



**City of Tacoma**  
Office of the Director  
Report and Decision

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WA State Department  
of Ecology (SWRO)

**CRITICAL AREAS DEVELOPMENT PERMIT**

**FILE NO: LU17-0009, LU17-0069**

**APPLICATION FOR:**

Alexey Shvets  
5342 N Ruby Street  
Tacoma, WA 98407

**SUMMARY OF REQUEST:**

The applicant requests a Critical Area Development Permit to construct a new single family residence within a Category IV wetland and buffer located on a steep slope. Mitigation for the wetland and buffer impacts is proposed to allow the construction of a new single family home. The remaining wetland and buffer area will be restored and enhanced with native vegetation.

Under *TMC* Chapter 13.11, a Critical Areas Development Permit is required.

**LOCATION:**

4203 Forest Street, Parcel 55650000291

**SUMMARY OF DECISION:**

The request for a Critical Areas Development Permit is **Approved**, subject to conditions.

**Notes:**

The appeal period on this decision closes **July 31, 2019** and the effective date of this decision is the following business day, provided no requests for reconsideration or appeals are timely filed as identified in APPEAL PROCEDURES of this report and decision.

The Director has jurisdiction in this matter per *TMC* 13.05.030. The applicant bears the burden of proof to demonstrate the proposal is consistent with the provisions of the *TMC*, the applicable provisions and policies of the City's *Comprehensive Plan*, and other applicable ordinances of the City.

**FOR ADDITIONAL INFORMATION CONCERNING THIS LAND USE PERMIT PLEASE CONTACT:**

Karla Kluge, Senior Environmental Specialist  
Planning and Development Services  
747 Market Street, Room 345, Tacoma, WA 98402  
253-591-5773 or [kkluge@cityoftacoma.org](mailto:kkluge@cityoftacoma.org)

## SUMMARY OF RECORD

The following attachments and exhibits constitute the administrative record:

### Attachments:

- Attachment A: Site Plan with Mitigation Planting Plan  
Attachment B: Technical Memorandum provided by Karla Kluge, City Senior Environmental Specialist, dated May 20, 2019

### Exhibits<sup>1</sup>:

- Exhibit "A": JARPA  
Exhibit "B": "Critical Areas Characterization and Compensatory Mitigation Program for the Development of a New Single Family Homesite", December 5, 2018, Habitat Technologies  
Exhibit "C": SEPA – MDNS & Environmental Checklist  
Exhibit "D": Project Site Plans  
Exhibit "E": Revised Geotechnical Engineering Report, Revised January 18, 2019 prepared by GeoResources  
Exhibit "F": Outside Agency and City Departmental Comments  
Exhibit "G": Public Comment Letters  
Exhibit "H": Applicants Response to Comments

## FINDINGS

### Proposal:

1. The applicant has requested a Critical Area Development Permit to construct a new single family residence within a Category IV wetland and buffer located on a steep slope. To allow for the development of the home site, a portion of the onsite wetland will be filled to accommodate the single family home. Buffer impacts will also occur as a result of the placement of a single family home on the site: therefore, a buffer modification is also proposed to allow for the proposed development. See Attachments "A-B" and Exhibit "D".
2. Mitigation is proposed to provide functional lift to the maximum extent possible on the site in order to allow the construction of the single family home. The remaining wetland and wetland buffer area will be restored and enhanced with native vegetation according to TMC 13.11.330.E to the maximum extent practicable where space is available on site. The retained onsite wetland and buffer areas shall be initially cleared of invasive vegetation and existing garbage and shall then be planted with a variety of native trees and shrubs appropriate for the site and selected to provide enhanced biological and physical wetland and buffer functions.
3. The proposed home will be constructed as a daylight basement structure that includes a rear structural concrete/retaining wall. The wall will extend at a minimum of 5 feet above the adjacent ground surface. The rear retaining wall and rear lower floor wall of the structure shall have no opening such as windows or doors. This will minimize potential slope debris from entering this area of the residence. The rear retaining/impact wall will also extend a minimum of 8 feet north and south from the residence to provide protection from debris

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<sup>1</sup> All Exhibits are contained in Planning and Development Services Department File No. LU17-0009. They are referenced and incorporated herein as though fully set forth.

impacting the sides of the home. The wing walls will be angled at 45 degrees for catchment purposes.

4. The rear/impact wall, and the first floor below grade wall, will also include drainage that extends the full depth below grade height of the walls.
5. The applicant's proposal is to eliminate a portion of the existing wetland and wetland buffer through excavation and fill the previous wetland area with structural support soils according to the geotechnical recommendations. The buffer for the onsite wetland area will be reduced to less than 15 feet in both side yards of the proposed dwelling to construct appropriate drainage around the home as well as to provide a maintenance corridor for access along the entire perimeter of the home.

**Project Site:**

6. The project site is addressed as 4203 Forest Street, Parcel 5565000291 and is comprised of approximately 0.39 acres.
7. The site is located within an "R-2" Single Family Dwelling District. The Comprehensive Plan Land Use designation for the site is Parks and Open Space. The neighborhood district is the North End Neighborhood Council District.
8. The site is generally square in shape, measuring approximately 130 feet wide by 130 deep and encompasses approximately 0.39 acres. The site is bounded by undeveloped land to the southeast, northwest, southwest and existing residential development on the northeast. The site is currently undeveloped except for a small cabin structure supported on stilts. The cabin, which is smaller than the proposed home, is currently located in the general location of the proposed building area. The site is accessed from an easement from Waterview Street through a driveway that also accesses the residential development to the northeast.
9. The site generally slopes downhill from the southeast to the northwest. The slope area is dissected by small drainage channels resulting in local ridges in the lower portion of the slope. Vegetation across the site was described as a moderate to dense stand of coniferous and deciduous trees, with an understory of ferns, grasses, and horse tail.
10. A wetland delineation report was provided which identified one sloped, Category IV wetland located generally across the entire site, and extending offsite to the southeast and northwest. The existing wetland area on site is 9,344 square feet in size and was further characterized as a Palustrine, Forested, Emergent, Category IV wetland with a regulated 50-foot buffer. The wetland extends offsite and drains into an existing stormwater drainage system that is piped into a small pond which is then piped to City storm along Waterview Street. The existing wetland buffer area is 7,554 square feet on site. Following development, the wetland area remaining on site will be approximately 3,374 square feet and the remaining wetland buffer area will be approximately 4,763 square feet.
11. The applicant's consultant described the western, up slope portion of the project site dominated by an upland forest plant community that included Douglas fir, western red cedar, big leaf maple, red alder, black cottonwood, vine maple, Himalayan blackberry, Scots broom, evergreen blackberry, trailing blackberry, laurel, ivy, dandelion, velvet grass, bluegrass, bracken fern, sword fern, yarrow, bull thistle, teasel, buttercup, and Queen Anne's lace. This plant community is typical of upland areas.

12. The plant community within the northern portion of the project site was dominated by a forest plant community typically associated with damp to saturated soil conditions. Vegetation included western red cedar, red alder, black cottonwood, willows, salmonberry, red osier dogwood, softrush, reed canarygrass, small fruited bulrush, slough sedge, dock, and bentgrass. This plant community was identified as hydrophytic in character and is typical of wetland areas.
13. The eastern corner of the site is dominated by vegetation associated with damp to saturated soil conditions. Vegetation in this area includes willows, softrush, reed canarygrass, small fruited bulrush, slough sedge, dock, lady fern, and bentgrass. This plant community is typical of wetlands.
14. Fish and Wildlife Habitat Conservation Areas (Biodiversity Areas) were evaluated on site and due to the prevalence of invasive species, most of the site does not meet the criteria for a Biodiversity Area or Corridor. However, the southwestern edge of the site on the upper slope is more heavily vegetated with native trees and shrubs and there may be a small portion on site within this area that meets the criteria. This area will not be impacted by the proposed home and is not included in the restoration effort as the vegetation already represents a native, diverse community.
15. The development of the site will capture and direct the existing surface water and groundwater around the structure. The effect on the remaining portion of the wetland on and off site is expected to be minimal as groundwater and surface water will continue to saturate the portion of wetland offsite to the south and the remaining wetland area to the north.
16. No federal listed "threatened" or "endangered" species have been documented within the project site. Bald Eagle (*Haliaeetus leucocephalus*) a federally listed species of concern occurs in the vicinity of the project site, primarily along the shoreline of Puget Sound.

**Surrounding Area:**

17. The surrounding area is bounded by undeveloped land to the southeast, northwest, southwest and an existing residential development on the northeast.
18. The surrounding area is zoned R-2" Single Family Dwelling District. The Comprehensive Plan Land Use designation for the surrounding area is also Parks and Open Space.

