

Anacortes Critical Areas Regulations Update

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

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

PROPOSED CODE – 2 nd Draft Organization (AMC 19.70)	CORRESPONDING EXISTING CODE (AMC 17.70)	SUMMARY OF KEY CHANGES From Existing 17.70 to the 1st Draft	SUMMARY OF KEY CHANGES From the 1 st Draft to the 2nd Draft
General Provisions (NEW)			
N/A	AMC 17.70.010 Introduction (Appendices A-D)	<ul style="list-style-type: none"> Removes Introduction section (which lists out a description of the ACFL, maps, history of ACFL land acquisition; and lists of Vulnerable species, animals and plants) 	
19.70.010 Purpose	Does not exist	<ul style="list-style-type: none"> Adds new General Provisions section intended to improve regulatory context and guidance for administration of the regulations Sets the purpose and standards for regulation of development affecting all critical areas types. 	
19.70.015 Applicability	Does not exist (Applicability is typically defined within each critical area section but is not easily found, and often not clear)	<ul style="list-style-type: none"> Adds broad applicability statement per Department of Commerce guidance 	
19.70.020 Identification, Classification, and Rating of Critical Areas	Does not exist	<ul style="list-style-type: none"> Adds overarching general standards for identification, classification, and rating of critical areas 	
19.70.025 Protection of Critical Areas	Does not exist.	<ul style="list-style-type: none"> Adds general protection requirements that apply to all critical areas types 	
19.70.030 General Requirements	New	<ul style="list-style-type: none"> Adds general city review responsibilities 	
19.70.035 Critical Areas Review	New 17.70.500 Nonconforming activities (wetlands)	<ul style="list-style-type: none"> Adds new provisions specifying when a critical area permit is required and clarifies provisions for modifying existing nonconforming structures and uses in all critical areas types 	
19.70.040 Exempt Activities	17.70.500 Nonconforming activities 17.70.100 (CARA) 17.70.220 (Geo) 17.70.380 & 17.70.500 (Wetlands) 17.70.540.A.3.b.i & 17.70.380 (FWHCA - ACFL)	<ul style="list-style-type: none"> Reorganizes existing “Uses by Right” in wetlands (AMC 17.70.380) and ACFL FWHCA provisions (AMC 17.70.540.A.3.b.i) to new “Exemptions” section 	<ul style="list-style-type: none"> Reorganizes exempt activities for all critical areas types into a table Divides “exemptions” into two categories <ul style="list-style-type: none"> No review required and Letter of Exemption required Relocates and retitles “Passive Recreation” to Permitted Alterations, providing for limited public and private recreational access, including trails, subject to Ecology-recommended impact minimizing measures, plus a critical areas report

