Chapter 17.70

Critical Areas Ordinance

Introduction

Although it may be uncommon to preface the specifics of an ordinance with an introduction and exhibits, in this case it is deemed essential to do so to ensure a complete and in-context understanding of the emphasis placed on certain city-owned land which figures prominently in the city's compliance with the spirit, intent, and letter of the Growth Management Act (GMA), particularly goals nine and ten which say:

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

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

Please refer to Appendix A. which shows the Anacortes Community Forest Lands ("ACFL"), City Parks, and Open Space. This map depicts the land mass of the city and shows clearly how much of that land mass is contained in the ACFL as well as in Washington Park, Cap Sante area, Thompson Trail, etc. It clearly shows that the vast majority of the existing city land mass which is not ACFL or major parkland, is very nearly built out and there is virtually nothing else to turn into new habitat. It should be noted that Anacortes has likely done far more to preserve habitat and natural areas than virtually any other community of our size.

Many decades before the GMA was even conceived, citizens of Anacortes recognized the need for and advantages of preserving parts of their surroundings in a wild and natural state. A partial history of land donations and acquisitions is memorialized in Appendix B as its history is noteworthy and deserving of preservation. Other lands have since been donated or acquired by the City so that today, in excess of 2,600 acres of city-owned lands comprise what we term the Anacortes Community Forestlands - the ACFL. And the ACFL is probably not complete as more land is obtained and added to the ACFL as opportunities present themselves.

To gain an appreciation for this exceptional accomplishment by a small city, compare the 2,600 acres of ACFL owned by the 15,000 citizens of Anacortes with the renowned Golden Gate Park in San Francisco which is touted to contain a million trees but is a mere 1,017 acres and highly developed for various recreation and cultural activities with pavilions, ball fields, zoo, galleries, etc. Compare the ACFL with Stanley Park in Vancouver, B.C. which is only 1,000 acres and is also highly developed. Griffith Park in Los Angeles is larger at 4,100 acres but is heavily developed with a zoo, athletic fields, amusements, observatory, and more. Birch Bay State Park is only 194 acres. Deception Pass State Park is 4,134 acres and is separated from the ACFL by a scant few miles of rural property. Sequim Bay State Park is 92 acres for primarily shoreline camping. Lake

Sammamish State Park is 512 acres for day use activities. Balboa Park in San Diego is 1,200 acres and highly developed for cultural and recreational activities. In Seattle, the total acreage of all parks of any type amounts only to 6,052 acres or about 11% of that city's total land area. And those parks house 185 athletic fields, miles of bike and pedestrian trails, 22 miles of boulevards, 71 playfields, 5 golf courses, and 130 children's play areas....among many other developed recreational areas. In Anacortes, the entire ACFL is entirely within the city limits and comprises about 50% of the city's total land area. In fact, there is probably not one single other city of any size in this country which has this much natural property per capita population or as a percentage of total land area. And there are several hundred additional acres of parkland in Anacortes in addition to the ACFL, including Washington Park which is probably 90% natural forest, and the Cap Sante area which is again primarily natural forest.

With this amount of pristine land in city ownership versus the fact that Anacortes is located on an island which limits land available for eventual development, concern emerged that development pressures would eventually lead to "selling off" portions of the ACFL. To prevent such an occurrence, the Forest Advisory Board, the Parks Department, the Parks Board, the city's administration, and the City Council worked cooperatively to develop and enact a "Conservation Easement Program" through which a permanent easement is placed on one acre of ACFL for each $1,000 donated for that purpose. Easements are held and administered by the Skagit Land Trust. To date, over 600 acres of the ACFL which are not otherwise protected by restrictions contained in the grant deeds have been placed under Conservation Easement. Refer to Appendix C for a depiction of exactly which acres of the ACFL have been placed under easement. Easement funds are placed into a special account which will eventually generate sufficient interest revenue to pay the costs of ACFL management, thus providing further protections for them. We know of no other town, city, or other entity which has such a program in effect. While the city permits people to venture into the ACFL on a managed network of trails, few other activities are allowed. In effect, the ACFL is 99% a natural habitat with a wide variety of plant and animal life (documented in Appendix D), lakes, ponds, wetlands and small streams, old growth timber, geologic features, and is often referred to as "a jewel" or "a treasure" by residents and visitors alike. And it will remain untouched not because of GMA but because the people who own it want it left untouched.

Appendix D is a listing of “Vulnerable Species of Anacortes” with arrangements for updating as more information becomes available.

ORDINANCE NO. 2617

ADOPTING A FLOOD DAMAGE PREVENTION ORDINANCE AND REPEAL OF ORDINANCE NO. 2451 ADOPTED THE SECOND DAY OF FEBRUARY 1998

THE CITY COUNCIL OF THE CITY OF ANACORTES DOES HEREBY ORDAIN AS FOLLOWS:

WHEREAS, City Ordinance No. 2451 established preliminary standards for participation in the national flood insurance program,

WHEREAS, The City of Anacortes wishes and desires to provide its citizens with the means to apply for and obtain flood insurance with the National Flood Insurance Program, and

WHEREAS, a condition precedent to obtaining flood insurance at reasonable and affordable rates is the adoption of a flood damage prevention ordinance,

NOW, THEREFORE, be it ordained the following ordinance be added to the Anacortes Municipal Code:

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of Washington has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city council of Anacortes, does ordain as follows:

1.2 FINDINGS OF FACT

(1) The flood hazard areas of Anacortes are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

(1) To protect human life and health;
(2) To minimize expenditure of public money and costly flood control projects;
(3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
(4) To minimize prolonged business interruptions;
(5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
(6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
(7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
(8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

(1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
(2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
(3) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
(4) Controlling filling, grading, dredging, and other development which may increase flood damage; and
(5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas.

SECTION 2.0 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"ADMINISTRATOR" means the Director of Community Development.

"APPEAL" means a request for a review of the interpretation of any provision of this ordinance or a request for a variance.

"AREA OF SHALLOW FLOODING" means a designated AO, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

"AREA OF SPECIAL FLOOD HAZARD" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

"BASE FLOOD" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A or V.

"BASEMENT" means any area of the building having its floor subgrade (below ground level) on all sides.

"BREAKAWAY WALL" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"COASTAL HIGH HAZARD AREA" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-30, VE or V.

"CRITICAL FACILITY" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

"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 located within the area of special flood hazard.

"ELEVATED BUILDING" means for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

"EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

"EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"FLOOD" or "FLOODING" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters and/or
(2) The unusual and rapid accumulation of runoff of surface waters from any source.

"FLOOD INSURANCE RATE MAP (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"FLOOD INSURANCE STUDY" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

"FLOODWAY" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"LOWEST FLOOR" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at Section 5.2-1(2).

"MANUFACTURED HOME" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"MANUFACTURED HOME PARK OR SUBDIVISION" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"NEW CONSTRUCTION" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"NEW MANUFACTURED HOME PARK OR SUBDIVISION" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

"RECREATIONAL VEHICLE" means a vehicle which is:

(a) Built on a single chassis;
(b) 400 square feet or less when measured at the largest horizontal projection;
(c) Designed to be self-propelled or permanently towable by a light duty truck; and
(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"START OF CONSTRUCTION" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"STRUCTURE" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

"SUBSTANTIAL DAMAGE" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"SUBSTANTIAL IMPROVEMENT" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started; or

(2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or

(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"VARIANCE" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

"WATER DEPENDENT" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

SECTION 3.0 GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Anacortes.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The 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 an accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and the FIRM are on file at **904-6th Street**. The best available information for flood hazard area identification as outlined in Section 4.3-2 shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under Section 4.3-2.

3.3 PENALTIES FOR NONCOMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a

misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $1,000 or imprisoned for not more than 10 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the administrator from taking such other lawful action as is necessary to prevent or remedy any violation.

3.4 ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

3.5 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

(1) Considered as minimum requirements;
(2) Liberally construed in favor of the governing body; and,
(3) Deemed neither to limit nor repeal any other powers granted under State statutes.

WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Anacortes, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION 4.0 ADMINISTRATION

4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

4.1-1 Development Permit Required

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.2. The permit shall be for all structures including manufactured homes, as set forth in the "DEFINITIONS," and for all development including fill and other activities, also as set forth in the "DEFINITIONS."

4.1-2 Application for Development Permit

Application for a development permit shall be made on forms furnished by the City of Anacortes and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

(2) Elevation in relation to mean sea level to which any structure has been floodproofed;

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 5.2-2; and

(4) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

4.2 DESIGNATION OF THE LOCAL ADMINISTRATOR

The administrator is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.3 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

Duties of the administrator shall include, but not be limited to:

4.3-1 Permit Review

(1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
(2) Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
(3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5.4(1) are met.

4.3-2 Use of Other Base Flood Data (In A and V Zones)

When base flood elevation data has not been provided (A and V Zones) in accordance with Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 5.2, SPECIFIC STANDARDS, and 5.4 FLOODWAYS.

4.3-3 Information to be Obtained and Maintained

(1) Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 4.3-2, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(2) For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in Section 4.3-2:

(i) Obtain and record the elevation (in relation to mean sea level) to which the structure was floodproofed and
(ii) Maintain the floodproofing certifications required in Section 4.1-2(3).

(3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.3-4 Alteration of Watercourses

(1) Notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4.3-5 Interpretation of FIRM Boundaries

Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.4.

4.4 VARIANCE PROCEDURE

4.4-1 Appeal Board

(1) The Board of Adjustment as established by the City of Anacortes shall hear and decide appeals and requests for variances from the requirements of this ordinance.
(2) The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the administrator in the enforcement or administration of this ordinance.
(3) Those aggrieved by the decision of the Board of Adjustment, or any taxpayer, may appeal such decision to a court of record, as provided in Chapter 17.10.060.
(4) In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

(i) The danger that materials may be swept onto other lands to the injury of others;
(ii) The danger to life and property due to flooding or erosion damage;
(iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
(iv) The importance of the services provided by the proposed facility to the community;
(v) The necessity to the facility of a waterfront location, where applicable;
(vi) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
(vii) The compatibility of the proposed use with existing and anticipated development;

(viii) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
(ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
(x) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
(xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Upon consideration of the factors of Section 4.4-1(4) and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
(6) The Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

4.4-2 Conditions for Variances

(1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 4.4-1(4) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
(2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
(3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
(5) Variances shall only be issued upon:

(i) A showing of good and sufficient cause;
(ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
(iv) A demonstration that no net loss of critical areas functions and values will occur as a result.

(6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
(7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except 4.4-2(1), and otherwise complies with Sections 5.1-1, 5.1-3, and 5.1-4 of the GENERAL STANDARDS.
(8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

In all areas of special flood hazards, the following standards are required:

5.1-1 Anchoring

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
(2) All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

5.1-2 Construction Materials and Methods

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
(3) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.1-3 Utilities

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
(2) The proposed water well shall be located on high ground that is not in the floodway (WAC 173-160-171);
(3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and,
(4) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.1-4 Subdivision Proposals

(1) All subdivision proposals shall be consistent with the need to minimize flood damage;
(2) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
(4) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

5.1-5 Review of Building Permits

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (Section 4.3-2), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

5.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided (Zones A1-30, AH, and AE) as set forth in Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, or Section 4.3-2, Use of Other Base Flood Data (In A and V Zones), the following provisions are required:

5.2-1 Residential Construction

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation.

(2) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
(ii) The bottom of all openings shall be no higher than one foot above grade.
(iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

5.2-2 Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

(1) Be floodproofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
(3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 4.3-3(2);
(4) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 5.2-1(2);
(5) Applicants flood proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below).