**Additional Information:**

19. In accordance with the State Environmental Policy Act (SEPA) administered under the Washington Administrative code (WAC)197-11-350, a Mitigated Determination of Non-Significance (MDNS) is being issued on July 17, 2019 under File Number LU17-0069. Mitigation required by the Department of Ecology include soil testing for contaminants and precautions associated with any soil disturbance at the site. The MDNS and associated Environmental Checklist are marked as Exhibit "C" to the Report and Decision.
20. Karla Kluge, Senior Environmental Specialist and subject matter expert for the Planning and Development Services Department, has conducted numerous site visits to the project site and reviewed the project proposal. The Director would note that substantial weight is given to Ms. Kluge's review of the proposal for potential effects on critical areas. Ms. Kluge's Technical Memorandum is marked as an Attachment to this decision. Ms. Kluge concurred with the Wetland Rating and Wetland Delineation which identified the Category IV wetland on site requiring a 50-foot wetland buffer. In addition, she provided analysis with regard to

the justification criteria for avoidance, minimization and mitigation hierarchy required for project impact analysis, the Reasonable Use Legal Test, the wetland buffer modification proposed and the mitigation required under a Reasonable Use Test given all appropriate application of the critical area code requirements at the site. Refer to Attachment "B".

The applicant provided arguments for the Reasonable Use Test demonstrating that the proposed development cannot avoid impacts to the wetland, buffer and steep slopes as the site is completely encumbered by these critical areas. The single family home placement, design and geotechnical engineering provides a reasonable use of a residentially zoned parcel and thus, the applicant has met the Reasonable Use Test per *TMC 13.11.240.B* demonstrating that there is no other economic use and the proposed mitigation will enhance the functions of a lower functioning Category IV wetland and buffer and provide long term habitat improvements for the urban species that frequent this area along the hillside.

Further, Ms. Kluge notes that *TMC 13.11.330.E* for buffer averaging or buffer reduction beyond the minimum standards to allow a reasonable use of a legal lot of record when all of the following criteria are met:

*a. There are no feasible alternatives to the site design that could be accomplished with the standard buffer averaging or buffer reduction provision above; and*

Ms. Kluge agrees with the applicant's assertion that there are no reasonable economic uses for the site that will avoid wetlands and their buffers and the steep slope on site. Refinements to the geotechnical design have resulted in an approvable structure that will meet criteria under the Critical Area code for wetland, buffers, steep slopes and Fish and Wildlife Conservation Areas (Biodiversity Areas/Corridors). Minimization through design and placement was completed to the extent practicable and further reductions would not be possible that would allow a single family home on site.

*b. The averaged or reduced buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland expert, and*

Ms. Kluge further describes the wetland and habitat on site as a Category IV wetland on a sloped wetland that has been impacted by surface sloughing and limited development associated with an old cabin structure. Invasive species have established within the wetland and buffer bare areas that were well vegetated after the surface sloughing. The proposed mitigation activities will restore and enhance the remaining wetland and wetland buffer and protect this area in perpetuity which is expected to maintain the functions of the remaining wetland and buffer.

The wetland delineation conducted by Habitat Technologies meets the requirements of *TMC 13.11.310* Wetland Classification and *TMC 13.11.320* Wetland Buffers. Ms. Kluge concurs with the delineated boundary and analysis provided within the reports.

The applicant provided surface water management techniques to collect water from entering the home foundation and routing it to existing receiving facilities. The remaining wetland will continue to receive surface flow and groundwater input and the area where water will be collected will no longer serve any portion of the remaining wetland. Thus, the post development hydrology will function in a similar manner as the pre-development hydrology.

*c. The remaining buffer area on site shall be enhanced and/or restored by removing invasive species that do not perform needed functions and replanting with an appropriate plant community, and*

Invasive species will be controlled and a native plant community will be installed within the remaining wetland and buffer areas on site where needed to achieve a native plant community. The planting of natives within areas impacted from clearing the invasive species will result in a native tree and shrub layer being allowed to grow and populate the area that will improve the functions of the remaining wetlands and buffer.

*d. The project shall meet the requirements of one of the three legal tests; No Practicable Alternatives, Public Interest, or Reasonable Use.*

As discussed above, the project has met the Reasonable Use. The establishment of a single family home and project design could not avoid impacts to the critical areas on site as the entire site is encumbered with critical areas. The applicant did minimize impacts and has provided mitigation to the extent practicable on the site. The placement of the home is designed to occupy an area where a small cabin structure is located on the slope and within the wetland which avoids some critical area impacts. The proposed mitigation will benefit the remaining wetland system by providing a heightened functional status within the remaining wetland and wetland buffer long term. In summary, the vegetation enhancement and identification of the wetland buffer through wetland buffer signage will ensure permanent protection for an enhanced wetland area that is expected to thrive in the long term providing functional habitat benefiting local wildlife. The placement of fencing or another approved delimiter along with signage and oversight of the wetland and buffer areas will provide continued preservation and protection of the remaining wetland and buffers.

#### **Notification and Comments:**

21. The application was determined to be technically complete on January 11, 2017. Written notice of the application has been mailed to owners of property within 400 feet of the site as indicated by the Pierce County Assessor/Treasurer's records, the neighborhood council, and qualified neighborhood groups, allowing for at least 30 days of comment period. Public notice was posted on the site within seven days of the start of the comment period.
22. Written comments from the public was provided in response to the public notice. Two parties provided public comments on the initial proposal. Comments are marked as Exhibit "G".
23. Mark Hood (Vanderburg Johnson & Gandara, LLP) provided a comment letter on behalf of Graham and Julie Tash noting concerns regarding impacts within wetlands and the stability of the steep slopes. Under the wetland concerns, the applicability of the Reasonable Use Test was questioned regarding whether there is a reasonable use with less impact on the wetlands.

Analysis: Under the Reasonable Use Test, a single family residential proposal in a residentially zoned area is appropriate provided attempts to avoid impacts to the critical areas, followed by minimizing impacts to the critical areas is provided. The entire site is encumbered in critical areas including wetlands, buffers and steep slopes. The applicant has avoided wetland and buffer impacts through design elements including placement of the proposed home in the general location where a small cabin currently exists on the property,

limiting the footprint of the home by utilizing a two-story structure and reducing the side and rear yard areas to allow only drainage facilities and a home maintenance corridor.

The comments provided by Mr. Hood included concerns that the Geotechnical Report did not specifically analyze the proposed design on the steeply sloped areas and that no design work on retaining walls was completed.

Analysis: The initial proposal did not include a Geotechnical Report that analyzed the specific design; however, during the review process, the applicant's Geotechnical engineer provided additional retaining wall engineering, a slope stability analysis, drainage recommendations, and reviewed the site with regard to the specific home footprint and general design proposed. The Revised Geotechnical Report can be found in Exhibit "E".

Concerns regarding the lack of mitigation for the wetland loss were also submitted by Mr. Hood.

Analysis: A Reasonable Use legal test acknowledges that there may be unavoidable loss of critical areas such as wetlands when a site is substantially encumbered by critical areas throughout the site and there is no available development area on site that would avoid all critical areas. Through the review process, appropriate mitigation areas were identified as available on site and an acceptable mitigation plan, "*Critical Areas Characterization and Compensatory Mitigation Program for the Development of a New Single Family Homesite*", December 5, 2018, Habitat Technologies, was submitted and can be found in Exhibit "B".

24. A second comment letter was received from Lisa and William Holderman and in general noted similar concerns on the slope stability and concurred with the letter sent by Mr. Hood. The main concern noted was slope stability and their belief that the slope was historically unstable with significant erosion hazards.

Analysis: Geotechnical Engineering and design was provided throughout the review process and a Revised Geotechnical Report was provided addressing erosion, slope stability, landslide hazards and storm water drainage from the site. The Revised Geotechnical Report can be found in Exhibit "E".

25. Federal, state and local governmental agencies and utility providers have reviewed the requested permit and provided comments where applicable. Local government agencies continued to review the revisions provided by the applicant until compliance with their specific regulations was met, with or without conditional requirements. Comments are included in Exhibit "F".
26. Comments from the Washington Department of Ecology, The City's Traffic Engineering, Real Property Services, Planning and Development Services, Tacoma Water, Tacoma Power were received. Comments are marked as Exhibit "G" and are included as Conditions of Approval or Advisory Notes for this report and decision.
27. The applicant provided responses to all comments throughout the review period and are included in Exhibit "H".