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			<ul style="list-style-type: none"> • Adds clarification that the “passive outdoor activities” exemption does not include constructing new roads or trails, vegetation clearing, or collection of animals.
19.70.050 Permitted Alterations	17.70.100 (CARA) 17.70.250 (Geo) 17.70.340.F.7 ; 17.70.400-.460 (Wetlands), 17.70.560 (FWHCA) 17.70.560 & 17.70.575 (FWHCA)	<ul style="list-style-type: none"> • Carries over “Passive Recreation” facilities as an “allowed use” within wetland buffers , but adds Ecology-recommended impact-minimizing parameters for such facilities • Updates/adds critical area permit types and criteria for non-exempt projects, including “variance” and “public agency exception”, replacing “special/conditional use permit”; but staff notes the need to make some adjustments to this section as part continuing update process 	<ul style="list-style-type: none"> • Reorganizes and consolidates into tables critical area permit types for all critical areas types • Updates critical area permit types and criteria for non-exempt proposals – Adds new permit type: “Permitted Alterations” (Type 2) <ul style="list-style-type: none"> ○ Buffer modifications; Public Services (utilities and access); Conservation/Enhancement projects; Chemical applications; Recreational areas / Facilities; SFR and necessary appurtenances
19.70.055 Reasonable Use Exception Variance	17.70.390 17.70.575	<ul style="list-style-type: none"> • Updates/adds critical area permit types and criteria for non-exempt projects, including “reasonable use exception”, “variance” and “public agency exception”, replacing “special/conditional use permit” currently in 17.70; but staff notes the need to make some adjustments to this section as part continuing update process 	<ul style="list-style-type: none"> • Updates critical area permit types and criteria for non-exempt proposals – Adds new permit type - “Reasonable Use Exception Variance” (Type 3-HE) <ul style="list-style-type: none"> ○ Everything else
Critical Areas Review Procedures (NEW)			
19.70.110 Critical Area Identification Form	Does not exist	<ul style="list-style-type: none"> • New Critical Area Identification Form added to submittal requirements for all permit review processes to help identify potential critical areas on or near a project site 	<ul style="list-style-type: none"> • Updates to review procedures to provide a more efficient review process
19.70.125 Critical Area Report	Listed within each CA type chapter	<ul style="list-style-type: none"> • Clarifies when a critical area report is required and consolidates requirements report contents from individual critical area sections • Clarifies when 3rd party review of critical areas reports is required 	<ul style="list-style-type: none"> • Adds minimum application requirements for critical areas permits
19.70.135 Mitigation Requirements	Within each CA type chapter	<ul style="list-style-type: none"> • Consolidates existing general requirements found within each section and adds new clarification that an applicant must demonstrate use of mitigation sequencing prior to impacting critical areas 	
19.70.140 Mitigation Plan Requirements	Within each CA type chapter	<ul style="list-style-type: none"> • Consolidates standards for mitigation plans in one location 	
19.70.145 Title Notice	Does not exist	<ul style="list-style-type: none"> • Adds new provisions for long-term protection and property purchaser notification of critical areas presence 	<ul style="list-style-type: none"> • Updates requirements for title notice documents
19.70.150 Field Marking	17.70.340.G 17.70.560.H	<ul style="list-style-type: none"> • Expands and clarifies temporary and permanent field marking requirements 	
19.70.155 Construction Plan Review, Monitoring, and Inspection	Does not exist	<ul style="list-style-type: none"> • Provides opportunity to require qualified professional review of construction plans and presence on site during construction 	
19.70.160 Financial Guarantee Requirements	17.70.330 (wetlands) 17.70.560 (FWHCA)	<ul style="list-style-type: none"> • Clarifies and expands financial guarantee (bonding) requirements when impacts to critical areas or buffers are proposed 	
19.70.170 Unauthorized Critical Area Alterations	17.70.470	<ul style="list-style-type: none"> • Clarifies and expands procedures for addressing unauthorized impacts; and performance standards for restoration; adds financial penalty for impacts to critical areas, buffers, and trees 	<ul style="list-style-type: none"> • Updates to restoration standards per Ecology guidance
19.70.175 Final Decision and Appeals	17.70.400 for special/conditional use permits	<ul style="list-style-type: none"> • Clarifies appeals of critical areas determination and critical areas permits (follow procedures for underlying permit type) 	

