;
- f. A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, typical plant installation details and notes, total number of each species by community type, timing of installation; and
- g. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring plan, contingency plan, and maintenance schedule, and actions. Standards for success must be established based on the performance standards identified and the functions and values being mitigated based on the guidance in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised).

## **B. Requirements for Compensatory Mitigation.**

1. Compensatory mitigation for alterations to wetlands may be used only for impacts that cannot be avoided or minimized, except as otherwise exempted in this chapter AMC 19.70.240, and must achieve equivalent or greater biologic functions. Compensatory

mitigation plans must be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1), (Ecology Publication No. 06-06-011b, March 2006, or as revised).

2. Mitigation ratios must be consistent with subsection I of this section.
3. Mitigation requirements may also be determined using the credit/debit tool described in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report March 2012” (Ecology Publication No. 10-06-011, March 2012, or as revised) consistent with subsection H of this section.

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

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

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

1. **Restoration.** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. Restoration of wetlands includes re-establishment and rehabilitation.
  - a. **Re-establishment.** Returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
  - b. **Rehabilitation.** Repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.
2. **Creation.** Creation (establishment) of wetlands on disturbed upland sites, such as those with vegetative cover consisting primarily of nonnative species. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.

3. **Enhancement.** Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions and values lost. Enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.
  4. **Preservation.** Preservation of high-quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided by reestablishment or creation. Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:
    - a. Proposed wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA-listed species;
    - b. There is no net loss of habitat functions within the watershed or basin;
    - c. Mitigation ratios for preservation as the sole means of mitigation must generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost;
    - d. The impact area is small (generally less than one-half acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland); and
    - e. All preservation sites must include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.
  5. **Wetland Bank or Advanced Wetland Mitigation.** For future use since no current banks have a service area in Anacortes.
- E. Type and Location of Compensatory Mitigation.** Unless it is demonstrated that a higher level of ecological functioning would result from an alternative mitigation approach, compensatory mitigation for ecological functions should be either in kind and on site, or in kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions must be conducted within the same sub-basin or on the site of the alteration, except when the following apply:
1. The conditions in AMC 19.70.270(B) are met.
  2. There are no reasonable opportunities on site or within the sub-basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include:
    - a. Anticipated replacement ratios for wetland mitigation;
    - b. Buffer conditions and proposed widths;

- c. Available water to maintain anticipated hydrogeomorphic classes of wetlands when restored; and
  - d. Proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
  - e. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland;
  - f. Off-site locations must be in the same sub-basin, unless watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; and
  - g. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing, seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.
- F. **Wetland Mitigation Banks.** Credits from a wetland mitigation bank certified under [WAC 173-700](#) may be used to compensate for impacts located within the service area specified in the mitigation bank instrument, if:
- 1. The proposal would provide appropriate compensation for the proposed impacts; and
  - 2. The impact site is located in the service area of the bank.
  - 3. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument.
  - 4. Replacement ratios using bank credits are consistent with replacement ratios specified in the certified mitigation bank instrument.
- G. **In-Lieu Fee Mitigation.** Credits from an approved in-lieu fee (ILF) program may be used when all of the following apply:
- 1. The Decision-maker determines that it would provide environmentally appropriate compensation for the proposed impacts.

2. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
3. Projects using ILF credits must have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the ILF program.
4. The impacts are located within the service area specified in the approved ILF instrument.

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

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

1. The following will be considered in the approval of an alternative mitigation plan:
  - a. The plan uses a watershed approach consistent with [Selecting Wetland Mitigation Sites Using a Watershed Approach \(Western Washington\)](#) (Ecology Publication #09-06-032, Olympia, WA, December 2009).
  - b. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual small habitat areas.
  - c. Mitigation according to Section D is not feasible due to site constraints including but not limited to parcel size, stream type, wetland category, or geologically hazardous areas.
  - d. There is a clear potential for success of the proposed compensation at the identified site.
  - e. The Plan must contain clear and measurable standards for achieving compliance with the specific provisions of the plan, consistent with AMC 19.70.135.

- f. The plan must be reviewed and approved as part of the overall approval of the proposed use.
  - g. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
  - h. Mitigation guarantees must meet the minimum requirements as outlined in AMC 19.70.160.
  - i. Qualified professionals in each of the critical areas addressed must prepare the plan.
  - j. The City may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.
- J. **Wetland Mitigation Ratios.** The ratios below are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

**Table 19.70.245 – Wetland Mitigation Ratios**

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation Only	Re-Est or Creation (R/C) and Re-hab (RH)	Re-Est or Creation (R/C) and Enhancement (E)	Enhancement Only
Category I Mature Forested	6:1	12:1	1:1 R/C & 10:1 RH	1:1 R/C & 20:1 E	24:1
Category I – based on score for functions	4:1	8:1	1:1 R/C & 6:1 RH	1:1 R/C & 12:1 E	16:1
Category I Natural Heritage Site	Not allowed	6:1 Rehabilitation of a Natural Heritage Site	Not allowed	Not allowed	Case-by-case

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

- K. **Buffer Mitigation Ratios.** Impacts to buffers must be mitigated at a 1:1 ratio. Compensatory buffer mitigation must replace those buffer functions lost from development.
- L. **Mitigation Performance Standards.** Wetland mitigation plans must be consistent with AMC 19.70.130 Mitigation requirements and 19.70.135 Mitigation plan requirements and Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Ecology Publication #06-06-011a), or as amended, and best available science.
- M. **Minimum Standards.** The design standards in this section must be incorporated into mitigation plans submitted to the City for impacts to wetlands and/or wetland buffers. The following standards apply to any mitigation proposed within Category I, II, III and IV wetlands and their buffers. Modifications to these design standards consistent with the guidance in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised) may be considered for approval by the Decision-maker as alternatives to the following standards:
1. Plants native to the region (not introduced, non-native or exotic species) must be used.
  2. Plant species selection must be consistent with the existing or projected hydrologic regime, including base water levels and stormwater event fluctuations.