#### **Applicable Regulations and Policies:**

28. Applicable Critical Area Code provisions relevant to this proposal provided in Exhibit "J":
- TMC 13.11.120 Intent
  - TMC 13.11.130 Scope and Applicability
  - TMC 13.11.140 Regulated Uses and Activities

*TMC 13.11.220 Application Types-Development Permit*

*TMC 13.11.240.B Reasonable Use Legal Test*

*TMC 13.11.250 General Standards*

*TMC 13.11.270 Mitigation Requirements*

*TMC 13.11.310 Wetland Classification*

*TMC 13.11.320 Wetland Buffers*

*TMC 13.11.330 Wetland Buffer Modifications*

*TMC 13.11.700 Geologically Hazardous Areas*

*TMC 13.11.720 Classification*

*TMC 13.11.730 General Development Standards*

29. The intent of Chapter 13.11 is to ensure that the City's remaining critical areas are preserved and protected from degradation caused by improper use and development as described under *TMC 13.11.120*. Development and activities occurring in or adjacent to a critical area which could result in a significant change to the critical area are subject to the provisions of the City's Critical Area Preservation Ordinance, *TMC 13.11.130* and *TMC 13.11.140*.
30. Per *TMC 13.11.220* and *TMC 13.11.240.B* the applicant provided information regarding the Reasonable Use Test documenting that the proposed single family home located in a residentially zoned area has been appropriately designed to minimize impacts to critical areas as avoidance is not possible because the entire site is completely encumbered by critical areas. Impacts were minimized through revision of design elements and mitigation is proposed to the maximum extent practicable on site.
31. Per *TMC 13.11.250* the applicant has provided mitigation sequencing and has taken appropriate action to first avoid wetland impacts, and then minimized wetland buffer impacts through design and the proposed development placement of the single family home including wetland and buffer enhancement and restoration as mitigation for unavoidable impacts.
32. Per *TMC 13.11.310* and *TMC 13.11.320* A wetland delineation report with a wetland rating worksheet was provided which identified one sloped, Category IV wetland located across the entire site, and extending generally offsite to the southeast and northwest. The existing wetland area on site is 9,344 square feet in size and was further characterized as a Palustrine, Forested, Emergent, Category IV wetland with a regulated 50-foot buffer. The wetland extends offsite and drains into an existing stormwater drainage ditch that is piped into a small pond which is then piped to City storm along Waterview Street. The existing wetland buffer area is 7,554 square feet on site. Following development, the wetland area remaining on site will be approximately 3,374 square feet and the remaining wetland buffer area will be approximately 4,763 square feet.
33. Per *TMC 13.11.330.E* the applicant's proposal will fill a portion of the onsite wetland and buffer and modify the required 50-foot wetland buffer around the remaining wetland area further than  $\frac{1}{4}$  reduction to allow for the development of the proposed single family home which may be allowed provided the followings provisions are met;

- a) There are no feasible alternatives to the site design that could be accomplished with the standard buffer averaging or buffer reduction provision above; and
  - b) The averaged or reduced buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland expert, and
  - c) The remaining buffer area on site shall be enhanced and/or restored by removing invasive species that do not perform needed functions and replanting with an appropriate plant community, and
  - d) The project shall meet the requirements of one of the three legal tests: No Practicable Alternatives, Public Interest, or Reasonable Use.
34. There are no feasible alternatives for a single family home that could be accomplished with the standard buffer modification alternatives. The reduced portion of wetland and buffer is allowed through the Reasonable Use Test provided mitigation is included to the maximum extent practicable. The remaining portion of the onsite wetland and wetland buffer where invasive species have populated, or bare earth is present will be restored to provide an enhanced wetland and wetland buffer on site.
35. The applicant has proposed to provide mitigation in the remaining portions of the wetland and buffer on site where opportunities exist due to deficiencies in native vegetation cover. The existing wetland on site is 9,344 square feet in size and will be reduced to approximately 3,374 square feet following development. The existing wetland buffer on site is 7,554 square feet and will be reduced to approximately 4,763 square feet following development.
36. The proposed mitigation plan for this project includes the preservation of native vegetation species within the remaining wetland and buffer, the control of invasive species, and the restoration and enhancement of the remaining wetland and buffer area on site. Monitoring will be conducted for a minimum of five years to ensure sufficient vegetation establishment.
37. The preservation of native trees and shrubs within the buffer, and the establishment of additional native trees and shrubs within portions of the onsite wetland buffer area will provide enhanced habitat areas and is expected to increase species diversity and wildlife habitat. Invasive plants such as Himalayan blackberry and Scotch Broom will be removed and replaced with native trees and shrubs.
38. The mitigation area does not include an access easement that is located along the north edge of the property. This area will be enhanced with groundcover only in order to erosion control and compliment the habitat improvements further up the slope.
39. Priority Species have not been identified on the subject site.
40. The site does not lie within an identified 100-year FEMA flood hazard zone.
41. The *Comprehensive Plan* provides the following relative to protection of critical areas:

**Policy EN-1.17** Assess and periodically review the best available science for managing critical areas and natural resources and utilize the development of plans and regulations while also taking into consideration Tacoma's obligation to meet urban-level densities under the Growth Management Act.

**Policy EN-1.21** Encourage the identification and characterization of all contaminated sites which adversely affect the City's shoreline areas, surface waters, groundwater and soils.

**Policy EN-2.1** Minimize the risk of damage to life and property by establishing robust development standards that ensure avoidance and/or minimization of potential geologic hazards.

**Policy EN-2.2** Require appropriate levels of study, technical analysis, best available science and all known available and reasonable methods of prevention control and treatment (AKART) as a condition to permitting construction within geologically hazardous areas, ensure sound engineering principles area used based on the associated risk in these areas and limit land uses within or near geologically hazardous areas.

**Policy EN-3.1** Ensure that the City achieves no net loss of ecological functions over time.

**Policy EN-3.2** Evaluate the potential adverse impacts of proposed development on Tacoma's environmental assets, their functions and the ecosystem services they provide.

**Policy EN-3.3** Require that development avoid and minimize adverse impacts to the maximum extent feasible, to existing natural resources, critical areas and shorelines through site design prior to providing mitigation to compensate for impacts.

**Policy EN-3.5** Discourage development on land where such develop would pose hazards to life, property or infrastructure, or where important ecological functions or environmental quality would be adversely affected in:

- a. Floodways and 100-year floodplains
- b. Geologic Hazard areas
- c. Wetlands
- d. Streams
- e. Fish and wildlife habitat conservation areas
- f. Aquifer recharge areas
- g. Shorelines

**Policy EN-3.19** Protect and retain wetlands, rivers, stream and lakes through use of best management practices, managing and treating stormwater runoff, protecting adjacent native vegetation removing invasive plant species and limiting the use of fertilizers/pesticides or other chemicals.

**Conclusion of Law as finding of Fact:**

42. Any conclusion of law hereinafter stated which may be deemed a finding of fact herein is hereby adopted as such.

**CONCLUSIONS<sup>2</sup>**

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<sup>2</sup> Conclusions are based upon the applicable criteria and standards set forth in the *Tacoma Municipal Code (TMC)*, the policies of the Comprehensive Plan, and the Attachments and Exhibits listed herein. Any conclusion of law hereinafter stated which may be deemed a finding of fact herein is hereby adopted as such.

1. The Director of Planning and Development Services (Director) has jurisdiction in this matter. See *TMC* Section 13.05.030.
2. The proposal will be consistent with the goals of the *Comprehensive Plan*.
3. Per *TMC* 13.11.220 and *TMC* 13.11.240.B the applicant provided information regarding the Reasonable Use Test documenting that the proposed single family home located in a residentially zoned area has been appropriately designed to minimize impacts to critical areas as avoidance is not possible because the entire site is completely encumbered by critical areas. Impacts were minimized through revision of design elements and mitigation is proposed to the maximum extent practicable on site.
4. Per *TMC* 13.11.250 the applicant has provided mitigation sequencing and has taken appropriate action to first avoid wetland impacts, and then minimized wetland buffer impacts through design and the proposed development placement of the single family home including wetland and buffer enhancement and restoration as mitigation for unavoidable impacts.
5. Per *TMC* 13.11.310 and *TMC* 13.11.320 A wetland delineation report with a wetland rating worksheet was provided which identified one sloped, Category IV wetland located across the entire site, and extending generally offsite to the southeast and northwest. The existing wetland area on site is 9,344 square feet in size and was further characterized as a Palustrine, Forested, Emergent, Category IV wetland with a regulated 50-foot buffer. The existing wetland buffer area is 7,554 square feet on site. The wetland extends offsite and drains into an existing stormwater drainage ditch that is piped into a small pond which is then piped to City storm along Waterview Street. Following development, the wetland area remaining on site will be approximately 3,374 square feet and the remaining wetland buffer area will be approximately 4,763 square feet.
6. Per *TMC* 13.11.330.E the applicant's proposal will fill a portion of the onsite wetland and buffer and modify the required 50-foot wetland buffer around the remaining wetland area further than  $\frac{1}{4}$  reduction to allow for the development of the proposed single family home which may be allowed provided as the applicant has met the following provisions:
  - There are no feasible alternatives to the site design that could be accomplished with the standard buffer averaging or buffer reduction provision above; and
  - The averaged or reduced buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland expert, and
  - The remaining buffer area on site shall be enhanced and/or restored by removing invasive species that do not perform needed functions and replanting with an appropriate plant community, and
  - The project shall meet the requirements of one of the three legal tests: No Practicable Alternatives, Public Interest, or Reasonable Use.
7. Based upon the findings and conclusions above and as conditioned, the proposed development is consistent with the City's Critical Area Preservation Ordinance *TMC* 13.11. In accordance with *TMC* 13.11 this proposal has developed appropriate mitigation that should result in enhanced functions in the remaining area of a Category IV wetland and wetland buffer. The steeply sloped areas have been reviewed and analyzed through engineered design and slope stability has been demonstrated by the Geotechnical engineer of record provided the applicant comply with the specifications and recommendations in the

report and comments provided by all review parties.