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Wetlands			
19.70.200 Wetlands – Description and Purpose	17.70.270 ; 17.70.280	<ul style="list-style-type: none"> Consolidates and simplifies existing purpose statements 	
19.70.210 Wetlands – Designation and Rating	17.70.320	<ul style="list-style-type: none"> Updates to wetland designation and rating system to reference most current WA State DOE Wetland Rating System for Western Washington – 2014 Update Removes Regionally and Locally Significant Wetland designations 	
19.70.220 Wetlands – Mapping and Delineation	17.70.300 & 17.70.320	<ul style="list-style-type: none"> Adds clarification regarding general reference mapping Updates delineation requirements to reference federal manual per WAC 173-22-035 	<ul style="list-style-type: none"> Updates mapping to show existing and potential wetlands
19.70.230 Wetlands – General Development Standards	17.70.340	<ul style="list-style-type: none"> Carries over existing general standards, adds references to new location for exemptions 	
19.70.240 Wetlands – Specific Wetland Category Development Standards	17.70.340	<ul style="list-style-type: none"> Carries over development standards for each Category of wetland, with updates to reference permitting requirements for proposed alterations; adds specific reference to requirement for mitigation sequencing, and updates to criteria per DOE guidance 	<ul style="list-style-type: none"> Reduces size threshold (from 4,000 sf to 1,000) for Cat I, II, III and IV wetlands to be exempt from the requirement to avoid impacts and added more criteria per DOE guidance
19.70.250 Wetlands – Required Buffer Areas	17.70.340	<ul style="list-style-type: none"> Standard buffer widths updated per Ecology guidance <ul style="list-style-type: none"> Added 33% increase provision and updated points values to match 2014 rating system Adds requirement to demonstrate no feasible alternative when proposing buffer averaging Carries over “Passive Recreation” facilities as an “allowed use” within wetland buffers, but adds Ecology-recommended impact-minimizing parameters for such facilities, including restriction to the outer 25% of buffer and max. of 6’ wide Adds/updates criteria for stormwater management facilities within buffers per DOE guidance Adds provisions regarding previously established buffers & “interrupted buffers” Adds a required 10’ setback from buffers 	<ul style="list-style-type: none"> Revises buffer approach to incorporate wetland type and functions, types of adjacent land use, and the environmental characteristics of the existing buffer, per DOE guidance Relocates allowed buffer uses to permitted alterations (19.70.040) and changes review type from Type 1 to Type 2, and updates criteria per DOE guidance Removes language about previously established buffers and clarifies provisions for functionally separated and isolated buffers
19.70.260 Wetlands- Critical Areas Report Additional Requirements	17.70.330	<ul style="list-style-type: none"> Expands upon existing report requirements 	
19.70.270 Wetlands – Compensatory Mitigation Performance Standards and Requirements	17.70.350	<ul style="list-style-type: none"> Adds alternative mitigation methods to the mitigation provisions to include off-site mitigation, advanced mitigation, in-lieu fees, and mitigation banking to allow for creation of those programs in the future (BAS, DOE guidance) Updates to mitigation ratios and performance standards per DOE guidance 	<ul style="list-style-type: none"> Adds definitions for types of restoration - “Re-establishment and Rehabilitation” Adds provisions for “Permittee-responsible mitigation” Additional updates to mitigation ratios to include estuarine wetlands Added design and construction requirements for wetland creation sites