3. Plant species selection must be consistent with the site environmental conditions such as slope, aspect, soils and exposure to sun, wind and rain.
4. Plants should be commercially available or available from local sources.
5. Native plant species high in food and cover value for fish and wildlife should be prioritized, as appropriate for the site.
6. Plant selection must be approved by a qualified professional.
7. The following standards apply to wetland design and construction:
  - a. For wetland creation sites, preliminary investigations of existing hydrology at the site must be completed to confirm that the site has adequate source hydrology (e.g., high groundwater, precipitation or riverine flooding) to support wetland conditions.
  - b. Water depth in areas of seasonal or occasional inundation must not exceed three feet (0.914 meters), unless the proposed mitigation is compensating for impacts to unvegetated/open water areas.
  - c. If creating or rehabilitating a slope wetland, the grade or slope within the wetland must not exceed 6 percent, unless otherwise approved by the Decision-maker.
  - d. Slopes within the wetland contributing basin and the buffer zone must not be steeper than 3:1 (horizontal to vertical).
  - e. The wetland (excluding the buffer area) should not contain more than 20 percent unvegetated/open water areas as measured at the seasonal high water mark, unless the mitigation is compensating for vegetated.
  - f. Site soils must be free of contamination and/or hazardous materials, and must have adequate organic content and porosity to support the proposed native plant community.
  - g. Planting densities and placement of plants should be determined by a qualified professional and shown on the design plans.
8. The planting plan must be approved by the City.
9. Stockpiling soil and construction materials should be confined to upland areas and contract specifications should limit stockpiling of earthen materials to durations in accordance with City clearing and grading standards, unless otherwise approved by the City.
10. Planting instructions must be submitted which describe placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock.
11. Controlled release fertilizer (if required) must be used in upland areas only (buffers and other non-wetland areas) and must be installed into the planting hole only at the time of planting. No fertilizer must be applied to the ground surface.



12. An irrigation system must be installed or watering afforded by trucks or hoses to provide water for installed plants and seeded areas to supplement rainfall to ensure that plants receive approximately 0.5 inches of water per week during the dry season of the first two years after plant installation.
13. All construction specifications and methods must be approved by a qualified professional and the City.
14. Construction management provided must be provided by a qualified professional. Ongoing work on site must be inspected by the City.

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## **PART 3: FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

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### **19.70.310. Fish and wildlife habitat – Description and Purpose**

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

### **19.70.315 Fish and wildlife habitat – Designation.**

- A. Fish and Wildlife Habitat Conservation Areas (FWHCAs) are designated as follows:
  1. Critical saltwater habitats, which include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.
  2. Naturally occurring ponds under 20 acres with submerged aquatic beds that provide fish or wildlife habitat as further defined in [WAC 365-190-130\(4\)\(e\)](#);
  3. Waters of the State, including streams as classified in WAC [222-16-030](#), including but not limited to Whistle Creek, Happy Valley Stream, Ace of Hearts Creek, Beaver Brook, Cranberry Creek, Clyde Creek, Anaco Bourn, Morrison Run, Cedar Springs, Weaverling Rill, Miller Creek, Aqua Creek, Howard Creek, Summit Creek, and March's Run;
  4. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
  5. Areas with which anadromous fish species have a primary association;

6. State natural area preserves, natural resource conservation areas, and state wildlife areas as established by WA DNR;
7. Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program in Chapter [79.70](#) RCW.
8. State priority habitats and areas associated with State priority species defined and listed by the State Department of Fish and Wildlife in the Priority Habitats and Species List Updated January 2019. Priority habitats and species known to be identified and mapped by WDFW (<http://apps.wdfw.wa.gov/phsontheweb/>) in Anacortes include, but may not be limited to, the following:
  - a. Biodiversity areas;
  - b. Bald eagle habitat protected pursuant to the Federal Bald and Golden Eagle Protection Act;
  - c. Chinook/fall chinook salmon;
  - d. Coho salmon;
  - e. Great blue heron nest sites and breeding areas;
  - f. Osprey nest sites;
  - g. Peregrine falcon nest sites and breeding areas;
  - h. Purple martin breeding areas;
  - i. Resident coastal cutthroat trout;
  - j. Winter steelhead trout;
  - k. Water fowl concentrations.
9. The following Habitats and Species of Local Importance have been designated by the City:
  - a. The Anacortes Community Forestlands.
  - b. The March Point Heronry.
  - c. The one and one-half acre “Park Reserve” at Cap Sante bounded by 3<sup>rd</sup> Street, East Park Drive, and Curtis Drive.
  - d. Ship Harbor Wetland.
  - e. Cannery Pond Wetland.
  - f. Category II wetlands within the watersheds of Little Cranberry Lake, Whistle Lake, and Hearth Lake and with seasonal surface water connections.
  - g. Smiley’s Bottom Wetland.