### DECISION

Based upon the above findings and conclusions, the request for a Critical Areas Development Permit is **Approved**, subject to the following conditions:

#### Conditions:

#### CRITICAL AREAS

1. The applicant shall record Notice on Title per Section *TMC* 13.11.280.1 for the subject site prior to development permits being issued for the site.
2. The applicant and contractor shall attend a preconstruction meeting with the Senior Environmental Specialist and building inspector prior to the commencement of site work.
3. The applicant shall erect high visibility fencing along the approved remaining wetland and wetland buffer boundary. The applicant shall inform the City Senior Environmental Specialist when the fence is erected in order to allow the City Senior Environmental Specialist to inspect the silt fence prior to beginning site work. The applicant shall ensure that once erosion control is no longer needed, the silt fence is removed.
4. Permanent fencing such as split rail fence or an approved delimiter that adequately demarcates the outside perimeter of the on-site remaining portion of the wetland and wetland buffer boundary shall be constructed.
5. Critical area signage shall be attached to the split rail fence to demark the boundary limits of the Critical Area. The applicant shall use the approved Critical Area sign template of the City of Tacoma.
6. The applicant shall conduct restoration and enhancement mitigation in accordance with the "*Critical Area Characterization and Compensatory Mitigation Program for the Development of a Single Family Homesite*", December 5, 2018, prepared by Habitat Technologies. The mitigation plan, in general, will provide for restoration and enhancement of the remaining portions of the onsite wetland and buffer.
7. The applicant shall inform the City Senior Environmental Specialist when the plantings will be installed. The applicant shall have a qualified wetland consultant on site during the plant installation. The applicant shall provide a Year 0, or an "As Built" report and associated fees for this review to the City following planting.
8. The applicant shall provide vegetative maintenance and monitoring of the mitigation areas for a period of 5 years and provide annual monitoring reports to the City of Tacoma Planning and Development Services Division by October 1 for years 1, 2, 3, 4 and 5 after completion along with the associated fees for this review.
9. ENVIRONMENTAL SERVICES
  1. The proposal shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual, Side Sewer and Sanitary Sewer Availability Manual, Tacoma Municipal Code 12.08 and the City of Tacoma Right-of-Way Design Manual in effect at time of vesting land use actions, building or construction permitting.

2. All stormwater shall be managed in compliance with the City of Tacoma Stormwater Management Manual (SWMM).
  3. The applicant shall review SWMM Minimum Requirements #1-10 and comply with all applicable requirements. For off-site improvement requests we should include the following Based upon the scope of the project as currently proposed, it appears that this project is required to comply with Minimum Requirements #1-5. Compliance with Minimum Requirement #9 shall be required if any on-site stormwater management features are installed.
  4. Per Minimum Requirement #5, projects that meet or exceed the SWMM thresholds shall employ, where feasible and appropriate, On-Site Stormwater Management BMPs to infiltrate, disperse, and retain stormwater runoff onsite to the maximum extent feasible. On-Site Stormwater Management BMPs include: Roof Downspout Control BMPs, Dispersion of all impervious surfaces and Soil Quality BMPs. If drainage cannot be managed on-site, it shall be conveyed to the City storm system in accordance with the Stormwater Management Manual and Public Works Design Manual.
  5. A hydrologic study for the wetland or stream identifying the contributing basin and demonstrating the pre and post development flows will be maintained.
  6. Be advised, this review is preliminary and is intended to determine the feasibility of compliance with the SWMM. This drawing will not be approved for construction.
  7. Additional permits and approvals, which may include a grading plan and a work order, are required for work. Comments have been provided at the end of this letter for your reference, these will need to be revised with construction submittals. Additional comments may follow when these submittals are received.
  8. Any private storm drainage system will require a Covenant and Easement Agreement for maintenance and access.
  9. Each new building or townhouse shall have a new, independent connection to the City sanitary sewer.
  10. A sanitary sewer assessment may be owed for all or part of this project. For details, please contact Sue Simpson, Public Works Construction Division at 253.591.5529 or [ssimpson@cityoftacoma.org](mailto:ssimpson@cityoftacoma.org).
  11. Any utility construction, relocation, or adjustment costs shall be at the applicant's expense.
- Streets, Driveways, and Sidewalks
12. A future accessway shall be constructed to Public Works Standards to a minimum width of 20 feet, 16 feet paved with a 4 foot graded and graveled surface to meet the requirements of the International Fire Code.
  13. The type, width, and location of all driveway approaches serving the site(s) shall be approved by the City Engineer.
  14. Civil drawings will be required at time of building permit to show how that access is feasible with the current grades.
  15. North Waterview Street fronting the property shall be restored in accordance with the Right-of-Way Restoration Policy.

The preceding conditions of development may require a work order permit. All street work shall be accomplished as stated herein unless otherwise approved by the City Engineer. A licensed professional engineer will be required to submit street plans for review and approval following the City's work order process. To initiate a work order, apply online at <https://aca.accela.com/tacoma/>. Contact the Site Development at (253) 591-5760 if you need assistance with the application process. A performance bond is required for all work orders per TMC 10.22.070.F.

#### MISCELLANEOUS COMMENTS

An online version of the City of Tacoma Stormwater Management Manual is available at <http://www.cityoftacoma.org/stormwater>.

An online version of the City of Tacoma Side Sewer and Sanitary Sewer Availability Manual is available at [www.govme.org](http://www.govme.org) under the "City Information" tab on the left side of the screen.

An online version of the City of Tacoma Right-of-Way Design Manual is available at [www.govme.org](http://www.govme.org) under the "City Information" tab on the left side of the screen.

If you have questions regarding these storm and sanitary sewer conditions, please contact Jason Miller at [jmiller@cityoftacoma.org](mailto:jmiller@cityoftacoma.org) or 253-591-5790, Environmental Services Science and Engineering Division, Site Development Group.

#### 10. TRAFFIC

The driveway shall meet TMC 10.14 for location, size, and access.

#### 11. WASHINGTON DEPARTMENT OF ECOLOGY

The Department of Ecology has recommended the following conditions of approval as indicated in their response letter, dated May 12, 2017.

- Sample the soil and analyze for arsenic and lead. Send the soil sampling results to the local land use permitting agency and Ecology for review.
- If lead or arsenic are found at concentrations above the Model Toxics Control Act (MTCA) cleanup levels (Chapter 173-340 WAC); the owners, potential buyer, construction workers, and other shall be notified of their occurrence. The MTCA cleanup level for arsenic is 20 parts per million (ppm) and lead is 250 ppm.
- If lead, arsenic and/or other contaminants are found at concentrations above MTCA cleanup levels, the applicant shall:
  - 1) Develop soil remediation plan and enter into the Voluntary cleanup Program with Ecology. For more information on the Voluntary cleanup Program, visit Ecology's website at: <http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm>.
  - 2) Obtain an opinion letter from Ecology stating that the proposed soil remediation plan will likely result in no further action under MTCA, the applicant shall provide to the local land permitting agency the opinion letter from Ecology.
  - 3) Prior to finalizing site development permit, provide to the local land use permitting agency "No Further Action" determination from Ecology indicating that the remediation plans were successfully implemented under MTCA.
- If soils are found to be contaminated with arsenic, lead or other contaminants, extra precautions shall be taken to avoid escaping dust, soil erosion, and water pollution during grading and site construction. Site design shall include protective measures to isolate or remove contaminated soils from public spaces, yards, and children's play areas. Contaminated soils generated during site construction shall be managed and disposed of in accordance with state and local regulations, including the Solid Waste Handling Standards regulation (chapter 173-350 WAC). For information about soil disposal contact the local health department in the jurisdiction where soils will be placed.

The link below provides a fact sheet that explains more how the arsenic and lead clean-up levels were set and why Ecology sees that they are protective for human health:  
<https://fortress.wa.gov/ecy/publications/SummaryPages/1109095.html>.

For assistance and information about Tacoma Smelter Plume and soils contamination, the applicant shall contact, Eva Barber with the Toxic Cleanup Program at (360) 407-7094 or via email at [Eva.Barber@ecy.wa.gov](mailto:Eva.Barber@ecy.wa.gov).

Additional recommendations are included in the letter which can be found in Exhibit "F". All recommendations included in the letter shall be followed.

**Advisory Notes:**

The below notes are meant to provide additional information to the applicant relative to the specific development proposal. These notes are not conditions of the permit nor do they constitute a complete review of the project.

**12. REAL PROPERTY SERVICES**

The property owner must obtain access/driveway and utility easements from the property to the northeast (4208 N. Waterview).

**13. TACOMA POWER**

1. When ready, please submit an electrical service application and electrical loading calculations to Rudy Eckert and Tony Daniels at [reckert@cityoftacoma.org](mailto:reckert@cityoftacoma.org) and [Tdaniels2@cityoftacoma.org](mailto:Tdaniels2@cityoftacoma.org). The electric service app can be found at this link: [https://www.mytpu.org/file\\_viewer.aspx?id=357](https://www.mytpu.org/file_viewer.aspx?id=357)

2. Please include "Tacoma Power" and communications into the easement.

3. Power will come from the pad mounted transformer at the north east end of the driveway to the new home.

**General Notes:**

Any construction, relocation or adjustment costs shall be at the applicant's expense.