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Fish and Wildlife Habitat Conservation Areas			
19.70.300 – Fish and Wildlife Habitat – Description and Purpose	New	<ul style="list-style-type: none"> Consolidates and simplifies existing purpose statements 	
19.70.310 – Fish and Wildlife Habitat – Designation	17.70.540	<ul style="list-style-type: none"> Replaces the list of named 15 streams with “Waters of the State”, which covers all streams; state priority habitat and species (mapped by WDFW) listed out for easier identification; existing habitats and species of local significance retained; local designation process retained 	
19.70.320 – Fish and Wildlife Habitat – Mapping	17.70.540	<ul style="list-style-type: none"> Carries over and updates list of mapping and inventories Updates references to external mapping sources that are adopted by reference 	<ul style="list-style-type: none"> Updated mapping, including stream map with names and typing according to WA DNR
19.70.330 – Fish and Wildlife Habitat – General Development Standards for All FWHCAs	17.70.560	<ul style="list-style-type: none"> Carries over General standards except some existing standards for buffer averaging, fencing, signage, etc. relocated to General Provisions 	
19.70.340 – Fish and Wildlife Habitat – Specific Standards for Streams	17.70.540.A.7	<ul style="list-style-type: none"> Updates buffers for Type F (shown tentatively as 100’), with staff acknowledgement that additional review of guidance for stream buffers in urban areas is needed Allowed activities in streams divided by Type: Fish Streams, Non Fish Perennial, Non Fish Seasonal Specific standards for streams – classification system improves the protection for “fish” streams 	<ul style="list-style-type: none"> Carries over 50’ buffers for streams based on BAS report Provides additional discussion and updates to standards for development near piped streams and roadside ditched segments, including stream enhancement measures, and incentives for daylighting streams Simplifies standards for stream crossings to reference compliance with state and federal fish passage criteria
19.70.350 – Fish and Wildlife Habitat – Specific Standards for Other FWHCAs	17.70.570	<ul style="list-style-type: none"> Updates standards for non-stream FWHCA’s – adds specific standards for Endangered, Threatened, and Sensitive Species, and other Priority Habitats and Species Carries over ACFL-specific provisions and updates protections for the March Point Heronry 	<ul style="list-style-type: none"> Adds language re: recreation and recreation-related facilities in ACFL, intended to recognize the conservation easement program’s purpose of preserving the ACFL for public recreation and conservation; and consistency with ACFL Comprehensive Plan Adds more specific language re: March Point Heronry Adds specific buffer requirements for non-stream FWHCA’s (marine shorelines, nesting bald eagles, great blue heron nesting areas and all others)
19.70.360 – Fish and Wildlife Habitat – Buffer Width Averaging for All FWHCAs	17.70.570	<ul style="list-style-type: none"> Updates habitat buffer averaging criteria 	<ul style="list-style-type: none"> Adds additional criteria for buffer width averaging, including maximum allowed reduction, and changes review process from Type 1 to Type 2
19.70.370 – Fish and Wildlife Habitat – Stormwater Management Facilities	Does not exist	<ul style="list-style-type: none"> Adds standards for stormwater management facilities within FWHCAs 	<ul style="list-style-type: none"> Updates standards for stormwater management facilities per DOE guidance
19.70.380 – Fish and Wildlife Habitat – Critical Area Report Additional Requirements	17.70.550	<ul style="list-style-type: none"> Expands on existing critical areas report and habitat assessment requirements 	<ul style="list-style-type: none"> Adds additional technical information requirements for streams and heron habitat
19.70.390 – Fish and Wildlife Habitat – Mitigation Performance Standards and Requirements	17.70.560	<ul style="list-style-type: none"> Consolidates mitigation performance standards and requirements 	<ul style="list-style-type: none"> Adds cross reference to requirements in AMC 19.70.135

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Geologically Hazardous Areas			
19.70.400 – Geologically Hazardous Areas- Description and Purpose	New	<ul style="list-style-type: none"> Adds new purpose language 	
19.70.410 – Geologically Hazardous Areas – Designation	17.70.180 & 17.70.190	<ul style="list-style-type: none"> Designations expanded to include more areas per BAS report <ul style="list-style-type: none"> Updates designation for erosion hazard areas to include coastal erosion prone areas Updates designation for landslide hazard area to include slopes having gradient steeper than 80% subject to rock fall during seismic shaking Adds designation for marine bluffs and refers to the SMP for regulations 	
19.70.420 – Geologically Hazardous Areas – Mapping	17.70.210	<ul style="list-style-type: none"> Mapping sources carried over and expanded upon 	<ul style="list-style-type: none"> Updates to City mapping per BAS report <ul style="list-style-type: none"> Updates known or suspected landslide hazards Adds Skagit County Potential Landslide and Erosion Areas, 2016 Adds DNR liquefaction susceptibility and site class mapping Adds DNR Tsunami Hazard Mapping
19.70.430 – Geologically Hazardous Areas – General Development Standards	17.70.220 & 17.70.250	<ul style="list-style-type: none"> Removes exemptions for certain activities from the requirement to submit critical area reports Eliminates exemptions for critical area reports in seismic hazard areas 	
19.70.440 – Geologically Hazardous Areas – Specific Development Standards	17.70.220 & 17.70.260	<ul style="list-style-type: none"> Retains existing 50’ buffer requirement from landslide hazard areas Updates allowed buffer reductions to a minimum of 15’ (up from 10’) per BAS report Adds requirement for property covenant/ notice on title per BAS report Updates slope stability analysis requirements per BAS report Updates to stormwater management standards to prohibit infiltration systems in landslide hazard areas unless report determines no adverse effect to slope stability, per BAS report Updates to require 3rd party review of proposals for alterations to geologically hazardous areas per BAS report Adds the requirement for 3rd party review in landslide hazard areas Adds performance standards for tsunami hazard areas Strengthens language for vegetation retention and management requirements Adds specific standards for stormwater management 	<ul style="list-style-type: none"> Revised buffer reductions to allow up to a maximum of a 25% reduction to the 50’ buffer requirement (min. buffer = 37.5’)
19.70.450 – Geologically Hazardous Areas – Critical Area Report Additional Requirements	17.70.230 & 17.70.240	<ul style="list-style-type: none"> Carries over and consolidates existing report requirements 	