- B. In addition to the FWHCAs identified in Subsection (A)(11) of this section, additional habitats and species of local importance may be designated by the City using the following process:
1. Designation process. The city may consider nominations for habitat areas and species to be designated as locally important on an annual basis as part of the annual comprehensive plan and development regulation update process, based on the following criteria:
    - a. Local populations of native species that are in danger of extirpation based on existing trends, likely to become endangered, or are vulnerable or declining;
    - b. The habitat represents either a high quality native habitat, or the habitat has a high potential to recover to a suitable condition and which is of limited availability, is highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape;
    - c. The species or habitat has recreation, commercial, game, tribal, or other intrinsic value;
    - d. Long-term persistence of a species is dependent on protection, maintenance, and/or restoration of the nominated habitat;
    - e. Protection by other county, state, or federal policies, laws, regulations, or non-regulatory tools is not adequate to prevent degradation of the species or habitat; and
    - f. Without protection, there is a likelihood that the species or habitat will be diminished.
  2. The nomination must indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries) or whether the habitat or ecosystem is being nominated in its entirety.
  3. The nomination may include management strategies for the species or habitats, which must be supported by best available science. Where restoration of habitat is proposed, a specific plan for restoration must be provided.
- C. All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

**19.70.320 Fish and wildlife habitat – Mapping.**

- A. **Mapping.** The approximate location and extent of some FWHCA’s are shown in the data layers maintained in the City of Anacortes geographic information system (GIS). In addition, the following maps and inventories are hereby adopted by reference, as amended:
1. [Washington Department of Fish and Wildlife Priority Habitat and Species maps](#);
  2. Washington Department of Natural Resources, [Official Water Type Reference maps](#);

3. Washington Department of Natural Resources [Puget Sound Intertidal Habitat Inventory maps](#);
4. Washington Department of Natural Resources [Shore Zone inventory](#);
5. Washington Department of Natural Resources [Natural Heritage Program mapping data](#);
6. Washington Department of Health Annual [Inventory of Shellfish Harvest Areas](#);
7. Anadromous and resident fish distribution maps contained in the habitat limiting factors reports published by the Washington Conservation Commission and others;
8. Washington Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps; and
9. NOAA Northwest Region Critical Habitat Mapper or equivalent source: <http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>

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

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

- A. All new development activities and uses are prohibited from habitat conservation areas and their buffers except in accordance with this Chapter unless within shoreline jurisdiction and hereby regulated by the AMC 19.72 Shoreline Regulations and Shoreline Master Program. Alterations of FWHCA's or their buffers is prohibited except as otherwise allowed by this chapter and may occur only if the proposed alteration of the habitat and any associated mitigation proposed does not degrade the functions and values of the habitat.
- B. **Exemptions.** Exemptions to this chapter are listed in the provisions established in AMC 19.70.040 Exemption Activities.
- C. Approvals and the Best Available Science. Any approval of alterations or impacts to a FWHCA area must be supported by the best available science as described in the required Critical Area Report.
- D. Approvals of Activities may be conditioned. The Decision-maker may condition approvals of activities allowed within or adjacent to a fish and wildlife habitat conservation area as necessary to minimize or mitigate any potential adverse impacts. Conditions will be based on the best available science and may include, but are not limited to, the following:
  1. Establishment of buffers;
  2. Preservation of important vegetation and/or habitat features such as snags and downed wood specific to the priority wildlife species in the fish and wildlife habitat conservation area;

3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
  4. Seasonal restriction of construction activities;
  5. Establishment of a duration and timetable for periodic review of mitigation activities; and
  6. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
- E. Seasonal Restrictions.** When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.
- F. Subdivisions.** The subdivision and short subdivision of land in FWHCA's and associated buffers is subject to the following:
1. Land that is located wholly within a FWHCA or its buffer may not be subdivided;
  2. Land that is located partially within a FWHCA may be subdivided only if an accessible and contiguous portion of each new lot that meets the minimum lot size requirements for the zone is located outside of the FWHCA and its buffer.
  3. Access roads and utilities serving a proposed subdivision may be permitted within the FWHCA and associated buffers only if the applicant's qualified professional(s) demonstrate, and the Decision-maker determines, that no other feasible alternative exists, all unavoidable impacts are fully mitigated, and the use is consistent with this chapter.
  4. This paragraph does not authorize new access roads and utilities in FWHCAs and associated buffers for existing subdivisions.
- G. Non-indigenous species.** No plant, wildlife, or fish species not indigenous to Fidalgo Island may be introduced to a FWHCA unless authorized by a state or federal permit approval.

#### **19.70.330 Fish and wildlife habitat – Specific Standards for Streams**

- A. Typing.** Stream types must be classified according to WAC 222-16-030. Stream classifications must include the following:
1. Type F streams are those that provide fish habitat;
  2. Type Np streams are perennial waters that do not contain fish habitat; and
  3. Type Ns streams are seasonal waters that do not contain fish habitat, but are physically connected by an above-ground channel system to Type F, or Np waters.
  4. In the case that available information on stream typing is unclear, stream typing will be performed by a qualified professional, provided by the applicant, using a site visit, mapping, and all available information.