All new electrical services will be installed underground unless otherwise approved by Tacoma Power Engineering; additional utility easements may be required.

**Submittal Requirements:**

Electric Service Application to Tacoma Power New Services Engineering Department. Review the Commercial Project Development Process online to determine additional submittal requirements.

Application for Electrical Permit to Tacoma Power Electrical Inspection Department.

For services over 400 amps, a set of electrical plans must be submitted to the Electrical Inspection Office for review.

**Fees:**

Fees for new electrical service or upgrading the existing electrical service will be determined when the power requirements are submitted to Tacoma Power New Services Engineering Department.

Fees for the electrical permit are based on the electrical contractors bid amount and have not been determined.

Forms and information are available online at <http://www.mytpu.org/tacomapower/permitting>

The [builder, developer, and/or owner] must observe the appropriate clearances to Tacoma Power's facilities during construction.

Appropriate clearances must be maintained between all structures and Tacoma Power's facilities. No building shall be constructed under a primary power line. Buildings in the vicinity of the overhead lines must meet WAC, NEC, NESC and Tacoma Power

requirements for clearance. Alternatively, the [builder, developer, and/or owner] shall incur all costs associated with relocating Tacoma Power's facilities in order to obtain the appropriate clearances. Costs of relocation include demolition of existing facilities, construction of new facilities, restoration of property as necessary, and relocation of other utilities as necessary.

Tacoma Power requests to retain all existing easements and facilities in the subject area(s). Alternatively, the [builder, developer, and/or owner] shall incur all costs associated with relocating Tacoma Power's facilities. Costs of relocation include demolition of existing facilities, construction of new facilities, restoration of property as necessary, and relocation of other utilities as necessary. The [owner, developer, and/or builder] shall assist Tacoma Power and other affected utilities in obtaining all necessary easements for said relocated facilities.

The [builder, developer, and/or owner] shall provide Tacoma Power and other affected utilities with all necessary easements.

#### 14. TACOMA WATER

If a new fire hydrant is required at a location, the hydrant will be installed by the extension of a permanent water main and shall be constructed by private contract. The developer of the privately financed project will be responsible for all costs and expenses incurred by Tacoma Water for preparation of plans and specifications, construction inspection, testing, flushing, sampling of the mains, and other related work necessary to complete the new water main construction to Tacoma Water standards and specifications. The engineering charge for the preparation of plans and specifications will be estimated by Tacoma Water. The developer will be required to pay a deposit in the amount of the estimated cost. The actual costs for the work will be billed against the developer's deposit. The new mains will be installed by and at the expense of the developer. The developer will be required to provide a 20-foot wide easement over the entire length of the water main, fire hydrant, service laterals and meters. The developer's Professional Land Surveyor shall prepare and submit the legal description of the easement to Tacoma Water for review and processing. Prior to construction, a second deposit in the estimated amount for construction inspection, testing, and sampling will be due to Tacoma Water. Upon completion of the project, the developer will either be refunded the unused amount of the deposit or billed the cost overrun. Approximate design time is ten weeks.

Customer is advised to obtain private utility easements for any property-side water pipes leading from the City meter to the building on any portion(s) existing on adjacent parcels. Per TMC 9.08 property side water pipe located within street rights-of-way are now exempt from a street occupancy permit.

New water service is required, it will be sized and installed by Tacoma Water. New water services will be installed after payment of the Service Construction Charge and the Water Main Charge. New meters will be installed by Tacoma Water after payment of the System Development Charge. Contact Tacoma Water at (253) 396-3057.

The Uniform Plumbing Code requires that a pressure-reducing valve (PRV) be installed on the customer's property side service line if pressure exceeds 80 PSI.

If fire sprinklering, contact the Tacoma Water Permit Counter at (253) 502-8247 for policies related to combination fire/domestic water service connections.

If existing water facilities need to be relocated or adjusted due to street improvements for this proposal they will be relocated by Tacoma Water at the owners' expense.

Tacoma Water facilities must remain accessible at all times. Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the developer.

Sanitary sewer mains and side sewers shall maintain a minimum horizontal separation of ten feet from all water mains and water services. When extraordinary circumstances dictate the minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology "Criteria For Sewage Works Design".

For utilities other than sanitary sewer, the proposed facilities shall have a minimum horizontal separation of five (5) feet and vertical separation of twelve (12) inches from Tacoma Water facilities.

15. TACOMA FIRE

Construction of the home shall comply with the adopted Fire Code at the time of building permit submittal. The applicant is advised, that under current Fire Code fire sprinklers would be required to be installed in the home due to the distance from the nearest fire apparatus access point.

16. BUILDING ENGINEERING

1. Site specific design of the catchment, retaining, impact, structural wall shall be addressed at time of development and include potential slide run-out loads from up slope areas.
2. Advisory comments: Inspection of piles, wall, foundation, and site grading shall be required by geotechnical representative of record at time of development.

ORDERED this day of July 17, 2019.



Peter Huffman  
Director, Planning and Development Services

**FULL DECISION TRANSMITTED** by first class or electronic mail to:

- Alexey Shvets, 5342 N Ruby Street, Tacoma, WA 98407
- Lisa and William Holderman, 4163 North Madrona Way, Tacoma, WA 98407
- Mark Hood, Vanderbuerg, Johnson & Gandara, 1201 Pacifica Avenue, Suite 1900, P.O. Box 1315, Tacoma, WA 98401-1315
- Pierce County Assessor-Treasurer, 2401 South 35th Street, Room 142, Tacoma, WA 98409, Attn: Darci Brandvold
- Brad Harp, Tacoma-Pierce County Health Department, 3629 South D Street, Tacoma, WA 98418-6813
- Elizabeth Bockstiegel, Department of Fish and Wildlife, 600 Capital Way North, Olympia, WA 98501-1091
- Eva Barber, WA Department of Ecology, PO Box 47775, Olympia, WA 98504-7775
- Marv Coleman, WA Department of Ecology, PO Box 47775, Olympia, WA 98504-7775

Zachery Meyer, WA Department of Ecology, PO Box 47775, Olympia, WA 98504-7775  
Chris Montague-Breakwell, WA Department of Ecology, PO Box 47775, Olympia, WA 98504-7775  
Halie Endicott, P.O. Box C-3755, Seattle, WA, 98124-3755

**SUMMARY OF DECISION TRANSMITTED** by first class and interoffice/e-mail to the following:

All property owners within 400 feet of the subject site  
North End Neighborhood Council  
City and Tacoma Public Utilities Reviewers: Jesse Angel, Jason Miller, Jennifer Kammerzell, Karla Kluge, Shelly Shaffer, Troy Stevens, Rudy Eckert, Lisa Spadoni, Chris Seaman, Craig Kuntz, Jesse Angel

**PURSUANT TO RCW 36.70B.130, YOU ARE HEREBY NOTIFIED THAT AFFECTED PROPERTY OWNER(S) RECEIVING THIS NOTICE OF DECISION MAY REQUEST A CHANGE IN VALUATION FOR PROPERTY TAX PURPOSES CONSISTENT WITH PIERCE COUNTY'S PROCEDURE FOR ADMINISTRATIVE APPEAL. TO REQUEST A CHANGE IN VALUE FOR PROPERTY TAX PURPOSES YOU MUST FILE WITH THE PIERCE COUNTY BOARD OF EQUALIZATION ON OR BEFORE JULY 1ST OF THE ASSESSMENT YEAR OR WITHIN 30 DAYS OF THE DATE OF NOTICE OF VALUE FROM THE ASSESSOR-TREASURER'S OFFICE. TO CONTACT THE BOARD CALL 253-798-7415 OR [WWW.CO.PIERCE.WA.US/BOE](http://WWW.CO.PIERCE.WA.US/BOE).**

## APPEAL PROCEDURES

Any request for RECONSIDERATION and/or any APPEALS must be submitted in the applicable manner as outlined below on or before July 31, 2019.

### **RECONSIDERATION:**

Any person having standing under the ordinance governing this application and feeling that the decision of the Director is based on errors of procedure or fact may make a written request for review by the Director within fourteen (14) days of the issuance of the written order. This request shall set forth the alleged errors, and the Director may, after further review, take such further actions as deemed proper, and may render a revised decision. A request for RECONSIDERATION of the Director's decision in this matter must be filed in writing to the staff contact listed on the first page of this document.