5.2-3 Manufactured Homes

(1) All manufactured homes to be placed or substantially improved on sites:

(i) Outside of a manufactured home park or subdivision,
(ii) In a new manufactured home park or subdivision,
(iii) In an expansion to an existing manufactured home park or subdivision, or
(iv) In an existing manufactured home park or subdivision on which a

manufactured home has incurred "substantial damage" as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the above manufactured home provisions be elevated so that either:

(i) The lowest floor of the manufactured home is elevated one foot or more above the base flood elevation, or
(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

5.2-4 Recreational Vehicles

Recreational vehicles placed on sites are required to either:

(i) Be on the site for fewer than 180 consecutive days,
(ii) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
(iii) Meet the requirements of 5.2-3 above and the elevation and anchoring requirements for manufactured homes.

5.3 COASTAL HIGH HAZARD AREAS

Located within areas of special flood hazard established in Section 3.2 are Coastal High Hazard Areas, designated as Zones V1-30, VE and/or V. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions in this ordinance, the following provisions shall also apply:

(1) All new construction and substantial improvements in Zones V1-30 and VE (V if base flood elevation data is available) on the community's FIRM shall be elevated on pilings and columns so that:

(i) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated one foot or more above the base flood level; and
(ii) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building

components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in and given year (100-year mean recurrence interval).

A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of Section 5.6(1)(i) and (ii).

(2) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1-30, VE, and V on the community's FIRM and whether or not such structures contain a basement. The administrator shall maintain a record of all such information.

(3) All new construction within Zones V1-30, VE, and V on the community's FIRM shall be located landward of the reach of mean high tide.

(4) Provide that all new construction and substantial improvements within Zones V1-30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

    (i) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and

    (ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

If breakaway walls are utilized, such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

(5) Prohibit the use of fill for structural support of buildings within Zones V1-30, VE, and V on the community's FIRM.

(6) Prohibit man-made alteration of sand dunes within Zones V1-30, VE, and V on the community's FIRM which would increase potential flood damage.

(7) All manufactured homes to be placed or substantially improved within Zones V1-30, V, and VE on the community's FIRM on sites:

(i) Outside of a manufactured home park or subdivision,
(ii) In a new manufactured home park or subdivision,
(iii) In an expansion to an existing manufactured home park or subdivision, or
(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

meet the standards of paragraphs 5.6(1) through (6) of this section and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones V1-30, V, and VE on the FIRM meet the requirements of Section 5.2-3.

(8) Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's FIRM either:

(i) Be on the site for fewer than 180 consecutive days,
(ii) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
(iii) Meet the requirements of Section 4.1-1(Development Permit Required) and paragraphs 5.6(1) through (6) of this section.

5.4 CRITICAL FACILITY

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

6.0 STAND ALONE ORDINANCE

This Ordinance is adopted as a stand alone ordinance will be enforced only in those areas presently identified or become identified as special flood hazard areas within the City of Anacortes.

7.0 REPEAL

Ordinance No. 2451 passed and approved the 2nd day of February 1998 is hereby repealed.

8.0 VALIDITY

If any section, paragraph, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that they would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses, or phrases may subsequently be found by competent authority to be unconstitutional or invalid.

9.0 EFFECTIVE

This Ordinance shall take effect and be in force five (5) days after its passage and publication.

PASSED AND APPROVED the ____ day of _____, 2003.

CITY OF ANACORTES

BY: _____
H. Dean Maxwell, Mayor

ATTEST:

_____
George Khtaian, City Clerk Treasurer

APPROVED AS TO FORM:

_____
Ian S. Munce, City Attorney

Aquifer Recharge Areas

17.70.300 Aquifer Recharge Areas.

A. Intent. This Section establishes areas determined to be critical in maintaining both groundwater quantity and quality. This Section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the City will determine the level of review and any mitigations required. The intent of this Section is to:

1. Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use; and

2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and

3. Ensure adequate design, construction, management, and operations to protect groundwater quality and quantity.

B. Existing and future beneficial uses of groundwater shall be maintained and protected and degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.

C. Wherever ground waters are determined to be of a higher quality than the criteria established for said waters under this Section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:

1. An overriding consideration of the public interest will be served; and
2. All contaminants proposed for entry into said groundwater(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.

D. It is the intent of this regulation to be consistent with and implement the requirements of RCW 90.48, RCW 90.54, WAC 173-200, WAC 173-201A, WAC 173-160, WAC 246-290, and WAC 246-291, as the same may hereafter be amended.

17.70.310 Aquifer Recharge Area Designations.

The City through this Section, hereby designates two categories for aquifer recharge areas. These categories are designated to assist the Zoning Administrator in determining the level of assessment necessary to evaluate specific land use proposals. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use with consideration given to hydrogeologic vulnerability. All designated areas are subject to change as data and information are updated or become available.

A. Designation Categories.

1. Category I areas are those so designated because of the need to provide them special protection due to a specific pre-existing land use, or because they are

identified by the City, County, State or Federal government as areas in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.

Category I includes areas served by groundwater which have been designated as a "Sole Source Aquifer Area" under the Federal Safe Drinking Water Act; areas identified within a "closed" or "low-flow" stream watershed designated by the Department of Ecology pursuant to RCW 90.22; areas identified by the City or County as sea water intrusion areas; and areas designated as "Wellhead Protection Areas" pursuant to WAC 246-290-135(4) and the groundwater contribution area in WAC 246-290-135(4) and the groundwater contribution area in WAC 246-291-100(2)(e). Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with either Group A public water supply wells, those Group B wells with a wellhead protection plan filed with the Skagit County Health Department, or plats served by 5 or more individual wells where the average lot size is equal to or less than 2 acres for which a well head protection plan has been completed and filed with the Skagit County Health Department, Category I areas are shown on the Aquifer Recharge Area map.

2. Category II is designated as areas throughout the City not identified as Category I areas.

3. When any portion of the proposed project area lies partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for Category I area.

17.70.320 Applicability and Prohibited Activities.

A. Applicability. All development projects are subject to the provisions of this Section except for the following:

1. Existing activities that currently and legally exist at the time this Section became effective. However, expansions or changes in use are subject to this Section and the review process contained herein.

2. Single family residential building permits, including accessory building permits, which are outside Category I areas.

3. Residential short plats outside Category I areas where each lot is 2.5 areas or greater.

4. Single-family residential building permits where a site assessment report was required to be completed for the land division, in which case, to meet the conditions of this exemption, the Applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.

B. Prohibited Activities. The following activities are prohibited in Category I areas due to the probability and/or potential magnitude of their adverse effects on groundwater:

1. Landfill activities as defined in WAC 173-304 and WAC 173-351.

2. Class V injection wells, including:
   a. Agricultural drainage wells;
   b. Untreated sewage waste disposal wells;
   c. Cesspools;
   d. Industrial process water and disposal wells; and
   e. Radioactive waste disposal

3. Radioactive disposal sites.

17.70.330 Initial Project Review.

A. General Procedures. Applicants for all development projects not allowed under Section 320 of this Chapter shall be required, through a site assessment report prepared pursuant to Section 340, to evaluate potential impacts to aquifer recharge areas, and appropriate mitigation measures to reduce or eliminate the potential for adversely impacting aquifer recharge areas shall be identified. The level of study and report detail required will be determined by the Zoning Administrator based on the type of land use being proposed, the designated aquifer recharge area category, and the vulnerability of the underlying aquifer(s) to contamination.

   The goal of this Section is to require Applicants to identify and characterize vulnerability only to the level necessary to determine appropriate mitigation measures necessary, to either reduce potential adverse impact to established parameters or eliminate potential adverse impacts to underlying aquifer(s).

B. Scoping. The level of study which will be required of the Applicant by the Zoning Administrator for a given development will be based on an initial project review by the Planning Department that may include staff from the County Health Department. Elements for the report that are required at a minimum and other elements that my be required as part of the scope for the study are listed in Section 340. Subsequent findings from the study or other information made available after the initial project review may obligate the Applicant to additional evaluation, development of a mitigation plan, and/or development of a groundwater monitoring plan. The following outlines the review process:

   1. The Zoning Administrator shall review the project and determine the required scope of the Site Assessment Report. The scope of site assessment required shall be conveyed to the Applicant and/or his or her representative in writing. The Applicant may present evidence to the Zoning Administrator to justify reduction in the scope for the Site Assessment Report.

   2. Four copies of the Site Assessment Report shall be submitted to the Planning Department for review. The Zoning Administrator shall either approve the Site Assessment Report as submitted, require additional evaluation, or require development of a Mitigation Plan. If additional information is required beyond the initial Site Assessment Report, the Applicant and/or his or her representative shall be notified in writing of the specifics of the information required. The

Applicant may present evidence to the reviewing official to justify modification of the requirement for additional information or present alternative or additional mitigation measures in lieu of further study.

3. When, to the satisfaction of the Zoning Administrator all information is provided and mitigation(s) established as being in compliance with this Section, the Zoning Administrator shall make appropriate recommendations for project permit approval.

17.70.340 Site Assessment Report

A. The scope of the Site Assessment Report shall be determined based on the initial project review specified in Section 330. The scope of the report may be reduced by utilizing appropriate mitigation measures, or if the water quality or quantity issue(s) are already known.

B. The Site Assessment Report shall be prepared by, or under the direction of, and signed by a professional engineer, licensed in the State of Washington, trained and qualified to analyze geologic, hydrologic, and groundwater flow systems; or by a geologist or hydrogeologist who earns his or her livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited 4 year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and groundwater flow systems.

C. Site Assessment Report Requirements. A site plan shall be prepared in accordance with the requirements of the Planning Department. In addition, a site assessment report shall include:

1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s).

2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s).

3. A site plan or another appropriately sealed map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within 1,000 feet of the subject project property. All well logs available through the County Health Department for identified wells within 1000 feet of the project property shall be included.

4. A description of the site-specific hydrogeologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth to and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map.

5. Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient form the project within 1,000 feet or as other wise directed by the Zoning Administrator.

D. Additional Site Assessment Elements. After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeologic conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional elements may also be required if the Applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors.

1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic unites (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.

2. Delineation of identified structural features such as faults, fractures, and fissures.

3. Aquifer characteristics including determination or recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).

4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area.

5. Preparation of appropriate hydrogeologic cross sections depicting at a minimum underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.

6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) from the site through the unsaturated zone to the aquifer(s) may be attenuated within the unsaturated zone and aquifer(s). Include consideration of advection, dispersion, and diffusion of contaminants in the groundwater.

7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s).

8. Determination of background or existing groundwater quality underlying the project area.

9. Development of groundwater monitoring program to measure potential impacts of the development of underlying aquifer(s).

10. Development of a spill plan and/or contingency plan describing the specific actions, which will be taken if a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).

11. The degree of continuity between groundwater and nearby surface water including potential impact to "closed" or "low-flow" streams from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.

12. In conjunction with the Skagit County Interim Seawater Intrusion Policy and subsequent policies or ordinances, applicable projects shall be required to determine appropriate pumping rates and schedules that maintain appropriate pumping rates and schedules that maintain dynamic draw down levels above mean seal level.

13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds 5 mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics.

14. A description of wetlands and FWHCAs and their buffers when such occur within 300 feet of the recharge area.

17.70.350 Aquifer Recharge Area Mitigation.

The Planning Department shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation. Where determined to be necessary through the site assessment process, development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in water quantity in aquifer recharge areas. The project shall not cause degradation of the groundwater quality below the standards described in WAC 173-200 or Department of Ecology's seawater intrusion policy.