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

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

**Table 19.70.330 Stream Buffers**

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

- 3. Increased Stream Buffer Widths.** The stream buffer widths may be increased by the Decision-maker as follows:
- a. When the qualified professional determines that the minimum width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area as a result of a habitat assessment required pursuant to AMC 19.70.360;
  - b. When the frequently flooded area exceeds the minimum stream buffer width, the stream buffer must extend to the outer edge of the frequently flooded area;
  - c. When a channel migration zone is present, the stream buffer must extend to the outer edge of the channel migration zone;
  - d. When the habitat area is in an area of high blowdown potential, the stream buffer width must be expanded an additional 50 feet on the windward side;
  - e. When the habitat area is within an erosion or landslide hazard area, or buffer, the stream buffer width must be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.
- C. Buffer Reduction Standards.** The Decision-maker may allow the reduction of buffer widths on a case-by-case basis when the critical areas report demonstrates the following criteria are met:
1. There is no feasible alternative to the site design that could be accomplished without buffer reduction;
  2. The total buffer width is not reduced to less than 35 feet in stretches of natural stream channel with intact native vegetation within the buffer, and the buffer reduction does not reduce the functions or values of the stream or buffer;
  3. The total buffer width is not reduced to less than 25 feet in stretches of modified stream channel with little to no intact native vegetation within the buffer, and the buffer reduction plan must include an enhancement plan to increase the functions or values of the stream or buffer.
  4. A buffer enhancement plan is proposed to improve the overall function of the buffer.
- D. Building setbacks from stream buffers.** Buildings, structures, paving, and other hard surfacing must be setback a minimum distance of 10 feet from the edge of the stream buffer unless determined by the Decision-maker that a smaller distance would meet the intent of this subsection. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. The following may be allowed in the building setback from the buffer if they do not cause damage to the critical root zone of trees in the buffer:
1. Landscaping;
  2. Uncovered decks, roof eaves and overhangs, unroofed stairways and steps;

3. Pervious ground surfaces, such as driveways, patios, and parking may be allowed; provided that they are engineered as a permeable pavement system as defined in AMC 19.12.020. Such improvements may be subject to the requirements in AMC 19.76, Stormwater Management.
- E. Functionally Separated and Isolated Stream Buffers.** Consistent with the definition of “buffers” in this chapter, areas that are functionally isolated and physically separated from a stream due to existing, legally established public roadways, railroads or other legally established structures or paved areas eight feet or more in width that occur between the area in question and the stream must be considered physically isolated and functionally separated stream buffers. Once determined by the Decision-maker, based on a submitted critical area report, to be a physically separated and functionally isolated stream buffer, development proposals are allowed in these areas.
- F. Additional Allowed Activities in streams.** Activities, uses and alterations of streams are prohibited unless otherwise listed as exempt or allowed according to the provisions of 19.70.040, 19.70.045, and 19.70.050. No alteration to a stream buffer may be permitted unless consistent with the provisions of this section and the specific standards for development outlined below.
1. **When allowed.** Relocation of Type F, Np, and Ns streams may be permitted only when the proposed relocation is part of an approved rehabilitation/restoration plan and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream. The applicant must demonstrate proper mitigation sequencing.
  2. **Stream Crossing.** Crossing of streams may be permitted and are required to be designed to allow fish passage based on state and federal fish passage criteria.
- G. Piped Watercourses and Roadside Ditches.** It is recognized that within the urban environment many historical streams have been substantially modified to accommodate development. Many of the regulated and mapped streams within the City of Anacortes pass through natural reaches, modified reaches, piped reaches, and sometimes along manmade roadside ditches.
1. Development along piped watercourses and roadside ditched segments of regulated streams are subject to a 10 foot setback from the centerline of the stream course and is subject to the recording of a utility easement granted to the city for access and maintenance of the watercourse infrastructure.
  2. The voluntary opening and restoration or rehabilitation of previously channelized, culverted, or piped streams is highly encouraged and may be approved by the Decision-maker, when the following is demonstrated within a critical areas report:
    - a. The restoration will result in a net gain in FWHCA functions, including an improvement in water quality and ecological functioning;



- b. Opened channels must be designed to support fish and wildlife habitat and uninhibited fish access, unless demonstrated to be infeasible;
- c. A reduction to the standard buffer is allowed to a minimum of 25 feet, or as recommended by a qualified professional in the Critical Area Report. Measured from the Ordinary High Water Mark (OHWM) and which includes habitat improvements, and measures to prevent erosion, landslide and water quality impacts;
- d. The proposal will not significantly increase the threat of erosion, flooding, slope stability or other hazards on the site or on adjacent properties.
- e. The proposal must demonstrate that there conveyance will maintain the flow capacity and not create flooding elsewhere in the drainage basin.

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

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

**19.70.335 Fish and wildlife habitat – Specific Standards for Other FWHCAs**

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

  - 1. No development is allowed within a fish and wildlife habitat conservation area or buffer with which State or Federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable State or Federal agency.
  - 2. Whenever activities are proposed adjacent to a fish and wildlife habitat conservation area with which State or Federally endangered, threatened, or sensitive species have a primary association, such area must be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the City. Approval for alteration of the fish and wildlife habitat conservation area or its buffer may not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate Federal or State agencies.
  