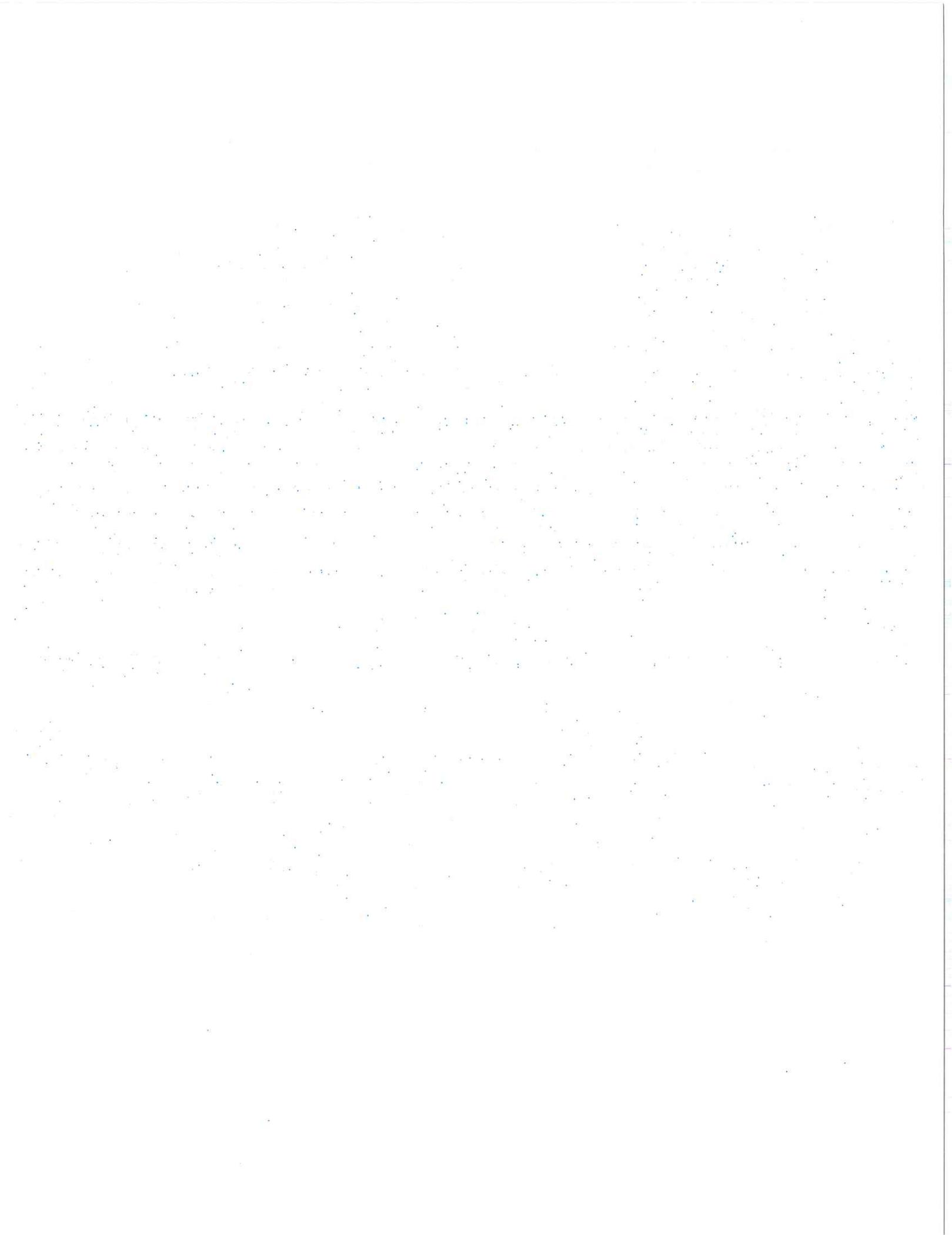
### **APPEAL TO HEARING EXAMINER:**

Any decision of the Director may be appealed by any aggrieved person or entity as defined in Section 13.05.050 of the *Tacoma Municipal Code*, within fourteen (14) days of the issuance of this decision, or within seven (7) days of the date of issuance of the Director's decision on a reconsideration, to appeal the decision to the Hearing Examiner.

An appeal to the Hearing Examiner is initiated by filing a Notice of Appeal accompanied by the required filing fee of **\$1,000.00**. Filing of the appeal shall not be complete until both the Notice of Appeal and required filing fee has been received. **THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD THE APPELLANT PREVAIL.** (Pursuant to Section 2.09.020 of the *Tacoma Municipal Code*, fees for appeals shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

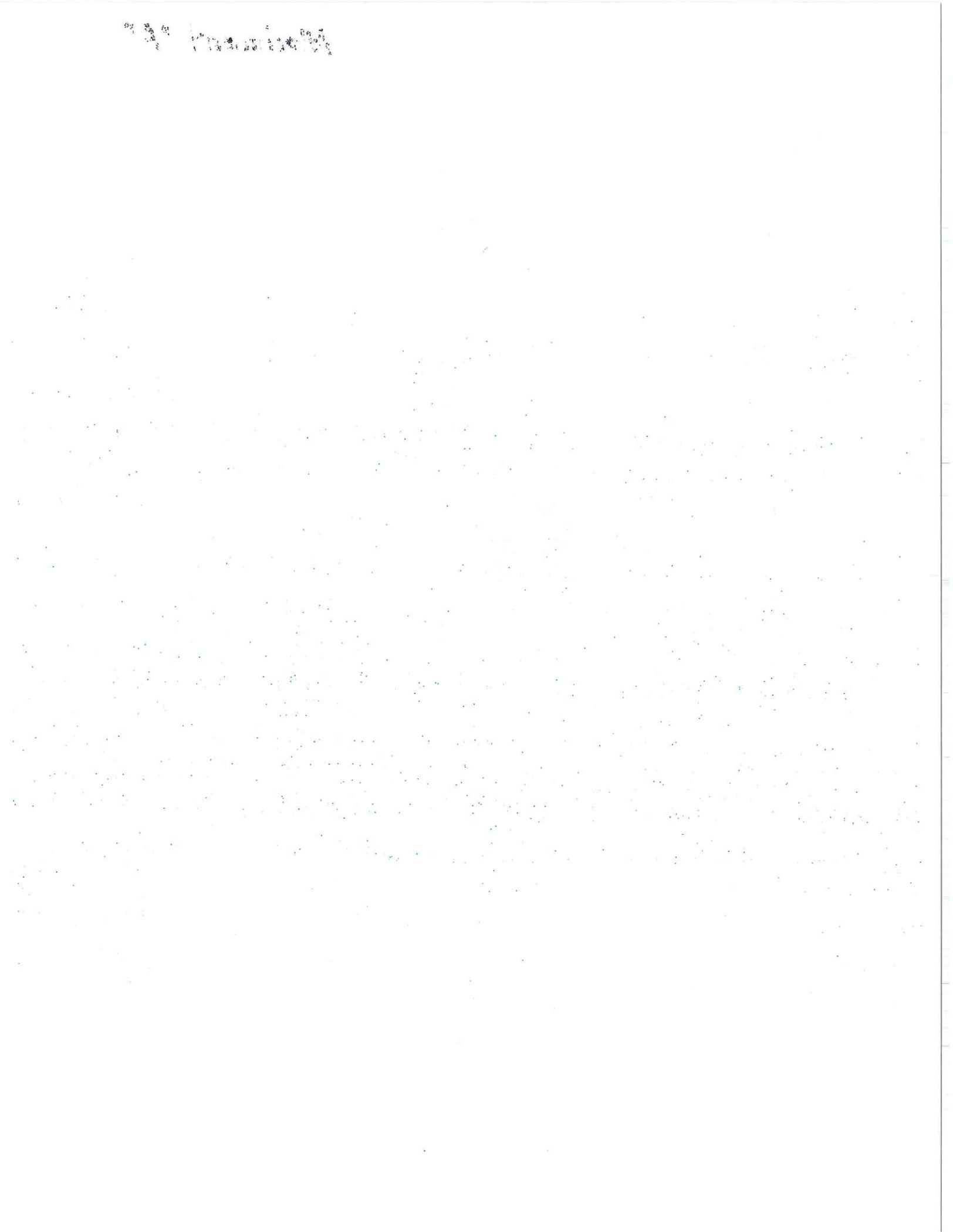
The Notice of Appeal must be submitted in writing to the Hearing Examiner's Office, Seventh Floor, Tacoma Municipal Building, and shall contain the following:

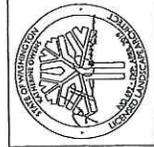
- (1) A brief statement showing how the appellant is aggrieved or adversely affected.
- (2) A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- (3) The requested relief, such as reversal or modification of the decision.
- (4) The signature, mailing address and telephone number of the appellant and any representative of the appellant.