A. Wellhead Protection Mitigation. Where a wellhead protection plan that addresses the project area exists, the Zoning Administrator shall use the recommendations contained in the wellhead protection plan as a basis for formulating mitigations. In the absence of such mitigation plan, the Planning Department shall contact the Public Water System Water Purveyor and jointly develop mitigations, a summary of which shall be signed by the Applicant and recorded with the Applicant's property title. Where the project includes 5 or more lots of 2 acres or less in size and is proposed to be served by individual wells, the Applicant shall prepare a Wellhead Protection Plan which must be approved by and kept on file with the Skagit County Health Department.

B. Seawater Intrusion Mitigation. Mitigation for a single-family residence shall be in conformance with the "Seawater Intrusion Policy" in effect under Skagit County Code 12.48.

C. Nitrate Loading Mitigation. If the project's calculated nitrate loading concentration at the determined point of compliance (per SCC 14.24.340 (2)(m)) is equal to or greater than 5 mg/L nitrate as nitrogen, the project shall be required to place a notification on

the documents of title for the property affected and a monitoring plan shall be developed to track the nitrate level and include a contingency plan to be implemented if the nitrate level exceeds 10 mg/L nitrate as nitrogen. If the plat nitrate loading calculation is equal to or exceeds 5 mg/L nitrate as nitrogen, then the Applicant shall develop a mitigation plan to reduce the nitrate loading rate below 5 mg/L nitrate as nitrogen.

17.70.350A Public notice and review.

In addition to the provisions for public notice provided under this Chapter, the Zoning Administrator shall provide official Notice of Decision and make the site assessment report available for public review upon approval of the following projects which have undergone critical areas review pursuant to this Section.

A. All projects occurring in Category I areas, except single-family residence or accessory building permits, and short subdivision.

B. All activities identified under Section 320(2), regardless of location; and

C. Commercial or industrial projects or subdivisions that have the potential to adversely affect the quality or availability of potable water.

Expanding Definitions. Anacortes Municipal Code Chapter 13.36 is hereby amended by expanding Section 13.36.220(D) to read as follows: "All development will comply with the City Zoning Ordinance relative to development in critical areas as defined and regulated in Chapter 17.70 (critical areas)."

Stormwater Additions. Anacortes Municipal Code Chapter 16.12 is hereby amended by adding the following requirement to Section 16.12.010(A): "17. A large, or small, parcel stormwater plan prepared pursuant to Anacortes Municipal Code Chapter 13.36."

Habitat Management for the March Point Heronry. Anacortes Municipal Code Chapter 17.70 is hereby amended to add a new Section 17.70.400.10 as follows:

"A habitat management plan substantially similar to that developed by the Skagit Land Trust and T-Bailey for the March Point Heronry in 2003 shall be developed prior to any City development permit(s) being issued for any parcels of property within the City limits that are adjacent to the March Point Heronry."

CRITICAL AQUIFER RECHARGE AREAS ("CARAs")

1. Add an additional designation category for Category 1 Protection in Section 17.70.310(1)(a):

(iv) areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). Critical aquifer recharge areas have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.

2. Add to the list of prohibited activities in Category I areas in Section 17.70.320(2):

(d) Mining
(i) Metals and hard rock mining.

(ii) 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 by the City Council.

(e) Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

(f) Other prohibited uses or activities

(i) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

(ii) Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream; and

(iii) Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers.

3. Add as Section 17.70.360 Performance Standards – General Requirements:

A. Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely effect the recharging of the aquifer.

B. The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and the Skagit County Health Department.

C. The proposed activity must be designed and constructed in accordance with City Ordinance #2441 (Stormwater Ordinance).

4. Add as Section 17.70.370 Performance Standards – Specific Uses:

A. **Storage tanks**. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:

1. **Underground tanks**. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall 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 noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances;

c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.

2. **Aboveground tanks.** All new above ground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

a. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;

b. Have a primary containment area enclosing or underlying the tank or part thereof, and

c. A secondary containment system either built into the tank structure of a dike system built outside the tank for all tanks.

B. **Vehicle repair and servicing.**

1. 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.

2. No dry wells shall be allowed in critical aquifer recharge areas 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 Washington Department of Ecology prior to commencement of the proposed activity.

C. **Use of reclaimed water for surface percolation or direct recharge.** Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the State Departments of Ecology and Health.

1. Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in Chapter 90.46.080(1) and Chapter 90.46.010(10) RCW. The Department of Ecology may establish additional discharge limits in accordance with Chapter 90.46.080(2) RCW.

2. Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.

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

Geologically Hazardous Areas

Designation, Classification, and Mapping

17.54.081 Designation of geologically hazardous areas
17.54.082 Designation of specific hazard areas
17.54.083 Classification of geologically hazardous areas
17.54.084 Mapping of geologically hazardous areas

Allowed Activities

17.54.085 Activities allowed in geologically hazardous areas

Report Requirements

17.54.086 Critical area report - Additional requirements for geologically hazardous areas
17.54.087 Critical area report - Additional requirements for specific hazards Performance standards
17.54.088 Performance standards - General requirements
17.54.089 Performance standards - Specific hazards

DESIGNATION, CLASSIFICATION, and MAPPING - GEOLOGICALLY HAZARDOUS AREAS

17.54.081 Designation of geologically hazardous areas.

Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area: *WAC 365-190-080(4)(a).*

A. Erosion hazard;

B. Landslide hazard;

C. Seismic hazard;

D. Mine hazard;

E. Volcanic hazard; and

F. Other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement.

These rules are designed to supplement, and not replace: building code rules and requirements, stormwater management rules and requirements, and other provisions of this zoning code.

17.54.082 Designation of Specific Hazard Areas

A. Erosion hazard areas**.** Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. *See WAC 365-190-080(4)(c).*

B. Landslide hazard areas**.** Landslide hazard areas are areas potentially subject to landslides 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. Example of these may include, but are not limited to the following:

1. Areas of historic failures, such as: *See WAC 365-190-080(4)(d)(i)*

    a. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

    b. Those areas mapped by the Washington Department of Ecology *(Coastal Zone Atlas) or* the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5); or

    c. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Washington State Department of Natural Resources;

2. Areas with all three of the following characteristics: *See WAC 365-190-080(4)(d)(ii)*

    a. Slopes steeper than fifteen percent (15%);

    b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

    c. Springs or ground water seepage.

3. 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; *See WAC 365-190-080(4)(d)(iii)*

4. Slopes that are parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials; *See WAC 365-190-080(4)(d)(iv).*

5. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking; *See WAC 365-190-080(4)(d)(v).*

6. Areas potentially unstable because of rapid stream inclusion, stream bank erosion, and undercutting by wave action; *See WAC 365-190-080(4)(d)(vi).*

7. Areas that show evidence of, or are at risk from snow avalanches; *See WAC 365-190-080(4)(d)(vii).*

8. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; *See WAC 365-190-080(4)(d)(viii).*

9. Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet 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 ten (10) feet of vertical relief. *See WAC 365-190-080(4)(d)(ix).*

C. Seismic hazard areas**.** Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primarily affected by; *See WAC 365-190-080(4)(e).*

1. The magnitude of an earthquake;

2. The distance from the source of an earthquake;

3. The type of thickness of geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

D. 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 the mine working, and geologic material. *See WAC 365-190-080(4)(f)(ii).*

E. 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. *See WAC 365-190-080(4)(f)(i).*

F. Tsunami hazard areas**.** Tsunami hazard areas are coastal areas and large lake shoreline areas susceptible to flooding and inundation as the result of excessive wave action derived from seismic or other geologic events. *See WAC 365-190-080(3)(d).*

G. Other hazard areas**.** Geologically hazardous areas shall also include areas determined by the [director] to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

17.54.083 Classification of geologically hazardous areas.

All geologic hazard areas should be classified according to the following categories for each geologic hazard type.

Classification	Documentation and Data Sources
Known or Suspected Risk	Documentation or projection of the hazard by a qualified professional exists.
Risk Unknown	Documentation or projection of the lack of hazard by a qualified professional exists, or data are not available to determine the presence or absence of a geological hazard.

17.54.084 Mapping of geologically hazardous areas.

A. The approximate location and extent of geologically hazardous areas are shown on the adopted critical area maps. The adopted critical areas maps include:

1. Coastal Zone Atlas (for marine bluff hazards);
2. U.S. Geological Survey landslide hazard, seismic hazard, and volcano hazard maps;

3. Washington State Department of Natural Resources seismic hazard maps for Western Washington;

4. Washington State Department of Natural Resources slope stability maps;

5. National Oceanic and Atmospheric Administration tsunami hazard maps;

6. Federal Emergency Management Administration flood insurance maps;

7. Maps included as Appendix B to the City Comprehensive Plan

B. These maps are to be used as a guide for the City, 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.

ALLOWED ACTIVITIES – GEOLOGICALLY HAZARDOUS AREAS

17.54.085 Activities allowed in geologically hazardous areas.

The following activities are allowed in geologically hazardous areas specifically mapped and designated by ordinance of the City Council pursuant to Allowed activities [Section X.10.150] and do not require submission of a critical area report:

A. Erosion and landslide hazard areas**.** Except as otherwise provided for in this Title, only those activities approved and permitted consistent with an approved critical area report in accordance with this Title shall be allowed in erosion or landslide hazard areas.

B. Seismic hazard areas**.** The following activities are allowed within seismic hazard areas:

1. Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

2. Additions to existing single-story residences that are 250 square feet or less; and

3. Installation of fences.

C. Mine hazard areas**.** The following activities are allowed within mine hazard areas:

1. Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

2. Additions to existing residences that are 250 square feet or less; and

3. Installation of fences.

D. Volcanic hazard areas**.** The following activities are allowed within volcanic hazard areas:

1. Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

2. Additions to existing residences that are 250 square feet or less; and

3. Installation of fences.

E. Tsunami hazard areas**.** The following activities are allowed within tsunami hazard areas:

1. Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

2. Additions to existing residences that are 250 square feet or less; and

3. Installation of fences.

F. Other hazard areas**.** The Planning Director may allow the following activities within other geologically hazardous areas, if the activity will not increase the risk of the hazard:

1. Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

2. Additions to existing residences that are 250 square feet or less; and

3. Installation of fences.

CRITICAL AREA REPORT REQUIREMENTS - GEOLOGICALLY HAZARDOUS AREAS

17.54.086 Critical area report - Additional requirements for geologically hazardous areas

A. Preparation by a qualified professional**.** A critical areas report for a geologically hazardous area shall be prepared by an engineer or geologist, licensed in the state of Washington, with experience analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard.

B. Area addressed in critical area report**.** The following areas shall be addressed in a critical area report for geologically hazardous areas:

1. The project area of the proposed activity: and

2. All geologically hazardous areas within two hundred (200) feet of the project area or that have potential to be affected by the proposal;

3. The presence, nature, and location of wetlands, FWHCAs, and/or aquifer recharge zones.

C. Geological hazards assessment**.** A critical area report for a geologically hazardous area shall contain an assessment of geological hazards including the following site- and proposal-related information at a minimum:

1. Site, land clearing, and construction plans**.** The report shall include a copy of the site plans for the proposal showing:

   a. The type and extent of geologic hazard areas, and any other critical areas, and buffers on, adjacent to, within two hundred (200) feet of, or that are likely to impact the proposal;

   b. Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;

   c. The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and

   d. Clearing limits;

2. Assessment of geological characteristics**.** The report shall include 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 shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:

   a. A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;

   b. A detailed overview of the field investigations, published data and references; data and conclusions from past assessments of the site; and site specific measurements, test. investigations, or studies that support the identification of geologically hazardous areas; and

   c. A description of the vulnerability of the site to seismic and other geologic events;

3. Analysis of proposal**.** The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties; and

4. Minimum buffer and building setback**.** The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

D. Incorporation of previous study**.** Where a valid critical areas report has been prepared within the last five (5) years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.