- B. Other Priority Habitats and Species.** Fish and wildlife habitat conservation areas or buffers with which species that are not State or Federally listed as endangered, threatened, or sensitive species, and are not anadromous fish species are subject to the following:

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

  - 1. **Anacortes Community Forest Lands:**

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

- a. Recreation and Recreation-Related Facilities. Construction of public recreation-related facilities such as trails, benches, interpretive displays, and viewing platforms, may be allowed in fish and wildlife habitat conservation areas or buffers
- b. Proposed alterations must be consistent with the adopted Anacortes Community Forest Lands Comprehensive Plan, as amended.
- c. Noxious and Invasive Plants. The Skagit County noxious weed ordinance and the ACFL invasive plant control program must be carefully considered in any adjacent development decision. Nonnative plants known to be invasive into the ACFL must be prohibited in landscaping plans of adjacent developments. Where such developments have CC&Rs, reference to this requirement must be included therein.
- d. Right of Way Vacations. In the case of street or alley vacations contiguous with an ACFL boundary, the half of the area vacated which is adjacent to the ACFL must be incorporated into the ACFL and subject to all ACFL related requirements.
- e. Private Access to ACFL. No new accesses will be established to the ACFL without prior request for such access to the parks and recreation department and the forest advisory board and approval by the city council.
- f. Burning. No burn piles or outdoor fires must ever be left unattended while ignited and in the event sparks or flames come within three hundred feet of the ACFL, the fire must immediately be brought under control or extinguished.
- g. Boundary Identification. City staff will work closely with property owners and developers to ensure that survey lines adjacent to the ACFL boundary are clearly and correctly marked before any timber and/or vegetation is removed from adjacent property. The forest manager will be involved in the final inspection of boundary lines.
- h. ACFL Buffers. City staff will work closely with builders to secure thirty-foot ACFL buffers using all available incentives.

## 2. March Point Heronry:

**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.

- a. Proposed development activities within 1,000 feet, or that is likely to impact the colony, must provide a critical areas assessment report and habitat management plan that follows at a minimum the guidelines provided by WDFW's Management Recommendations for Washington's Priority Species (March 2012).  
[https://wdfw.wa.gov/publications/00026/abbreviated\\_great\\_blue\\_heron.pdf](https://wdfw.wa.gov/publications/00026/abbreviated_great_blue_heron.pdf).
- b. Buffers will be implemented as described in the buffer section below.

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

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

1. **Marine FWHCA's Buffers.** Buffer for all designated fish and wildlife habitats or species within marine shorelines must be regulated by AMC 19.72 Shoreline Regulations and the Shoreline Master Program..
2. **All Other Non-Stream FWHCA Buffers.** Buffers from fish and wildlife habitat conservation areas must be established to protect the functions and values of the critical area from the impacts of proposed adjacent activities.
  - a. Buffer widths for fish and wildlife habitat areas must be based on consideration of the following factors: species-specific recommendations of the Washington State Department of Fish and Wildlife; recommendations contained in a habitat management plan submitted by a qualified professional; and the nature and intensity of land uses and activities occurring on the land adjacent to the site. Buffers must:
    - i. Consist of an undisturbed area of native vegetation, or areas identified for restoration, sufficient to protect the integrity, functions, and values of the affected habitat;
    - ii. Reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby;
    - iii. Be consistent with the applicable species-specific management recommendations issued by the Washington Department of Fish and Wildlife.
  - b. Nesting bald eagles and bald eagle habitat must be protected consistent with the U.S. Fish and Wildlife Service (USFWS) National bald eagle management guidelines, or the state or federal regulations in place at the time of application. Whenever activities are proposed adjacent to a confirmed nest territory or communal roost, a bald eagle habitat management plan must be developed by a qualified professional. Activities are adjacent to managed bald eagle sites when they are within 660 feet of a nest or within one-half mile (2,640 feet) of a shoreline foraging area. Approval of the activity must not occur prior to consultation with the state or federal agency with authority on bald eagle pairs and their nest.
  - c. Great Blue Heron nesting and breeding areas: Development near a verified heron breeding habitat including nesting colony areas, former nesting colonies;,

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

**19.70.340 Fish and wildlife habitat – Buffer Width Averaging.**

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

10. Only those portions of the FWHCA buffer within the project area or subject parcel may be considered in the total buffer area for buffer averaging.

**19.70.345 Fish and wildlife habitat – Stormwater Management Facilities.**

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

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

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

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

2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
  3. A discussion of any Federal, State, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
  4. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
  5. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with AMC 19.70.135, Mitigation Requirements;
  6. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
- C. Additional Technical Information Requirements for Streams.** If no project impacts are anticipated and standard stream buffer widths are retained, a stream delineation report, general critical areas report or other reports, alone or in combination, may be submitted as consistent with the specific requirements of this section. In addition to the general critical area report requirements for fish and wildlife habitat conservation areas provided in subsections A through D of this section, technical information on streams must include the following information at a minimum:
1. A written assessment and accompanying maps of the stream and associated hydrologic features on and off site within 300 feet of the project area, including the following information at a minimum: Stream survey showing the field delineated ordinary high water mark(s);
    - a. Standard stream buffer boundary as determined by AMC 19.70.340;
    - b. Boundary for proposed stream buffers averaging, if applicable;
    - c. Vegetative, faunal, and hydrologic characteristics;
    - d. Soil and substrate conditions; and
    - e. Topographic elevations, at two-foot contours;
  2. A detailed description and functional assessment of the stream channel and stream buffer under existing conditions pertaining to the protection of stream functions, fish habitat and, in particular, potential anadromous fisheries;