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Critical Aquifer Recharge Areas			
19.70.500 Critical Aquifer Recharge Areas – Description and Purpose	17.70.080	<ul style="list-style-type: none"> • Adds new purpose language • 	
19.70.510 Critical Aquifer Recharge Areas – Applicability and Hazardous Materials Questionnaire	Does not exist	<ul style="list-style-type: none"> • New requirement to help determine regulated activities/facilities - Regulated facilities questionnaire required as part of application 	
19.70.520 Critical Aquifer Recharge Areas – Designation	17.70.090	<ul style="list-style-type: none"> • Eliminates Category I and II distinction; Critical Aquifer Recharge Areas designation criteria is same as for current Category 1. • Applicability is specific to certain use types that have the potential to negatively impact ground water quality within CARAs • Removes reference to seawater intrusion areas since this is primarily a concern with drilling of new wells for potable water, and the City’s water source is the Skagit River 	
19.70.530 Critical Aquifer Recharge Areas – Mapping	17.70.090		<ul style="list-style-type: none"> • Updates mapping per BAS recommendations: <ul style="list-style-type: none"> ○ Designates CARAs (formerly Category I) ○ Adds areas that are mapped with high permeability soils as CARA ○ Adds areas that contain groundwater wells within the city limits as CARA
19.70.540 Critical Aquifer Recharge Areas – General Development Standards	17.70.150	<ul style="list-style-type: none"> • Carries over prohibited activities 	
19.70.550 Critical Aquifer Recharge Areas – Specific Development Standards for Regulated Facilities	17.70.160	<ul style="list-style-type: none"> • Carries over specific performance/ development standards • Adds table with specific references to other State and Federal statutes regulating groundwater impacting activities 	
19.70.560 Critical Aquifer Recharge Areas – Critical Areas Report Additional Requirements	17.70.120	<ul style="list-style-type: none"> • Carries over report requirements 	<ul style="list-style-type: none"> • Consolidates report requirements
Frequently Flooded Areas			
19.70.600 Frequently Flooded Areas – Description and Purpose	17.70.020	<ul style="list-style-type: none"> • Adds purpose language • 	
19.70.610 Frequently Flooded Areas – Designation	17.70.040	<ul style="list-style-type: none"> • References existing recodified FEMA floodplain management requirements to new Chapter AMC Ch. 19.74 (to be completed as part of this process) • Adds reference to tsunami hazard areas in geologically hazardous areas section • Adds discussion of sea level rise and climate change per BAS recommendations 	
19.70.615 Frequently Flooded Areas – Mapping	17.70.040.B	<ul style="list-style-type: none"> • Carries over mapping references/designation 	
19.70.620 Frequently Flooded Areas – General Development Standards	17.70.060	<ul style="list-style-type: none"> • Adds cross reference to recodified Floodplain Management standards in AMC 19.74 	

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19.70.625 Frequently Flooded Areas – Critical Areas Report Additional Requirements	New	<ul style="list-style-type: none"> • Adds the Federal ESA requirements for floodplain development to conduct a Habitat Assessment Report for all development in these areas; and provides exemptions to the requirement to complete a habitat assessment for certain activities 	