E. Mitigation of long-term impacts**.** When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the pre-existing conditions following abandonment of the activity.

17.54.087 Critical area report - Additional technical information requirements for specific hazards.

Critical area reports for geologically hazardous areas must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

A. Erosion and landslide hazard areas**.** In addition to the basic critical area report requirements, the technical information for an erosion hazard or landslide hazard area shall include the following information at a minimum:

1. Site plan**.** The critical area report shall include a copy of the site plan for the proposal showing:

   a. The height of slope, slope gradient, and cross-section of the project area;

b. The location of springs, seeps, or other surface expressions of ground water on or within two hundred (200) feet of the project area or that have potential to be affected by the proposal;[5] and

c. The location and description of surface water runoff features;

2. Hazards analysis**.** The hazards analysis component of the critical areas report shall specifically include:

   a. A description of the extent and type of vegetative cover;

   b. A description of subsurface conditions based on data from site-specific explorations;

   c. Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;

   d. An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;

   e. An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred-year storm event;

   f. Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.

   g. A study of slope stability including an analysis of proposed cuts, fills, and other site grading;

   h. Recommendations for building siting limitations; and

   i. An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;

3. Geotechnical engineering report**.** The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer or geologist licensed by the State that presents engineering recommendations for the following:

   a. 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;

   b. Recommendations for drainage and subdrainage improvements;

c. 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

d. Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate;

4. Erosion and sediment control plan**.** For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall be prepared in compliance with requirements set forth in the City Ordinance #2441;

5. Drainage plan**.** The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the City Ordinance #2441. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area;

6. Mitigation plans**.** Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability; and

7. Monitoring surface waters**.** If the Planning Director determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the City.

B. Seismic hazard areas**.** In addition to the basic report requirements, a critical area report for a seismic hazard area shall also meet the following requirements:

1. The site map shall show all known and mapped faults within two hundred (200) feet of the project area or that have potential to be affected by the proposal.

2. The hazards analysis shall include a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated and fault displacement).

3. A geotechnical engineering report shall evaluate the physical properties of the subsurface soils, especially the thickness of unconsolidated deposits and their liquefaction potential. If it is determined that the site is subject to liquefaction,

mitigation measures appropriate to the scale of the development shall be recommended and implemented.

C. Mine hazard areas**.** In addition to the basic report requirements, a critical area report for a mine hazard critical area shall also meet the following requirements:

1. Site plan**.** The site plan shall delineate the following found within two hundred (200) feet of or directly underlying the project area, or that have potential to be affected by the proposal:

   a. The existence of mines, including all significant mine features, such as mine entries, portals, adits, mine shafts, air shafts, and timber shafts;

   b. The location of any nearby mines that may impact or be affected by the proposed activities;

   c. The location of any known sinkholes, significant surface depressions, trough subsidence features, coal mine spoil piles, and other mine-related surface features; and

   d. The location of any prior site improvements that have been carried out to mitigate abandoned coal mine features; and

2. Hazards analysis**.** The hazards analysis shall include a discussion of the potential for subsidence on the site and classify all mine hazards areas within two hundred (200) feet of the project area, or that have potential to be affected by the proposal, as either low, moderate, or severe. The hazards analysis shall include a mitigation plan containing recommendations for mitigation of the potential for future trough subsidence, as appropriate, for the specific proposed alteration and recommendations for additional study, reports, and development standards if warranted.

D. Volcanic hazard areas**.** In addition to the basic report requirements, a critical area report for a volcanic hazard area shall also meet the following requirements:

1. Site plan**.** The site plan shall show all areas within two hundred (200) feet of the project area that have potential to be affected by pyroclastic flows, lahars, or mud and debris flows derived from volcanic events;

2. Hazards analysis**.** The hazards analysis shall include a complete discussion of the potential impacts of volcanic activity on the site (for example, inundation by mud flows resulting from volcanic activity);

3. Emergency management plan**.** The emergency management plan shall include plans for emergency building exit routes, site evacuation routes, emergency training, notification of local emergency management officials, and an emergency warning system.

E. Tsunami hazard areas. In addition to the basic report requirements, a critical area

report for a tsunami hazard area shall also meet the following requirements:

1. Site plan**.** The site plan shall show all areas within two hundred (200) feet of the project area that have potential to be inundated by wave action derived from a seismic event;

2. Hazards analysis**.** The hazards analysis shall include a complete discussion of the potential impacts of the tsunami hazard on the site;

3. Emergency management plan**.** The emergency management plan shall include plans for emergency building exit routes, site evacuation routes, emergency training, notification of local emergency management officials, and an emergency warning system.

F. Other geologically hazardous areas**.** In addition to the basic requirements, the Planning Director may require additional technical information to be submitted when determined to be necessary to the review the proposed activity and the subject hazard. Additional technical information that may be required, includes, but is not limited to:

1. Site plan**.** The site plan shall show all hazard areas located within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and

2. Hazards analysis**.** The hazards analysis shall include a complete discussion of the potential impacts of the hazard on the project area and of the proposal on the hazard.

PERFORMANCE STANDARDS - GEOLOGICALLY HAZARDOUS AREAS

17.54.088 Performance Standards - General Requirements

A. Alterations of geologically hazardous areas or associated buffers may only occur 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 certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.

B. Critical facilities prohibited**.** Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative.

17.54.089 Performance Standards - Specific hazards

A. Erosion and landslide hazard areas**.** Activities on sites containing erosion or landslide hazards shall meet the standards of Performance standards -General requirements [Section X.50.080] and the specific following requirements:

1. Buffer requirement**.** A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the Planning Director to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional.

   a. Minimum buffer**.** The minimum buffer shall be equal to the height of the slope or fifty (50) feet, whichever is greater.

   b. Buffer reduction**.** The buffer may be reduced to a minimum of ten (10) feet when a qualified professional demonstrates to the Planning Director's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.

   c. Increased buffer**.** The buffer may be increased where the Planning Director determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;

2. Alterations**.** Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:

   a. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

   b. The development will not decrease slope stability on adjacent properties;

   c. Such alterations will not adversely impact other critical areas;

3. Design Standards**.** Development and land clearing within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this Title. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

   a. The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum

horizontal acceleration as established by the current version of the Uniform Building Code.

b. Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;

c. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;

d. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;

e. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;

f. The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and

g. Development shall be designed to minimize impervious lot coverage;

4. Vegetation retention**.** Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;

5. Seasonal restriction**.** Clearing shall be allowed only from May 1 to October 1 of each year provided that the City may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions.

6. Utility lines and pipes**.** Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior;

7. Point discharges**.** Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:

a. Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge;

b. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state;

c. Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;

8. Subdivisions**.** The division of land in landslide hazard areas and associated buffers is subject to the following:

   a. 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.

   b. Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the City determines that no other feasible alternative exists; and

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

B. Seismic hazard areas**.** Activities proposed to be located in seismic hazard areas shall meet the standards of *Performance standards - General requirements* [Section 17.54.088].

C. Mine hazard areas**.** Activities proposed to be located in mine hazard area shall meet the standards of *Performance standards General requirements* [Section 17.54.088] and the specific following requirements:

1. Alterations**.** Alterations of a mine hazard area and/or buffer are allowed, as follows:

   a. All alterations are permitted within a mine hazard area with a low potential for subsidence;

   b. 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

   c. Within a mine hazard area with a severe potential for subsidence only those activities allowed in accordance with Section 17.54.085 will be allowed.

2. Subdivisions**.** The division of land in mine hazard areas and associated buffers is subject to the following:

   a. Land that is located within two hundred (200) 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 (200) 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.

b. Access roads and utilities may be permitted within two hundred (200) feet of a mine hazard area with a moderate or severe potential for subsidence if the City determines that no other feasible alternative exists.

3. Reclamation activities**.** For all reclamation activities, including grading, filling, and stockpile removal, as-built drawings shall be submitted to the City in a format specified by the Planning Director.

D. Volcanic and tsunami hazard areas**.** Activities on sites containing areas susceptible to inundation due to volcanic or tsunamis hazards shall require an evacuation and emergency management plan. The City may use the performance standards for coastal high hazard areas (see Chapter X.40, *Frequently flooded areas}* as guidance in reviewing new structures proposed in volcanic and tsunami hazard areas.

E. Other hazard areas**.** Activities on sites containing or adjacent to volcanic, tsunamis, or other geologically hazardous areas, shall meet the standards of *Performance standards - General requirements* [Section 17.54.088].

CHAPTER 17.65 -- WETLAND PROTECTION

SECTIONS

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17.65.010 FINDINGS OF FACT AND PURPOSE

The wetlands of the City are indispensable and fragile natural resources with significant development constraints. In their natural state, wetlands serve humans and nature. They provide habitat areas for fish, wildlife, and vegetation; water-quality maintenance and pollution control; flood control; shoreline erosion control; natural resource education; scientific study; open space; and recreation opportunities.

A number of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, land clearing, building, pollution, and other acts. Piecemeal or cumulative losses may, over time, destroy remaining wetlands. Damaging or destroying wetlands diminishes public safety and the general welfare.

It is therefore necessary for the City of Anacortes to ensure protection for wetlands by regulating development activities in wetlands and those activities at adjacent sites that may adversely affect wetlands and to encourage restoration of already degraded or destroyed systems.

17.65.020 PURPOSE

A. It is the policy of the City of Anacortes to minimize damage to wetlands wherever prudent or feasible; to require that activities not dependent upon a wetland location be located at non-wetland sites; to allow wetland losses only where all practicable measures have been applied to reduce those losses that are unavoidable and in the public interest; to provide for compensation in the form of wetland restoration or creation to offset losses; to prevent any net-loss of wetlands and to provide for the protection of wetlands under additional ordinances already adopted by the City of Anacortes, including building codes, clearing and grading control ordinances, groundwater management regulations, stormwater management regulations, Shoreline Master Plan regulations, and other pertinent regulations.

B. Furthermore, such activities must not threaten public safety or cause nuisances by:

1. Blocking flood flows or destroying flood storage areas, thereby raising flood heights or velocities on other land and increasing potential flood damages;

2. Causing water pollution through any means, including location of wastewater disposal systems in wet soils; unauthorized or detrimental application of pesticides, herbicides, and algacides; disposal of solid wastes or stormwater runoff at inappropriate sites; or the creation of unstable fills. However, nothing contained in this ordinance shall prevent the establishment of new wetland areas designed to improve water quality.

3. Increasing erosion; or

4. Increasing runoff of sediment and/and or stormwater.

C. In addition, it is the policy of the City of Anacortes that activities in or affecting wetlands shall not destroy natural wetland functions important to the general welfare by:

1. Decreasing breeding, spawning, nesting, wintering, feeding, or other critical habitat for fish and wildlife, including rare, threatened, and endangered plant and animal species and commercially and recreationally important wildlife;

2. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;

3. Decreasing groundwater recharge;

4. Destroying sites suitable for education and scientific research as outdoor biophysical laboratories, living classrooms, and training areas;

5. Interfering with public rights in waters and the recreation opportunities for fishing, boating, hiking, birdwatching, photography, camping, and other activities related to wetlands; or

17.65.030 WETLAND DISTRICT

This ordinance shall apply to all lands in of a wetland and its associated buffers designated in this ordinance located within the jurisdiction of the City of Anacortes. Such wetlands are hereby designated to be within the Wetland District and protected under all of the terms and provisions of this ordinance.