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

D. Additional Technical Information for Heron Habitat.

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



**E. Additional FWHCA information.** When appropriate due to the type of habitat or species present, or the project area conditions, the Decision-maker may also require the critical area report to include:

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

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

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

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## **PART4: GEOLOGICALLY HAZARDOUS AREAS**

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**19.70.410 Geologically Hazardous Areas– Description and Purpose.**

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

**19.70.415 Geologically Hazardous Areas - Designation.**

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

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

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

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

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

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

#### **19.70.420 Geologically Hazardous Areas – Mapping.**

- A. The approximate location and extent of geologically hazardous areas are shown on the City of Anacortes geologically hazardous data layers maintained in the City of Anacortes geographic information system (GIS). In addition, the following maps and resources providing information

on the location and extent of geologically hazardous areas are hereby adopted by reference as amended:

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

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

#### **19.70.425 Geologically Hazardous Areas – General Development Standards.**

- A. All development activities and uses are prohibited in geologically hazardous areas and their buffers, except as provided for in this chapter, and only when it is demonstrated that the activity will not create undue risk to life, health, and safety.
- B. **Exemptions and Allowed Activities.** Exemptions are listed in the provisions established in AMC AMC 19.70.040 Exempt Activities.
- C. **Approvals.** Alterations of geologically hazardous areas or associated buffers may only occur pursuant to this chapter, and as determined by a qualified professional with concurrence by a 3<sup>rd</sup> party review, for activities that:
  1. Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;
  2. Will not adversely impact other critical areas;
  3. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and

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

#### 19.70.430 Geologically Hazardous Areas – Specific Development Standards

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





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

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

**10. Subdivisions.**

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



- i. Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer;
  - ii. Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the Decision-maker determines that no other feasible alternative exists, and if the critical areas report determines such development will not adversely affect slope stability
- b. Division of land within erosion hazard areas must comply with the following additional requirements:
- i. Except as otherwise provided in this section, existing vegetation must be retained on all lots until building permits are approved for development on individual lots;
  - ii. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant must implement a revegetation plan in those areas that have been impacted prior to final inspection of the site development permit or the issuance of any building permit for the subject property;
  - iii. Clearing of vegetation on individual lots may be allowed prior to building permit approval if the Decision-maker determines that:
    - 1. Such clearing is a necessary part of a large-scale grading plan,
    - 2. It is not feasible to perform such grading on an individual lot basis, and
    - 3. Stormwater output from the graded area will meet established water quality standards.

**B. Seismic Hazard Areas.**

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

**C. Mine Hazard Areas.**

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

- i. All alterations are permitted within a mine hazard area with a low potential for subsidence,
  - ii. Within a mine hazard area with a moderate potential for subsidence and at coal mine by-product stockpiles, all alterations are permitted subject to a mitigation plan to minimize risk of structural damage using appropriate criteria to evaluate the proposed use, as recommended in the hazard analysis, and
  - iii. Within a mine hazard area with a severe potential for subsidence only those activities allowed in AMC 19.70.040 **Exempt activities** of this chapter will be allowed.
- b. **Subdivisions.** The division of land in mine hazard areas and associated buffers is subject to the following:
- i. Land that is located within two hundred feet of a mine hazard area with a severe potential for subsidence may not be subdivided. Land that is located partially within a mine hazard area may be divided provided that each resulting lot has sufficient buildable area that is two hundred feet away from the mine hazard area with a severe potential for subsidence. Land that is located within a mine hazard area with a low or moderate potential for subsidence may be subdivided;
  - ii. Access roads and utilities may be permitted within two hundred feet of a mine hazard area with a moderate or severe potential for subsidence if the city determines that no other feasible alternative exists.
- c. **Reclamation Activities.** Reclamation activities must conform to the provisions in Chapter 332-18 WAC Excavations For all reclamation activities, including grading, filling, and stockpile removal, as-built drawings must be submitted to the city in a format specified by the Decision-maker.

**D. Tsunami Hazard Areas.**

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

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

**19.70.435 Geologically Hazardous Areas - Critical Area Report Additional Requirements**

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

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

- i. A complete discussion of the potential impacts of seismic activity on the site (for example, liquefaction, lateral spreading, fault rupture);
    - ii. An evaluation of the subsurface soil and groundwater profile, physical properties of the subsurface profiles, and the liquefaction potential of the site;
    - iii. Recommendations for mitigation measures to be implemented in order to minimize the risk to the project, and adjacent properties if appropriate.
  - c. **Tsunami Hazard Areas.** The technical information required in a critical area report for a project within a tsunami hazard area must also include:
    - i. A discussion of the potential impacts of the tsunami hazard on the site; and
    - ii. Recommendations as to structure construction techniques including but not limited to the use of coastal high hazard performance standards.
    - iii. For all development other than single lot, single family residences, an emergency management plan including plans for emergency building exit routes, site evacuation routes, emergency training, notification of local emergency management officials, and an emergency warning system.
  - d. **Marine Bluffs** A geotechnical engineering report will be required when development is proposed within 50 feet (in all directions) of or to the crest of a marine bluff, or a distance equal to the height of the slope up to a distance of 100 feet from the crest (measured from the top), whichever is greater.
    - i. The report must be based on best available science, existing and proposed uses, risks of slope failure, and coastal erosion rates over the last 75 years, if applicable.
    - ii. All proposed development on a marine bluff or in the required buffer must be prohibited, except as may be allowed per AMC 19.72 and DR-6.9.1 of the Shoreline Master Program, or minor development to provide public access (e.g., public trails, stairs or view points), provided that impacts are mitigated and the development can be shown to be safe.
- D. **All Geologically Hazardous Areas.** The Director may require additional information deemed necessary to adequately review the proposal.
  - 1. **Site and Construction Plans.** The critical area submittal for geologically hazardous areas must include a copy of the site plans for the proposal, drawn at an engineering scale, showing:

- a. The type and extent of geological hazard areas, any other critical areas, and recommended and required buffers on, adjacent to, off site within 200 feet of, or that are likely to impact or be affected by the proposal;
- b. Proposed development, including the location of existing and proposed structures, fill, clearing limits, significant trees to be removed, vegetation to be removed, proposed material stock pile locations, and stormwater management facilities;
- c. The topography, in two-foot contours, of the project area and all hazard areas addressed in the report;
- d. Height of slope, slope gradient, and cross-section of the project area indicating the stratigraphy of the site;
- e. The location of springs, seeps, or other surface expressions of groundwater on or off site within 200 feet of the project area or that have the potential to affect or be affected by the proposal;
- f. The location and description of surface water on or off site within 200 feet of the project area or that has the potential to be affected by the proposal.

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## **PART 5: CRITICAL AQUIFER RECHARGE AREAS**

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### **19.70.510 Critical Aquifer Recharge Areas – Description and Purpose.**

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

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

- A. **Applicability.** The provisions of this section apply to regulated facilities that are within or adjacent to those portions of the City of Anacortes designated as critical aquifer recharge areas on the City of Anacortes Critical Areas Map. Regulated activities/facilities are defined as those commercial, industrial and home occupation uses that:
  1. Process or handle hazardous materials in regulated quantities; and

2. Treat or store regulated quantities of hazardous materials.

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

**19.70.520 Critical Aquifer recharge areas – Designation.**

**A. Critical aquifer recharge areas include:**

1. Areas served by groundwater which have been designated as a “Sole Source Aquifer Area” under the Federal Safe Drinking Water Act;
    - a. Areas within a “closed” or “low-flow” stream watershed designated by the Department of Ecology pursuant to RCW 90.22;
    - b. Areas designated as “Wellhead Protection Areas” pursuant to [WAC 246-290](#) and the groundwater contribution area pursuant to [WAC 246-291-125\(3\)\(d\)\(iii\)](#) or otherwise recognized by the Director as needing wellhead protection. Wellhead protection areas include, for the purpose of this regulation, the identified recharge areas associated with:
      - i. The 10-year groundwater time-of-travel for all Group A public water supply wells; or
      - i. The 5-year groundwater time-of-travel for all Group B public water supply wells with a wellhead protection plan filed with the Skagit County Health Department; or
      - ii. Plats serviced by five or more individual wells where the average lot size is equal to or less than two acres for which a wellhead protection plan has been completed and filed with the Skagit County Health Department; or
      - iii. The 1,000-foot radius for individual private drinking water supply wells, as identified by map criterion in section 10.70.530.
- B. All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.**

**19.70.525 Critical Aquifer Recharge Areas – Mapping.**

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

**19.70.530 Critical Aquifer Recharge Areas – General Development Standards**

- A. Regulated activities/facilities may be permitted in a critical aquifer recharge area only if the applicant can demonstrate that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.
- B. The proposed regulated activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, State Department of Health, and the Skagit County Health Department.
- C. **Storage tank permits.** The City of Anacortes specifically regulates and authorizes permits for underground storage tanks pursuant to the International Fire Code and this chapter. The Washington Department of Ecology also regulates and authorizes permits for underground storage tanks (WAC 173-360). The Anacortes Fire Department regulates and authorizes permits for the removal of underground storage tanks.
- D. Owners and operators of facilities with existing underground storage tanks that are located within a critical aquifer recharge area must comply with all release detection requirements as specified in WAC 173-360.
- E. **Spreading or injection of reclaimed water.** Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the Washington Department of Ecology and Skagit County Health Department.
1. Surface spreading must meet the groundwater recharge criteria given in RCW 90.46.080 and 90.46.010(10).
  2. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.



**F. Prohibited activities and land uses.** The following land uses and activities for new development or redevelopment are prohibited within or adjacent to critical aquifer recharge areas:

1. Landfill activities as defined in WAC 173-304 and WAC 173-351;
2. All underground injection wells as defined in Chapter 173-218 WAC;
3. Disposal of hazardous or dangerous wastes;
4. Mining, including:
  - a. Metals and hard rock mining;
  - b. Sand and gravel mining are prohibited in critical aquifer recharge areas determined to be highly susceptible or vulnerable unless a stormwater quality management plan is approved and followed by the applicant;
5. Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
6. Storage, processing, or disposal of radioactive substances;
7. Dry cleaning establishments using the solvent perchlorethylene; and
8. Other:
  - a. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
  - b. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream;
  - c. Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers.