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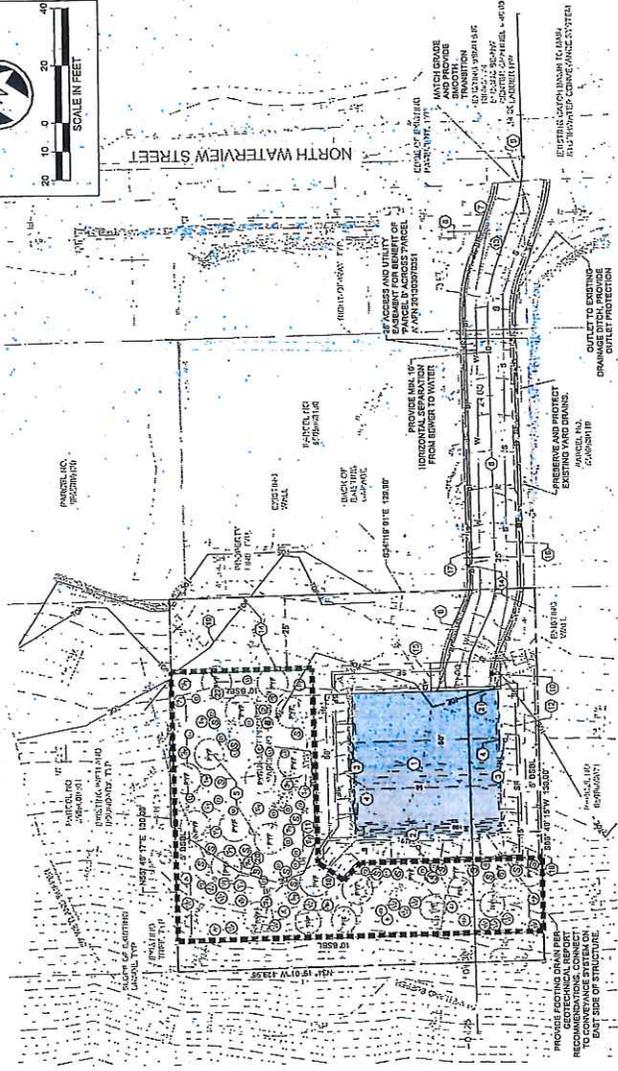


**PLANT LEGEND**

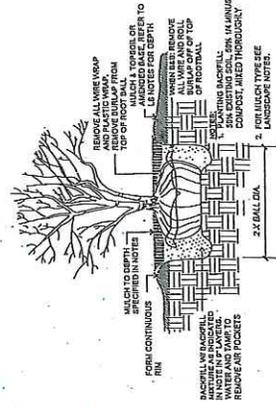
SYMBOL	QTY	DESCRIPTION	SIZE
(P)	19	Pine trees	12" O.C. MIN.
(M)	2	Prickly pear	12" O.C. MIN.
(S)	3	Thru plants	12" O.C. MIN.
(V)		Western red cedar	12" O.C. MIN.

SYMBOL	QTY	DESCRIPTION	SIZE
(D)	28	Red maple	1" OAL, 0" P.C.
(B)	2	Blackberry	1" OAL, 0" P.C.
(S)	2	Spice bush	1" OAL, 0" P.C.
(A)	5	Aspen	1" OAL, 0" P.C.
(V)	4	Western red cedar	1" OAL, 0" P.C.
(M)	14	Manzanita	1" OAL, 0" P.C.



PLANTING PLAN



SHRUB PLANTING DETAIL  
N.T.S.





**City of Tacoma**  
**Planning and**  
**Development Services**  
**Technical Memorandum**

May 20, 2019

To: File LU17-0009 (LU17-0069 SEPA)

From: Karla Kluge, Senior Environmental Specialist

**Subject: Alex Shvets Critical Area Development Permit**  
**4203 Forest Street, Parcel 5565000291**  
**File No. LU17-0009, LU17-0069**

**Proposal**

A Critical Area Development Permit to construct a new Single family residence within a Category IV wetland and buffer located on a steep slope. Mitigation for the wetland and buffer impacts is proposed to allow the construction of a new single family home. The remaining wetland and buffer area will be restored and enhanced with native vegetation.

**Documents provided to the City of Tacoma**

- Joint Aquatic Resources Permit Application
- Site Plans
- *Critical Areas Characterization and compensatory Mitigation Program for the Development of a New Single Family Homesite, December 5, 2018, Habitat Technologies*
- *Revised Geotechnical Engineering Report, Revised January 18, 2019 prepared by GeoResources*
- SEPA Checklist

**Proposal**

1. The applicant proposes a Critical Area Development Permit to construct a new single family residence within a Category IV wetland and buffer located on a steep slope. To allow for the development of the home site, a portion of the onsite wetland will be filled to accommodate a single family home. Buffer impacts will also occur as a result of the placement of a single family home on the site: therefore, a buffer modification is also proposed to allow for the proposed development.
2. Mitigation is proposed to provide functional lift to the maximum extent possible on the site in order to allow the construction of the single family home. The remaining wetland and wetland buffer area will be restored and enhanced with native vegetation according to *TMC 13.11.330.E* to the maximum extent practicable where space is available on site. The retained onsite wetland and buffer areas shall be initially cleared of invasive vegetation and existing garbage and shall then be planted with a variety of native trees and shrubs common to the local area and selected to provide enhanced biological and physical wetland and buffer functions.
3. The proposed home will be constructed as a daylight basement type of structure that includes a rear structural concrete/retaining wall. The wall will extend at a minimum



of 5 feet above the adjacent ground surface. The rear retaining wall and rear lower floor wall of the structure shall have no opening such as windows or doors. This will minimize potential slope debris from entering this area of the residence. The rear retaining/impact wall will also extend a minimum of 8 feet north and south from the residence to provide protection from debris impacting the sides of the home. The wing walls will be angled at 45 degrees for catchment purposes.

4. The rear/impact wall, and the first floor below grade wall, will also include drainage that extends the full below grade height of the walls.
5. The applicant's proposal is to eliminate a portion of the existing wetland and buffer through excavation and filling of the previous wetland area with structural support soils according to the geotechnical recommendations. The buffer for the onsite wetland area will be reduced to less than 15 feet in both side yards of the proposed dwelling to construct appropriate drainage around the home as well as to provide a maintenance corridor for access along the entire perimeter of the home.

#### **Project Site Description**

6. The project site is addressed as 4203 Forest Street, Parcel 5565000291 and is comprised of approximately 0.39 acres.
7. The site is located within an "R-2" Single Family Dwelling District. The Comprehensive Plan Land Use designation for the site is Parks and Open Space. The neighborhood district is the North End Neighborhood Council District.
8. The site is square in shape, measure approximately 130 feet wide by 130 deep and encompasses proximately 0.39 acres. The site is bounded by undeveloped land to the southeast, northwest, southwest and existing residential development on the northeast. The site is currently undeveloped except for a small cabin structure supported on stilts. The cabin, which is smaller than the proposed home, is currently located in the general location of the proposed building area. The site is accessed from an easement from Waterview street through a driveway that also accesses the residential development to the northeast, or downslope of the proposed home.
9. The site generally slopes down from the southeast to the northwest. The slope area is dissected by small drainage channels resulting in local ridges in the lower portion of the slope. Vegetation across the site was described as a moderate to dense stand of primarily coniferous and a few deciduous trees, with a moderate understory of ferns, grasses, and horse tail.
10. The applicant provided a wetland delineation report which identified one sloped, Category IV wetland located across the entire site, and extending offsite to the southeast and north. The existing wetland area on site is 9,344 square feet in size and was further characterized as a Palustrine, Forested, Emergent, Category IV wetland with a regulated 50-foot buffer. The wetland extends offsite and drains into an existing stormwater drainage ditch that is piped into a small pond which is then piped to City storm along Waterview Street. The existing wetland buffer area is 7,554 square feet on site. Following development, the wetland area remaining on site will be approximately 3,374 square feet and the remaining wetland buffer area will be approximately 4,763 square feet.

11. The applicant's consultant described the western, up slope portion of the project site dominated by an upland forest plant community that included Douglas fir, western red cedar, big leaf maple, red alder, black cottonwood, vine maple, Himalayan blackberry, Scots broom, evergreen blackberry, trailing blackberry, laurel, ivy, dandelion, velvet grass, bluegrass, bracken fern, sword fern, yarrow, bull thistle, teasel, buttercup, and Queen Anne's lace. This plant community is typical of upland areas.
12. The plant community within the northern portion of the project site was dominated by a forest plant community typically associated with damp to saturated soil conditions. Vegetation included western red cedar, red alder, black cottonwood, willows, salmonberry, red osier dogwood, soft rush, reed canarygrass, small fruited bulrush, slough sedge, dock, and bentgrass. This plant community was identified as hydrophytic in character and is typical of wetlands.
13. The eastern corner of the site was dominated by vegetation associated with damp to saturated soil conditions. Vegetation in this area included willows, soft rush, reed canarygrass, small fruited bulrush, slough sedge, dock, lady fern, and bentgrass. This plant community is typical of wetlands.
14. The Fish and Wildlife Habitat Conservation Area (Biodiversity Area) that are located on the site are very limited as a high percentage of invasive species exist in patches throughout the site with the exception of the area along the southern boundary of the site.
15. The proposed drainage system for the development will capture and direct the existing surface water and groundwater around the structure. The effect on the remaining portion of the wetland on and off site is expected to be minimal as groundwater flows will continue to saturate the remaining portions of wetland onsite and those portions of the offsite wetland that remain.
16. No federal listed "threatened" or "endangered" species have been documented within the project site. Bald Eagle (*Haliaeetus leucocephalus*) a federally listed species of concern occurs in the vicinity of the project site, primarily along the shoreline of Puget Sound.
17. The site does not lie within an identified 100-year FEMA flood hazard zone.