17.65.031 This ordinance will be revised prior to December 1, 2006 in order to further consider Section 17.65.053(F)(1) (Standard Buffer Widths) and 17.65.210 (Isolated Wetland Exemption); no action will create a GMHB appeal opportunity.

17.65.040 RULES FOR INTERPRETATION OF WETLAND DISTRICT BOUNDARIES

The boundaries of a specific wetland district shall ordinarily be determined by the applicant through the performance of a field survey applying wetland definition criteria. The applicant is required under Section 17.65.110 of this ordinance to show a wetland district boundary on a scaled drawing submitted as part of the permit application. Wetland delineations shall be performed in accordance with the procedures specified in § 17.65.051. Evidence documenting the results of the boundary survey shall be required by the Planning Department. The definition of wetlands does not apply to those wetlands that were unintentionally created after July 1, 1990 as a result of the construction of a road, street, or highway; or to stormwater detention ponds or stormwater conveyance systems (other than those facilities formally designated as wetland mitigation sites).

The Planning Department, when requested by the applicant, may waive the delineation and, in lieu of direct action by the applicant, perform the delineation. The Planning Department may use remote sensing, hydrology, soils, plant species, and other data, and consult with biologists, hydrologists, soil scientists, or other experts as needed to perform the delineation. The applicant will be charged for costs incurred in accordance with the provisions of Section 17.65.110 of this ordinance.

Where the Planning Department performs a Wetland District determination at the request of the applicant, it shall be considered a final determination.

Where the applicant has provided a determination of the Wetland District boundary, the Planning Department shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Planning Department shall, at the applicant's expense, obtain competent expert services, from a person agreed upon by applicant and Planning Department, to render a final delineation.

17.65.050 PERMIT REQUIREMENTS, ENFORCEMENT

No regulated activity in a wetland or its associated buffers may be conducted without a permit from the Zoning Administrator and full compliance with the terms of this ordinance and other applicable regulations. All activities that are not permitted as of right or as special permit uses shall be prohibited. All projects shall be fully bonded prior to any wetland work being undertaken pursuant to permits issued under this ordinance.

DESIGNATION, RATING and MAPPING

17.65.051 Designation, Rating, and Mapping Wetlands

A. **Designating Wetlands.** Wetlands are those areas, designated in accordance with the *Washington State Department of Ecology, Wetlands Identification and Delineation Manual, March 1997, Pub. No. 96-94*, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas within the City meeting the wetland designation criteria in the Identification and Delineation Manual, regardless of any formal identification, not otherwise excluded under § 17.65.040, § 17.65.053, and § 17.65.210 are hereby designated critical areas and are subject to the provisions of this Title.

B. **Wetland Ratings.** Wetlands shall be rated according to the August 2004 Washington State - Wetland Rating System found in the Washington State Wetland Rating System for Western Washington, or as revised by Ecology. These documents contain the definitions and methods for determining if the criteria below are met.

1. **Wetland Rating Categories**

   a. **Category I.** Category I wetlands are those that meet one or more of the following criteria:

      i. Documented habitat for federal or state listed endangered or threatened animal, or plant species;

      ii. High quality native wetland communities, including documented Category I or II quality Natural Heritage wetland sites and sites which qualify as a Category I or II quality Natural Heritage wetland.

      iii. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps (defined in the rating system documents); or wetlands of exceptional local significance.

   b. **Category II.** Washington Department of Fish and Wildlife, U.S. Fish Wildlife Services, and National Marine Fisheries Services documented habitats for state listed sensitive plant, fish, or animal species;

      i. Wetlands that contain fish or animal species listed as priority species by the Washington Department of Fish and Wildlife, or plant species listed as rare by the Washington State Department of Natural Resources;

      ii. Wetland types with significant ecological functions as determined by an agency approved functional evaluation methodology that may not be adequately replicated through creation or restoration;

      iii. Wetlands possessing significant habitat value based on a score of twenty-two (22) or more points in the State Department of Ecology Habitat Rating System; or

      iv. Documented wetlands of local significance.

   c. **Category III.** Category III wetlands are those that do not satisfy category I, II, or IV criteria, and with a habitat value rating of twenty-one (21) points or less under the DOE Habitat Rating System.

d. **Category IV.** Category IV wetlands are those that meet one or more of the following criteria:

i. Hydrologically isolated wetlands, as determined by the U.S. Army Corps of Engineers Regulatory Branch that are less than or equal to one (1) acre in size, have only one wetland class, and are dominated [greater than eighty percent (80%) area cover] by a single, non-native plant species (monotypic vegetation); or

ii. Hydrologically isolated wetlands that are less than or equal to two (2) acres in size, and have only one wetland class and greater than ninety percent (90%) area cover of non-native plant species

2. **Date of wetland rating.** Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

3. Wetland delineations that are accepted by the City are valid for 5 years from the Date they are filed with the City.

C. **Mapping.** The approximate location and extent of wetlands are shown on the adopted critical area maps. The following critical area maps, are hereby adopted: City Stormwater Quality Management Plan, 1994. Additionally, soil maps produced by U.S. Department of Agriculture National Resources Conservation Service may be useful in helping to identify potential wetland areas.

These maps are to be used as a guide for the City, 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. Updating is to be accomplished through the City's annual Comprehensive Plan/Development Regulations updating process described in the City Comprehensive Plan Appendix F.

The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a Professional Wetland Scientist (PWS), certified by the Society of Wetland Scientists professional certification program.

D. **Regionally Significant Wetlands.**

Pursuant to 17.65.051 (B) 1 (a) iii the following wetlands are designated as Category I Wetlands:

1. Cannery Pond (West of the State Ferry Terminal).

2. Ship Harbor Interpretive Preserve (East of the State Ferry Terminal), except as to buffer widths which shall be as required for Category II.

3. Any otherwise regulated *Category* II wetland, as rated under 17.65.051 B.1.b, that is within the watersheds of Little Cranberry Lake, Whistle Lake and Heart Lake and that drains by natural seasonal surface water connection into those lakes or their upstream associated wetland systems.

E. **Locally Significant Wetlands.**

Pursuant to 17.65.051 (B) 1 (b) iv the following wetlands are designated as Category II Wetlands:

1. The wetlands on or adjacent to the Port of Anacortes owned property at the Anacortes Airport except as to buffer widths which shall be as required for Category III.

ADDITIONAL REPORT REQUIREMENTS – WETLANDS

17.65.052 Critical Area Report

Critical area reports for wetlands must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

A. **Preparation by a Qualified Professional.** A critical area report for wetlands shall be prepared by a Professional Wetland Scientist.

B. **Area Addressed in Critical Area Report**. The following areas shall be addressed in a critical area report for wetlands:

1. The project area of the proposed activity;

2. All wetlands and recommended buffers within three hundred (300) feet of the project area. Critical area reports should consider wetlands and other critical areas within three hundred (300) feet due to the maximum potential buffer size for wetlands. Critical area size and characteristics beyond the project area may be estimated through aerial photographic interpretation and discussions with agency staff if the adjacent property owner denies access; and

3. All shoreline areas, water features, floodplains, and other critical areas, and related buffers within three hundred (300) feet of the project area.

C. **Wetland analysis.** A critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information at a minimum:

1. A written assessment and accompanying maps of the wetlands and buffers within three hundred (300) feet of the project area, including the following information at a minimum:

a. Wetland delineation and required buffers;

b. Existing wetland acreage;

c. Wetland category;

d. Vegetative, faunal, and hydrologic characteristics;

e. Soil and substrate conditions;

f. Topographic elevations, at two-foot or five-foot contours (as determined by the Administrator), and

g. A discussion of the water sources supplying the wetland along with documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – drift lines, algal layers, moss lines, and sediment deposits).

2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.

4. Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method and including the reference of the method and all data sheets.

5. Proposed mitigation, if needed, including a written assessment and accompanying maps of the mitigation area, including the following information at a minimum:

a. Existing and proposed wetland acreage;

b. Vegetative and faunal conditions;

c. Surface and subsurface hydrologic conditions including an analysis of existing and future hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;

d. Relationship within watershed and to existing waterbodies;

e. Soil and substrate conditions, topographic elevations;

f. Existing and proposed adjacent site conditions;

g. Required wetland buffers (including any buffer reduction and mitigation proposed to increase the plant densities, remove weedy vegetation, and replant the buffers);

h. Property ownership; and

i. Associated wetlands and related wetlands that may be greater than three hundred (300) feet from the subject project.

j. A Map drawn to a scale appropriate to show relevant features and information of the development proposal site and adjacent area.

k. A discussion of ongoing management practices that will protect wetlands after the project site has been developed; including proposed monitoring and maintenance programs.

6. A bond estimate for the installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for a minimum of five years.

D. **Additional Information.** When appropriate, the Administrator may also require the critical area report to include an evaluation by the state Department of Ecology or an independent qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as to improving effectiveness.

1. If the development proposal site contains or is within a wetland area, the applicant shall submit an affidavit, which declares whether the applicant has knowledge of any illegal alteration to any or all wetlands on the proposed site and whether the applicant previously had been found in violation of any wetland-related ordinance. If the applicant has been found previously in violation, the applicant shall declare whether such violation has been corrected to the satisfaction of the jurisdiction.

2. The Administrator shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, and the functions and value of the affected wetland, consistent with the goals, purposes, objectives and requirements of this ordinance.

PERFORMANCE STANDARDS

17.65.053 Performance Standards – General Requirements

A. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.

B. Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this Title.

C. **Category I Wetlands.** Activities and uses shall be prohibited from Category I, except as provided for in the Uses By Right and Special Permit Requirements, provided the standards for Category II and III Wetlands are met.

D. **Category II and III Wetlands.** With respect to activities proposed in Category II and III wetlands, the following standards shall apply to Special Permit Requirements:

1. Water-dependent activities may be allowed where there are no practical alternatives that would have a less adverse impact on the wetland, its buffers and other critical areas.

2. Where nonwater-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:

   a. The basic project purpose cannot reasonably be accomplished and successfully avoid, or result in less adverse impact on, a wetland on another site or sites in the general region; and

   b. All alternative designs of the project as proposed, that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.

   c. Full compensation is made for loss of hydrological and ecological function and value as set forth in § 17.65.054.

E. **Category IV Wetlands.** Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers through Special Permit Requirements in accordance with an approved critical area report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's reasonable objectives. Full compensation for the acreage and ~~loss~~ function~~s~~ losses will be provided.

F. **Wetland Buffers**

1. **Standard Buffer Widths.** The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity.

   Required standard wetland buffers, based on wetland category and land use intensity, are as follows:

a. Category I – 200 feet

b. Category II – 100 feet

c. Category III – 50 feet

d. Category IV – 35 feet

2. **Measurement of Wetland Buffers.** All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category and the proposed land use. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers with predominately native plants will be considered. Lawns, walkways, driveways, and other mowed, cultivated, or paved areas will not be considered buffers.