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

- A.** The following mitigation measures, as applicable, are required for development of regulated facilities within a critical aquifer recharge area:
1. Floor drains must not be allowed to drain to the stormwater system and must be designed and installed to meet the Uniform Plumbing Code (UPC) Section 303.
  2. If any roof venting carries contaminants, then the portion of the roof draining this area must go through pretreatment pursuant to UPC Section 304(b).
  3. All nonresidential vehicle washing must be self-contained or be discharged to a sanitary sewer system, if approved by the sewer utility, and is subject to UPC Sections 708 and 711.

4. Utilize Integrated Pest Management (IPM) practices for pest control and Best Management Practices (BMPs) for the use of fertilizers as described by the Skagit County Local Hazardous Waste Management Program.
5. Facilities installing new underground tanks. All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes must meet the requirements of WAC 173-360 and be designed and constructed so as to:
  - a. Prevent releases due to corrosion or structural failure for the operational life of the tank;
  - b. Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substance; and
  - c. Use material in the construction or lining of the tank which is compatible with the substance to be stored.
6. Aboveground tanks. All new aboveground storage facilities/tanks containing hazardous substances within a critical aquifer recharge area must be constructed, installed, used and maintained to:
  - a. Prevent the release of a hazardous substance to the ground, or groundwater;
  - b. Include an impervious containment area enclosing or underlying the tank or part thereof;
  - c. Include a secondary containment system either built into the tank structure or a dike system built outside the tank. The secondary containment system or dike system must have a capacity of at least 110 percent of the primary tank and conform to the requirements of UFC Chapter 7902.2.
7. Vehicle repair and servicing.
  - a. Commercial vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
  - b. Dry wells are not allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.
8. Additional protective measures may be required if deemed necessary by the City of Anacortes.

9. State and federal regulations – The uses listed below will be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Statutes, Regulations and Guidance Pertaining to Groundwater Impacting Activities

<b>Activity</b>	<b>Statute – Regulation – Guidance</b>
Above Ground Storage Tanks	Chapter <a href="#">173-303-640 WAC</a>
Animal Feedlots	Chapter <a href="#">173-216 WAC</a> , Chapter <a href="#">173-220 WAC</a>
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303 WAC
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC
Injection wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicle Recycler Facilities (WDOE 94—146)
Oil and Gas Drilling	WAC 332-12-450, Chapter 173-218 WAC
Wastewater Facilities	Chapter 173-240 WAC
On-Site Sewage Systems (<3,500 gal/day)	Chapter 246-272A WAC, Local Health Ordinances
Large On-Site Sewage Systems (3,500 to 1000,000 gal/day)	Chapter 246-272B WAC, State Health Ordinances
Pesticide Storage and Use	Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter 332-18 WAC

Wastewater Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture
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**19.70.540 Critical Aquifer Recharge Areas – Critical area report additional requirements.**

- A. Additional Report Contents for CARA's.** In addition to the minimum report contents required per AMC 19.70.125 CARA reports must also include;
- B. Minimum Report Contents.** A critical areas report must include a hydrogeologic assessment including, but not limited to, the following:
1. Information sources;
  2. Geologic and hydrologic setting including available recharge, permeability/transmissivity information;
  3. Available well logs, borings, seeps/springs within 1,000 feet of the project area;
  4. Available water quality information;
  5. Groundwater depth, flow direction and gradient based on available information;
  6. Surface water location and recharge potential;
  7. Water source supply to the site;
  8. Any sampling schedules necessary;
  9. Discussion of the effects of the proposed project on the groundwater resources;
  10. Description of potential mitigation measures, should it be determined that the proposed project may have an adverse impact on groundwater resources; and
  11. Other information as required by the City.
- C.** If the hydrogeologic assessment determines that the facility will have no effect on groundwater resources, the facility is exempt from the development standards requirements in section 19.70.540 of this Chapter.
- D.** If the hydrogeologic assessment determines that the facility could have an effect on groundwater resources, the Decision-maker will require implementation of applicable development standards in sections 19.70.540.

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## PART 6: FREQUENTLY FLOODED AREAS

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### 19.70.610 Frequently Flooded Areas – Description and Purpose.

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

### 19.70.615 Frequently Flooded Areas – Designation.

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

### 19.70.620 Frequently Flooded Areas – Mapping.

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

### 19.70.625 Frequently flooded areas – General Development Standards

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

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

**19.70.630 Frequently Flooded Areas – Critical Areas Report Additional Requirements**

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

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

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## DEFINITIONS

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

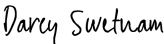
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Certificate Pages: 5	Initials: 0
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	Anacortes, WA 98221
	cityclerk@cityofanacortes.org
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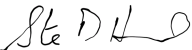
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**Signer Events**

Signature	Timestamp
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Steve Hoglund steveh@cityofanacortes.org City Clerk/Treasurer City of Anacortes Security Level: Email, Account Authentication (None)		Sent: 7/26/2021 7:59:09 PM Viewed: 7/27/2021 8:38:04 AM Signed: 7/27/2021 8:38:13 AM
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Laurie Gere laurieg@cityofanacortes.org Security Level: Email, Account Authentication (None)		Sent: 7/26/2021 7:59:09 PM Viewed: 7/27/2021 8:52:49 AM Signed: 7/27/2021 8:53:04 AM
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Signing Complete	Security Checked	7/27/2021 8:53:04 AM
Completed	Security Checked	7/27/2021 8:53:04 AM

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**Required hardware and software**

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



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

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