3. **Increased Wetland Buffer Widths.** The Administrator shall require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

   a. A larger buffer is needed to protect other critical areas;

   b. The buffer or adjacent uplands has a slope greater than fifteen percent (15%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland; or

   c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to project the wetland functions and values, implementation of a buffer planting plan may substitute. Where a buffer planting plan is proposed, it shall include densities that are not less than three (3) feet on center for shrubs and eight (8) feet on center for trees and require monitoring and maintenance to ensure success. Existing buffer vegetation is considered "inadequate" and will need to be enhanced through additional native plantings and (if appropriate) removal of non-native plants when: (1) non-native or invasive plant species provide the dominant cover, (2) vegetation is lacking due to disturbance and wetland resources could be adversely affected, or (3) enhancement plantings in the buffer could significantly improve buffer functions.

4. **Wetland Buffer Width Averaging.** The Administrator may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case

basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

a. It will not reduce wetland functions or functional performance;

b. The wetland contains variations 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 narrower buffer in other places;

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

d. For Category 1 and 2 wetlands the buffer width is not reduced to less than 75percent (75%) of the standard width.

5. **Buffer Consistency.** All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter.

6. **Buffer Maintenance.** Except as otherwise specified or allowed in accordance with this Title, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive non-native weeds is required for the duration of the mitigation bond.

7. **Buffer Uses.** The following uses may be permitted within a wetland buffer in accordance with the review procedures of this Title, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

   a. **Conservation and Restoration Activities.** Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife and in accordance with an approved critical area report.

   b. **Passive Recreation.** Passive recreation facilities designed ~~and~~ in accordance with an approved critical area report,

   c. **Stormwater Management Facilities.** Stormwater management outfall facilities are allowed in accordance with an approved critical areas report with no net loss of function to the wetland and wetland buffer. However, stormwater facilities beyond those necessary to ensure continued pre-development stormwater flows to wetlands may only be permitted through the Conditional Use process.

8. **Construction Practices.** All construction adjacent to a wetland buffer(s) shall be undertaken pursuant to best management practices as set forth in City Code and post-construction uses shall comply with best operating procedures as set forth in City Code.

G. **Signs and Fencing of Wetlands**

1. **Temporary Markers**. The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur during construction and is subject to inspection by the Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. **Permanent Signs**. As a condition of any permit or authorization issued pursuant to this Chapter, the Administrator may require the applicant to install permanent signs or markers along the boundary of a wetland or buffer.

3. **Fencing**

   a. The Administrator shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the Administrator shall condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.

   b. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

   c. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

4. **Buffer Isolation.** If a portion of a required buffer is effectively isolated from the remainder of the buffer or its associated wetland by existing development such as a road, building, paving, etc. in such a way that it cannot perform the usual functions of a buffer, it shall not be identified as a buffer.

17.65.054 Performance Standards – Compensatory Mitigation Requirements

Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater hydrological and biologic functions. There shall be no net loss of ecological function and value as a result of any mitigation project, with risks reduced through the use of mitigation ratios. Compensatory mitigation plans shall be consistent with the state Department of Ecology Guidance on Wetland Mitigation in Washington State publications #04-06-013c and #04-06-13b as revised.

A. Mitigation Shall Be Required in the Following Order of Preference**:**

1. Avoiding the impact altogether by not taking a certain action or parts of an action.

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

4. Reducing or eliminating the impact over time by preservation and maintenance operations.

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

B. **Mitigation for Lost or Affected Functions.** Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions ~~as~~ *to* those lost, except when:

1. The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or

2. Out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.

C. **Preference of Mitigation Actions.** Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

1. Restoring wetlands on upland sites that were formerly wetlands.

2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.

3. Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements.

D. **Type and Location of Mitigation.** Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and

within the same stream reach, sub-basin, or drift cell. Mitigation actions shall be conducted within the same sub-drainage basin and on the site as the alteration except when all of the following apply:

1. There are no reasonable on-site or in-subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland provides; and

3. Off-site locations shall be in the same sub-drainage basin unless:

    a. Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or

    b. Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

E. **Mitigation Timing.** Mitigation projects shall be completed with an approved monitoring and maintenance plan prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development adjacent to the wetlands. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

The Administrator may authorize a one-time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the City and include a financial guarantee.

F. **Mitigation Ratios**

1. **Acreage Replacement Ratios.** The following ratios shall apply to creation or restoration that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits

from a state certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Category I:	6-to-1
Category II:	3-to-1
Category III:	2-to-1
Category IV:	1.5-to-1

2. **Increased Replacement Ratio.** The Administrator may increase the ratios under the following circumstances:

   a. Uncertainty exists as to the probable success of the proposed restoration or creation;

   b. A significant period of time will elapse between impact and replication of wetland functions;

   c. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or

   d. The impact was an unauthorized impact.

G. **Wetlands Enhancement as Mitigation**

1. Impacts to wetland functions may be mitigated by enhancement of existing degraded wetlands and/or buffers. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

2. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under Subsection F. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.

3. Mitigation ratios for enhancement in combination with other forms of mitigation shall range form 6:1 to 3:1 and be limited to Category III and Category IV wetlands.

H. **Wetland Mitigation Banks**

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

a. The bank is certified under Chapter 173-700 WAC;

b. The Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the banks certification.

3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

17.65.055 Performance Standards – Subdivisions

The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

A. Land that is located wholly within a wetland or its buffer may not be subdivided.

B. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

1. Located outside of the wetland and its buffer; and

2. Meets the minimum lot size requirements of the City.

C. Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the City determines that no other feasible alternative exists and when consistent with this Title.

17.65.060 TEMPORARY EMERGENCY PERMIT

Notwithstanding the provisions of this ordinance or any other law to the contrary, the Planning Department may issue a temporary wetlands permit through oral or written authorization, provided a written permit is accomplished within three working days, if it deems that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted. The emergency permit may be terminated at any time without process upon a determination by the Planning Department that the action was not or is no longer necessary to protect human health or the environment. The Planning Department may, within 90 days of the emergency permit, require that the action be reconsidered as an after-the-fact permit, subject to any or all of the terms and provisions of this ordinance.

17.65.070 USES BY RIGHT

The following uses shall be allowed as a right within a wetland to the extent that they are not prohibited by any other ordinance or law and provided they do not require structures,

grading, fill, draining, or dredging except as provided herein or authorized by Conditional Use Permit:

A. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of existing wetland.

B. Outdoor recreational activities, including fishing, birdwatching, hiking, boating, horseback riding, swimming, canoeing, and similar activities with limited environmental impact..

C. Enhancement of a wetland through the removal of non-native invasive species. Weeding shall be restricted to hand removal and weed material shall be removed from the site. Bare areas that remain after weed removal shall be revegetated with native shrubs and trees at natural densities. Some hand seeding may also be done over the bare areas with native herbs.

D. Education, scientific research, and nature trails;

E. Uses by right that do not require a special permit and that may involve filling, flooding, draining, dredging, ditching, or excavating to the extent specifically provided below:

1. Maintenance or repair of lawfully located roads or structures and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telegraph, telecommunication, or other services, provided that such roads, structures, or facilities are not materially changed or enlarged and written notice prior to the commencement of work has been given to the Planning Department and provided that the work is conducted using best management practices to ensure that flow and circulation patterns, and chemical and biological characteristics of the wetland, are not impaired and that any adverse effect on the aquatic environment will be minimized;

2. 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 that they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the wetland, except as authorized by special permit.

17.65.080 SPECIAL PERMIT USES (Conditional Use Permits)

Regulated activities other than those specified Section 17.65.070 may not be conducted except upon application to the Planning Department and issuance of a special permit entitled a Conditional Use Permit.

17.65.090 CONDITIONAL USE PERMITS

Application for a Conditional Use Permit to conduct a regulated activity shall be made to the Planning Department on forms furnished by that office. Permits shall be valid for a period not to exceed three years from the date of issue unless a shorter or longer period is specified by the Planning Department upon issuance of the permit. An extension of an original permit may be granted upon written request to the Planning Department by the original permit holder or the successor in title. The request for renewal of a permit shall follow the same form and procedure as the original application. Public notice and other permit processing requirements shall be consistent with procedures for other City Conditional Use Permits.

17.65.100 PERMIT APPLICATIONS

Application for a Conditional Use Permit for a regulated activity shall include but not be limited to the following unless waived with written justification by the Planning Department:

A. The purpose of the project and an explanation of why the proposed activity requires a wetland location or access to wetlands, or cannot be located at other sites;

B. A site plan drawn to an appropriate scale showing the Wetland District Boundary and the wetland boundary as determined by field survey; the width, depth, and length of all existing and proposed structures, roads, water-courses, and drainageways; water, wastewater, and storm water facilities; utility installations within 300 feet of a wetland; and the relationship of the proposed activity and any potentially affected wetland to the entire parcel of land owned by the applicant;

C. A description of the wetland or wetlands that will be affected by the regulated activity, including a sketch plan for the entire wetland drawn to a scale appropriate to delineate all significant or affected features, the area that may be filled or impacted; vegetation type; wetland water sources; and a general characterization of the habitat, wildlife, and common plants;

D. Soil types on the site and the exact locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;

E. Adjacent land use; and

F. Elevations of the site and adjacent lands within 300 feet of the site at contour intervals of no greater than five feet.

The Planning Department may require additional information, including, but not limited to, documentation and evidence of a wetland boundary determination by field survey; an assessment of wetland functional characteristics; documentation of the ecological, aesthetic, economic, or other values of a wetland, a study of flood, erosion, or other hazards at the site; evidence of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this ordinance or to evaluate the proposed use in terms of the purposes of this ordinance.

Any person who wants to know whether a proposed activity or an area is subject to this ordinance may request in writing a determination from the Planning Department. Such a request for determination shall contain plans, data, and other information as may be requested by the Planning Department to assist in making the determination.

At the time of an application or request for determination, the applicant shall pay a filing fee sufficient to cover the costs of evaluation of the application as specified by City Ordinance. These fees may be used to retain expert consultants who will provide services pertaining to wetland boundary determinations, functional assessment, and mitigation measures, as deemed necessary by the Planning Department.

Upon receipt of the completed application, the Planning Department shall notify the individuals and agencies, including federal and state agencies, having jurisdiction over or

an interest in the matter to provide such individuals and agencies an opportunity to comment.

The Planning Department shall establish a mailing list of all interested persons and agencies who wish to be notified of such applications.

17.65.110 PUBLIC HEARING AND RECOMMENDATIONS

No later than 60 days after receipt of a complete Conditional Use Permit application and after at least 15 days advance notice that the application has been published in one newspaper having general circulation in the area, the Planning Commission shall hold a public hearing on the application

Any person may present evidence and testimony at the hearing. At the hearing, the applicant shall have the burden of demonstrating that the proposed activity will be on accordance with the purposes of this ordinance and the standards set forth below.

17.65.120 STANDARDS FOR CONDITIONAL USE PERMITS

The City, after according consideration to the comments of the general public, other affected municipalities and counties, and federal and state agencies with jurisdiction over the area in question, shall issue a wetland permit only if it is found that the regulated activity is determined to be in the public interest in accordance with Section 17.67.140 below and that the applicant has demonstrated by a preponderance of the evidence that the regulated activity:

A. Is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative;

B. Will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, and hydrological conditions;

C. Will not jeopardize the continued existence of species that appear on federal or state endangered or threatened species lists; or on the Department of Wildlife list of Species of Special Concern in Skagit County.

D. Will not cause significant degradation of groundwater or surface-water quality;

E. Complies with all applicable state, local, and federal laws, including those related to sediment control, pollution control, floodplain zoning, and on-site wastewater and stormwater disposal;

F. Will provide the mandated wetland buffer area between the wetland and upland activities for those portions of a regulated activity that need not be conducted in the wetland; and

G. Complies with other standards contained in this ordinance, including those pertaining to wetland enhancement, creation, and restoration as required.

17.65.130 PRACTICABLE ALTERNATIVE TEST

For all permit applications, an alternative site for the proposed activity shall be considered practicable if it is available and the proposed activity can be carried out on that site after taking into consideration costs, existing technology, infrastructure, and logistics, in light of overall project purposes.

There is no practicable alternative if the applicant demonstrates all of the following to the satisfaction of the Zoning Administrator:

A. The basic purpose of the project cannot reasonably be accomplished using one or more other sites in the general region that would avoid or result in less adverse impact on a wetland;

B. The basic purpose of the project cannot be accomplished by a reduction in the size, scope, configuration, or density of the project as proposed or by changing the design of the project in a way that would avoid or result in fewer adverse effects on the wetland; and

C. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints.

17.65.140 PUBLIC INTEREST TEST

In determining whether a proposed regulated activity in any wetland is in the public interest, the City Council shall consider the following as a part of its conditional use permit review under 17.65.120.

A. The extent of the public need for the proposed activity;

B. The extent and permanence of the beneficial or detrimental effects that the proposed regulated activity may have on the public and private uses for which the property is suited;

C. The quality of the wetland that may be affected and the amount of wetland to be disturbed with the quality of the wetland to be evaluated using procedures specified in the Washington State wetland assessment method.

D. The economic value of the proposed regulated activity to the general area; and

E. The ecological value of the wetland and probable impact on public health and safety, fish, plants, and wildlife.

17.65.150 CONDITIONAL USE PERMIT CONDITIONS

The City Council shall attach such conditions to the granting of a Conditional Use Permit as deemed necessary to carry out the purposes of this ordinance. Such conditions may include but are not limited to:

A. Limitations on minimum lot size for any regulated activity;

B. Requirements that structures be elevated on piles and otherwise protected against natural hazards;

C. Modification of waste disposal and water supply facilities;

D. Imposition of operational control, sureties, and deed restrictions concerning future use and subdivision of lands, such as flood warnings, preservation of undeveloped areas in open space use, and limitation on vegetation addition or removal;

E. Dedication of easements to protect wetlands;

F. Establishment of vegetated buffer zones separating and protecting the wetland from proposed activities;

G. Erosion control and stormwater management measures;

H. Setbacks for structures and restrictions on fill, deposit of soil, and other activities in the wetland;

I. Modification in project design to ensure continued water supply to the wetland and circulation of water;

J. Creation or restoration of an area of wetland; and

K. Development of a plan to guide actions involving the creation of a new wetland or the restoration of a damaged or degraded wetland.

The Planning Department shall require a bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the bond shall be consistent with the purposes of this ordinance. In the event of a breach of any condition of any such bond, the Planning Department may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution.

17.65.160 WETLAND RESTORATION AND CREATION

As a condition of a permit issued or as an enforcement action under this ordinance, the City shall require that the applicant engage in the restoration or creation of wetlands in order to offset, in whole or in part, the losses resulting from an applicant's or violator's actions. In making a determination of whether such a requirement will be imposed, and, if so, the degree to which it would be required, the Planning Department will consider the following:

A. The long and short-term effects of the action upon wetland and associated aquatic ecosystem, and the reversible or irreversible nature of the impairment or loss;

B. The type and benefit of the wetland functions and associated resources lost;

C. The type, size, and location of the wetland altered, and the effect it may have upon the remaining system or watershed of which the wetland is a part;

D. Observed or predicted trends with regard to the gains or losses of this type of wetland in the watershed, in light of natural and human processes;

E. The cost and likely success of the possible compensation measures in relation to the magnitude of the proposed project or violation; and

F. The degree to which the applicant has demonstrated a good-faith effort to incorporate measures to minimize and avoid wetland impacts within the proposed project.

If wetland restoration or creation is required by the City, the applicant or violator shall develop a wetland restoration or creation plan for review and approval of the Planning Department. The creation or restoration of wetlands shall not be an alternative to the standards set forth in Section 17.65.130 but shall be used only to compensate for unavoidable losses.

The plan should state the exact location, of the proposed site; ownership; size, type and complete ecological assessment (flora, fauna, hydrology, wetland functions, etc.) of the wetland being restored or the area where a new wetland will be created; and the natural suitability of the proposed site for establishing the replacement wetland (i.e., water source and drainage patterns, topographic position, wildlife habitat opportunities, value of the existing area to be converted, etc.). In addition, plan view and cross-sectional, scaled drawings; topographic survey data, including slope percentage and final grade elevations; and other technical information are required in sufficient detail to explain, illustrate, and provide for:

A. Soil and substrate conditions; topographic elevations; grading and excavation; erosion and sediment control needed for wetland construction and long-term survival;

B. Planting plans specifying plant species types, quantities, locations, size, spacing, or density; source of plant materials, propagules, or seeds; timing, season, water, and nutrient requirements for planting; and, where appropriate, measures to protect plants from predation;

C. Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary ambient water conditions and hydrocycle/hydroperiod characteristics;

D. Mid-course corrections and a five or ten year monitoring and replacement plan establishing responsibility for removal of exotic and nuisance vegetation and permanent establishment of the wetland system and all its component parts (5 years is recommended for emergent vegetation and 10 years for forested and scrub-shrub wetland sites);

E. A demonstration of fiscal, administrative, and technical competence of sufficient standing to successfully execute the overall project.

17.65.170 WETLAND ENHANCEMENT, RESTORATION, AND CREATION ALTERNATIVES

Ordinarily, the applicant or violator shall undertake restoration or creation efforts on or adjacent to the site where permanent losses have been sustained or where restoration of a former wetland is possible. Replication "in-kind" of the impacted wetland will be the preferred alternative for creation or restoration efforts. Where the applicant has demonstrated to the satisfaction of the Zoning Administrator that this approach is infeasible due to technical constraints, such as parcel or wetland size or wetland type, or that a wetland of a different type or location is strongly justified based on regional needs or the functional value of the impacted wetland, the Zoning Administrator may accept or recommend an alternative proposal. Such proposal may involve monetary compensation as provided for in this section or the creation or restoration "out of kind" and "off site."

The Council shall set reasonable fees for compensation of wetland losses based upon the amount that would be required to perform on-site, in-kind restoration or creation. Where the City Council determines that the public interest is better served, the City Council may require a fee in lieu of direct action on behalf of the applicant or violator to initiate restoration or creation projects. Such fees shall be held in escrow for the express use of wetland creation and restoration projects and shall not be commingled with other funds. Work shall begin within twelve months and be completed no later than twenty-four months from receipt of a fee in lieu.

17.65.180 SUSPENSION, REVOCATION

The Planning Department may suspend or revoke a permit if it finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. The Planning Department shall cause notice of the denial, issuance, conditional issuance, revocation, or suspension of a permit to be published in a timely manner in a daily or weekly newspaper having a broad circulation in the area wherein the wetland lies.

17.65.190 NONCONFORMING ACTIVITIES

A regulated activity that was lawful before the passage of this ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following:

A. No such structure or use shall be expanded, changed, enlarged, or altered in any way that increases its Nonconforming character relative to the provisions of this chapter without securing a Conditional Use Permit, except as specifically authorized in (B) and (C) below.

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

C. Shannon Point Marine Center: the buffer area surrounding Cannery Pond shall conform to the following distances: 225 feet along the western boundary of the wetland to its southwestern corner, with this line extending southward parallel to, and 100 feet east of, the access road to a point 400 feet south of the southern edge of the wetland; the southern edge of the buffer will be an east-west line perpendicular to the east property boundary connecting with the west buffer boundary as described above. Where the access road falls within the buffer boundary (west side of wetland), SPMC may undertake maintenance and repair of the road and underground utilities as specified in Section 17.65.070.

D. Final Plat approvals, Conditional Use Permits, and building permits issued after the adoption of the City's first wetland ordinance (Ordinance #2131, adopted January 2, 1990) but before the effective date of this ordinance amendment will continue to be controlled by the version of this ordinance in effect at the time of their final approval/permit issuance.

E. In the event that a structure defined as Nonconforming relative to provisions of this chapter is destroyed by fire or remodeled, it may be rebuilt in such a way that does not increase the nonconformity, but such rebuilding or remodeling shall not trigger a requirement for restoration of wetlands, streams, or buffers that were altered in a way that was legal at the time of their alteration.

17.65.200 REASONABLE USE EXCEPTION

A. "Reasonable Use" means the minimum use to which a property owner is entitled under applicable state and federal constitutional provisions, including takings and substantive due process. Reasonable use shall be liberally construed to protect the constitutional property rights of the applicant.

B. A reasonable use exemption may be secured only if:

1. The strict application of this Title 17.70 would deny reasonable use of the property.

2. There is no other reasonable use that would result in less impact on the critical area.

3. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.

C. A reasonable use exemption may only be secured by using the City's conditional use process.

17.65.210 ISOLATED WETLAND EXEMPTION

The following isolated wetlands shall be exempted from this ordinance:

Category I	0
Category II	under 2,500 square feet
Category III	under 2,500 square feet
Category IV	under 10,000 square feet

17.65.220 ADAPTIVE MANAGEMENT

The City will monitor all construction projects undertaken adjacent to a wetland buffer(s) after the effective date of this ordinance at least once a year in order to assess buffer function and the use of City prescribed best operating procedures. From year to year the City will ensure that there is no net loss of buffer ecological function and value, on a citywide basis. In the event that such a situation occurs the City will promptly mitigate for any loss and take any further corrective action necessary to ensure that this situation does not reoccur. Corrective action may involve widening buffers, fines, and/or performance bonds.

Chapter X.60
Fish and Wildlife Habitat Conservation Areas

Designation and Mapping
X.60.010 Designation of Fish and Wildlife Habitat Conservation Areas

Additional Report Requirements – Habitat Conservation Areas
X.60.020 Critical Area Report – Additional Requirements for Habitat Conservation Areas

Performance Standards
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DESIGNATION AND MAPPING

X.60.010 Designation of Fish And Wildlife Habitat Conservation Areas

A. Fish and wildlife habitat conservation areas include:

1. Areas With Which State or Federally Designated Endangered, Threatened, and Sensitive Species Have a Primary Association.

   a. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

   b. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

   This Subsection shall not apply to hair seals and sea lions that are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or

threatening to damage commercial fish being lawfully taken with commercial gear.

2. **State Priority Habitats and Areas Associated With State Priority Species.** Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife and may be designated as appropriate through the process detailed in the next section (A3).

3. **Habitats and Species of Local Importance.** Habitats and species of local importance are those identified by the City, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

   a. **Designation Process.** The City shall consider nominations for habitat areas and species to be designated as locally important on an annual basis, following the procedures set forth in the City Comprehensive Plan, Appendix F.

      i. Habitats and species to be designated shall exhibit the following characteristics:

         (a) Local populations of native species are in danger of extirpation based on existing trends:

            (1) Local populations of native species that are likely to become endangered; or

            (2) Local populations of native species that are vulnerable or declining;

         (b) The species or habitat has recreation, commercial, game, tribal, or other special value;

         (c) Long-term persistence of a species is dependent on the protection, maintenance, and/or restoration of the nominated habitat;

         (d) 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 in; and

(e) Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

ii. Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape.

iii. Habitats and species may be nominated for designation by any person.

iv. The nomination should 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.

v. The nomination may include management strategies for the species or habitats. Management strategies must be supported by professional scientific analysis, and where restoration of habitat is proposed, a specific plan for restoration must be provided prior to nomination.

vi. The Administrator shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in subsection (i) and make a recommendation to the Planning Commission based on those findings.

vii. The Planning Commission shall hold a public hearing for proposals found to be complete in accordance with City hearing procedures and make a recommendation to the City Council based on the characteristics enumerated in subsection (i).

viii. Following the recommendation of the Planning Commission, the City Council shall determine whether the nominated habitat or species shall be designated a Habitat or Species of Local Importance.

ix. Approved nominations will be subject to the provisions of this Title.

b. The following areas are designated as habitats of local importance:

(i) The Anacortes Community Forest Lands, subject to the uses by right exemption set forth in 17.65.070. Unless otherwise protected by perpetual deed restrictions, permanent habitat protection within the ACFL shall be accomplished through the City's Conservation Easement Program.

(ii) The March Point Heronry, with the understanding that even though it is currently outside the City limits and therefore under Skagit County jurisdiction, a habitat management plan using CAO guidelines and professional scientific analysis shall be developed prior to any City development permit(s) being issued for any parcels of property within the city limits that are adjacent to the March Point Heronry.

4. **Commercial and Recreational Shellfish Areas.** These areas include all public and private tidelands or wetlands suitable for shellfish harvest, including shellfish protection districts established pursuant to Chapter 90.72 RCW.

5. **Kelp and Eelgrass Beds and Herring and Smelt Spawning Areas.**

6. **Naturally Occurring Ponds Under Twenty Acres But Larger than 2500 Square Feet.** Naturally occurring ponds are those ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, water or wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

7. a. **Stream Designations**

   The following 15 streams are hereby designated as FWHCAs for those stretches that are not in culverts or artificially created ditches as of December 31, 2003: Whistle Creek, Happy Valley Stream, Ace of Hearts Creek, Beaver Brook, Cranberry Creek, Clyde Creek, Anaco Bourn, Morrison Run, Cedar Springs, Weaverling Rill, Miller Creek, Aqua Creek, Howard Creek, Summit Creek, and March's Run.

   b. Stream Buffers

   Within these FWHCAs 50 foot buffers, on each side of the creek, measured from the top of the bank, are hereby established, and therein:

   (i) All new subdivisions of land must demonstrate that existing ecological functions and values of these streams and their buffers are at least maintained (and preferably enhanced).

   (ii) Prior to issuing a building permit the Building Department must have documents(s) and photographs on file describing the existing ecological function and value of the 50-foot buffer in general terms and a description of how the property owner will ensure that this existing function and value will be maintained over time. Every year the Building Department will commission an evaluation by a qualified riparian scientist as to whether or not on a cumulative basis ecological function and value has been maintained on all sites subject to building permit since January 1, 2004. If at any time this standard is not achieved the City shall either adopt a regulatory scheme to ensure that the standard is met or actually restore buffers to ensure that the standard is met.

   c. Converting Culverts and Ditches to Streams

Property owners or developers shall be encouraged to open up, or daylight, portions of streams that are in culverts, and return streams that are in artificial ditches to a more natural state. Streams that were in culverts or artificial ditches, as of December 31, 2003 shall only be subject to 10 foot buffers, with enhanced buffer planting and may use the platting or boundary line adjustment process to:

Reduce individual lot sizes to any buildable configuration provided the total square footage of the new lots plus the stream and buffer square footage equals or exceeds the total square footage for an equal number of minimum size lots in that zone prior to removing the stream from the culvert.

8. Lakes, Ponds, Streams, and Rivers Planted With Game Fish by a Governmental or Tribal Entity.

9. **State Natural Area Preserves and Natural Resource Conservation Areas.** Natural area preserves and natural resource conservation areas are defined and established by the Washington State Department of Natural Resources.

10. **Areas of Rare Plant Species and High Quality Ecosystems.** Areas of rare plant species and high quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program as designated through the process detailed in Section A3 above.

11. Land Useful or Essential for Preserving Connections Between Habitat Blocks and Open Spaces as designated through the process detailed in Section A3 above.

B. All areas within the City having one or more of these characteristics are hereby designated critical areas and are subject to the provisions of either this Title or Title 18.16 (City Shoreline Master Program).

C. **Mapping**. The approximate location and extent of habitat conservation areas are shown on the critical area maps adopted by the City, as most recently updated. The following critical area maps are hereby adopted:

1. Washington Department of Fish and Wildlife Priority Habitat and Species maps;

2. Washington State Department of Natural Resources, Official Water Type Reference maps, as amended;

3. Washington State Department of Natural Resources Puget Sound Intertidal Habitat Inventory maps;

4. Washington State Department of Natural Resources Shorezone Inventory;

5. Washington State Department of Natural Resources Natural Heritage Program mapping data;

6. Washington State Department of Health Annual Inventory of Shellfish Harvest Areas;

7. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission;

8. Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps; and

9. City official habitat maps.

   These maps are to be used as a guide for project applicants, and/or property owners and should be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

REPORT REQUIREMENTS – HABITAT CONSERVATION AREAS

X.60.020 Critical Area Report. Critical area reports for habitat conservation areas must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

A. **Preparation by a Qualified Professional.** A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.

B. **Areas Addressed in Critical Area Report**. The following areas shall be addressed in a critical area report for habitat conservation areas:

1. The project area of the proposed activity;

2. All habitat conservation areas and ~~recommended~~ ***their associated*** buffers within three hundred (300) feet of the project area; and

3. All shoreline areas, floodplains, ***wetlands, streams,*** other critical areas, and related buffers within three hundred (300) feet of the project area.

C. **Habitat Assessment.** A habitat assessment 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 habitat conservation area shall 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;

6. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

D. **Additional Information May Be Required.** When appropriate due to the type of habitat or species present or the project area conditions, the Administrator may also require the habitat management plan to include:

1. An evaluation by an independent qualified professional hired by the City and paid for by the applicant regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;

2. A request for consultation with the Washington Department of Fish and Wildlife or the local Native American Indian Tribe or other appropriate agency; and

3. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

PERFORMANCE STANDARDS

X.60.030 Performance Standards – General Requirements.

A. **Alterations**. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations not currently authorized shall be prohibited from habitat conservation areas, except either in accordance with this Title or the City Shoreline Master Plan.

B. **Non-indigenous Species.** No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

C. **Mitigation and Contiguous Corridors.** Mitigation sites shall be located wherever practicable to preserve or achieve contiguous wildlife habitat corridors

in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas.

D. **Approvals of Activities.** Development within Habitat Conservation Areas or their buffer areas not otherwise exempted in this title shall be by Conditional Use Permit. Conditions may be established based on professional scientific analysis and may include, but are not limited to, the following:

1. Establishment of buffer zones;

2. Preservation of critically important vegetation and/or habitat features such as snags and downed wood;

3. Limitation of access to the habitat area, including fencing and/or signage 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. **Mitigation and Equivalent or Greater Biological Functions.** Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

F. **Scientific Basis for Approvals.** Any approval of alterations or impacts to a habitat conservation area shall be supported by the professional scientific analysis.

G. **Buffers**

1. **Establishment of Buffers.** The City shall require the establishment of buffer areas for activities adjacent to habitat conservation areas on a case by case basis when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the nature of the existing vegetation, sensitivity of the habitat, and the type and intensity of human activity proposed to be conducted nearby. Habitat conservation areas and their buffers shall be preserved in perpetuity through the use of native growth protection easements and critical area tracts.

2. **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.

3. **Habitat Buffer Averaging.** The Administrator may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report including professional scientific analysis only if:

   a. It will not reduce stream or habitat functions;

   b. It will not adversely affect salmonid habitat;

   c. It will provide additional natural resource protection, such as buffer enhancement;

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

   e. Isolated buffers may not be included in any buffer averaging calculation.

4. Buffer Isolation. If a portion of a required buffer is effectively isolated from the remainder of the buffer or its associated habitat areas by existing development such as a road, building, paving, etc. in such a way that it cannot perform the usual functions of a buffer, it need not be designated as a buffer.

H. **Signs and Fencing of Habitat Conservation Areas**

1. **Temporary Markers**. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and verified by the Building Official prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until an occupancy permit has been issued and permanent signs, if required, are in place.

2. **Permanent Signs**. As a condition of any permit or authorization issued pursuant to this Chapter, the Administrator may require that applicant to install permanent signs along the boundary of a habitat conservation area or buffer.

3. **Fencing**

   a. The Administrator shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the Administrator shall condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the

edge of the habitat conservation area or buffer, when fencing is needed to minimize future impacts to the habitat conservation area.

b. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.

c. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

I. **Subdivisions.** The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the City Conditional Use Permit process

X.60.040 Performance Standards – Specific Habitats.

A. **Bald Eagle Habitat.** Bald Eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington Department of Fish and Wildlife.

B. **Wetland Habitats.** All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland performance standards set forth in *Wetlands* (Chapter 17.65).

C. **Riparian Habitat Areas.** Unless otherwise allowed in this Title, all structures and activities shall be located outside of the riparian habitat area.

1. **Establishment of Riparian Habitat Areas**. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to rivers, perennial or intermittent streams, seeps, and springs.

2. **Riparian Habitat Area Widths.** Recommended riparian habitat area widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to Subsection (3), or a lesser width is allowed pursuant to Subsection (4). Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of bank, if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of instream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

Riparian Habitat Areas	
Stream type	**Recommended RHA widths**
Type 1 and 2;	250 feet
Type 3; or other perennial or fish bearing streams, 5-20 feet wide	200 feet
Type 3; or other perennial or fish bearing streams, < 5 feet wide	50 feet
Type 4 and 5; or intermittent streams and washes with low mass wasting potential	50 feet
Type 4 and 5; or intermittent streams and washes with high mass wasting potential	225 feet

3. **Increased Riparian Habitat Area Widths**. The recommended riparian habitat area widths shall be increased, as follows:

   a. When the Administrator determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;

   b. When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;

   c. When a channel migration zone is present, the riparian habitat area width shall be measured from the outer edge of the channel migration zone;

   d. When the habitat area is in an area of high blowdown potential, the riparian habitat area width shall be expanded an additional fifty (50) feet on the windward side; or

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

4. **Riparian Habitat Area Width Averaging**. The Administrator may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if:

   a. The width reduction will not reduce stream or habitat functions, including those of nonfish habitat;

   b. The width reduction will not degrade the habitat, including habitat for anadromous fish;

c. The proposal will provide additional habitat protection;

d. The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;

e. The width reduction will not be located within another critical area or associated buffer; and

f. The reduced riparian habitat area width is supported by professional scientific analysis.

5. **Riparian Habitat Mitigation.** Mitigation of adverse impacts to Type 1 and 2 riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub-drainage basin as the habitat impacted. Mitigation of adverse impacts to Type 3, 4, and 5 riparian habitat areas may be approved by the Administrator provided there is no net loss in buffer function and value from existing conditions as of December 31, 2003. See Section X.60.010.A.7b.ii above.

6. **Alternative Mitigation for Riparian Habitat Areas.** The performance standards set forth in this Subsection may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.

D. **Anacortes Community Forest Lands (ACFL) Standards.**

a. **Shared Wetland.** In any circumstance where a jurisdictional wetland is shared by a private property owner and the ACFL, said wetland shall not be impacted adversely by private property owners unless the impacts are appropriately mitigated per chapter 17.65.

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

c. **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 shall be incorporated into the ACFL and subject to all ACFL related requirements.

d. **Private Access to ACFL.** No new accesses will be established to the ACFL without prior request for such access to the Parks & Recreation Department and the Forest Advisory Board and approval by the City Council.

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

f. **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.

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