#### **Tacoma Municipal Code (TMC) Critical Areas Pertinent Regulations and Analysis**

The intent of Chapter 13.11 is to ensure that the City's remaining critical areas are preserved and protected from degradation caused by improper use and development as described under *TMC 13.11.120*.

#### **TMC 13.11.220 Application Types.**

*A. This chapter allows three types of wetland/stream/fish and wildlife habitat conservation area (FWHCA) applications, which result in the issuance of an administratively appealable decision consistent with Chapter 13.05. After the appeal period expires, the Director's approved decision becomes the official permit. Programmatic Restoration Projects processed under either the Minor Development Permit or the Development Permit may qualify for additional time extensions according to 13.05.070.*

B. The three types of permits are as follows:

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3. *Development Permit.* A Decision will be issued where, the Director determines that avoidance and minimization have not eliminated all impacts and compensatory mitigation will be required as a result of the proposal.

- a. The applicant must meet the requirements of one of three legal tests; No Practicable Alternatives, Public Interest or Reasonable Use, and
- b. Demonstrate Mitigation Sequencing, and
- c. Provide mitigation as required in accordance with this Chapter

\*\*\*\*\*

TMC 13.11.240. Legal Tests

B. *Reasonable Use.* A Reasonable Use exists when the standards of this chapter deny all reasonable economic use of the property. To demonstrate Reasonable use, the applicant must demonstrate all of the following:

Throughout the review process, the applicant continued to update the design of the project and in response to Public Comments, provided a response to all three Legal Tests (No Practicable Alternatives, Reasonable Use, and Public Interest). While the Practicable Alternative Test and Public Interest Test analysis may provide additional justification information, compliance is required from one test only and the most appropriate test for a development scenario such as this where the site is completely encumbered with critical areas is the Reasonable Use Test. The applicant provided the following response for this test:

1. *There is no reasonable economic use or value with less impact on the Critical Area:*

Applicant Response: The property is zoned for use as a single family residence. No economically reasonable use with lower impact is known to the property owner. As identified below, the applicant has no other feasible alternative and has made significant effort to minimize the impact of building a home on the property.

Analysis: The site is zoned for single family homes and the applicant has proposed an appropriate use for the site and I concur that no other economic use would likely have less impact due to the complete coverage of critical areas on the lot. In addition, the proposed home has been designed to limit unavoidable impacts through structural design and placement on the lot.

2. *There are no feasible on-site alternatives to the proposed activity or use (e.g., reduction in density or use intensity, scope or size, change in timing, phasing or implementation, layout revision or other site planning considerations) that would allow reasonable economic use with less adverse impact.*

Applicant Response: The project as currently proposed has been through design iterations in order to reduce the footprint of the building. With respect to site planning considerations, rear and side yards are not proposed to be added, which reduced the potential impact on wetland and minimizes the loss of wetlands functions.

Analysis: The applicant has continued to revise the home design as review and analysis have been conducted with City staff. Piles with a flow-through system under the house are no longer proposed. The foundation will be slab (with deep pin piles) and all water flowing through the wetland down the slope will be collected in a catchment system and directed around the home footprint and eventually into the City storm water system. The applicants geotechnical report indicates that a rear

concrete retaining wall and debris catchment wall will also be constructed for stability of the hillside and for safety. The desired home will be two-story, limiting the footprint and the location of the home will encompass an already disturbed area where there is an existing small cabin structure. A drainage corridor and maintenance corridor around the home have been designed to further limit additional intrusion into the remaining wetland and buffer.

3. *The proposed activity or use will be mitigated to the practical extent and result in minimum feasible alteration or impairment of functional characteristic of the site, including contours, vegetation, fish and wildlife habitat, groundwater, surface water and hydrological conditions.*

Applicant Response: As described above, the proposed single family residence has been designed to result in the minimum feasible impairment of the functional characteristics of the wetlands. A wetland assessment and wetland mitigation and enhancement plan has been prepared by Tom Deming, PWS, of Habitat Technologies for the project.

Analysis: The Reasonably Use legal test acknowledges that it is possible for an entire site to be significantly or entirely encumbered with critical areas and it is impossible to avoid all critical areas to allow for reasonable development. A single family home in an appropriately zoned area is a reasonable use of the site. The applicant has further limited impacts through design of a two-story home with a smaller footprint on the site, including the drainage corridor and maintenance corridor without designating a large yard area for the home.

4. *The proposed activity or use complies with all local, state and federal laws and will not jeopardize the continued existence of endangered, threatened sensitive or priority habitat or species and,*

Applicant Response: compliance with applicable city, state and federal laws will be demonstrated through the permitting process. The proposed wetland mitigation will only be performed after the permits required have been obtained.

Analysis: The applicant will provide copies of applicable state and federal permits for the project prior to issuance of development permits.

5. *The inability to derive reasonable economic use is not the result of any action, such as but not limited to, in segregating or dividing the property in a way that makes the property unable to be developed after the effective date of the ordinance codified in this chapter.*

Applicant's Response: Neither the property, nor its boundary, has been modified by the owner. The owner has not created any other encumbrances that affect the development of the site.

Analysis: the applicant has not subdivided or pursued any other action that would create the environmental limitations as they relate to development on the parcel.

\*\*\*\*\*

#### TMC 13.11 250 General Standards

A. *General permit standards. No regulated activity of use shall be permitted in or adjacent to a Critical Area or buffer, management area, or geo-setback without prior to approval and without meeting the provisions of this section.*

1. The applicant has taken appropriate action to first avoid adverse impacts, then minimize impacts and finally, compensate or mitigate for unavoidable impacts;
2. The result of the proposed activity is no net loss of Critical Area functions;
3. The existence of plant or wildlife species appearing on the federal or state endangered, sensitive or threatened species list will not be jeopardized;
4. The proposal will not lead to significant degradation of groundwater or surface water quality; and
5. The proposal complies with the remaining standards of this chapter, which include those pertaining to compensation and the provision of bonds.

Analysis: As described above, the applicant has continued to redesign the proposed development to allow for a reasonable use of the property yet minimize impacts to critical areas on the site. Avoidance is not possible for any development on this site as the site is completely encumbered with critical areas including wetlands, buffers and steep slopes. Minimization was accomplished through a multistory design which limits the footprint of the development, and a drainage and maintenance corridor design around the perimeter of the home.

Critical Area functions will be mitigated to the maximum extent practicable and functions of the remaining areas will be enhanced. The proposed mitigation plan for this project includes the preservation of native vegetation species within the wetland and buffer, the control of invasive species, the enhancement of portions of the wetland buffer and 5-years of vegetation monitoring. The preservation of native trees and shrubs within the buffer, and the establishment of additional native trees and shrubs within portions of the remaining onsite wetland and wetland buffer area will provide enhanced habitat areas and is expected to increase species diversity and wildlife habitat. Invasive plants such as Himalayan blackberry, Scotch Broom and horsetail will be removed and replaced with native trees and shrubs.

The proposed plant palette within the mitigation plan includes a variety of native trees and shrubs as follows: Western crabapple (*Pyrus fusca*), Sitka spruce (*Picea sitchensis*), Western Red Cedar (*Thuja plicata*), Red Twig Dogwood (*Cornus stoloniferis*), black twinberry (*Lonicera involucrata*), Sitka willow (*Salix sitchensis*), Vine Maple (*Acer circinatum*), Oceanspray (*Holodiscus discolor*), Wild rose (*Rosa gymnocarpa*) which will complement the previously restored area and provide additional functional capacity for the site.

Vegetation will not, however, be planted within the access easement that crosses the site along the northwest boundary.

No endangered, sensitive or threatened species will be jeopardized as none are located within the project site.

Surface water and groundwater will be captured to protect the proposed development and routed to city storm facilities; however, groundwater will continue to hydrate remaining wetland areas. The proposal will comply with all provisions of the critical area code and mitigation bonding will be required through conditional requirements.

#### *13.11.310 Wetland Classification.*

*A. Wetlands shall be classified Category I, II, III, and IV, in accordance with the criteria from the revised Washington State Wetlands Rating System for Western Washington*

developed by the Washington Department of Ecology, Publication Number 04-06-025, August 2004.3.

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Category IV wetlands are those that have the lowest levels of functions (between 9-15 points) and are often heavily disturbed. These are wetlands that may be replaced, and in some cases may be improved.

#### 13.11.320 Wetland Buffers.

A. *General.* A buffer area shall be provided for all uses and activities adjacent to a wetland area to protect the integrity, function, and value of the wetland. Buffers adjacent to wetlands are important because they help to stabilize soils, prevent erosion, act as filters for pollutants, enhance wildlife diversity, and support and protect plants and wildlife. A permit may be granted if it has been demonstrated that no adverse impact to a wetland will occur and a minimum buffer width will be provided in accordance with this section. The buffer shall be measured horizontally from the delineated edge of the wetland. The buffer shall be vegetated with the exception of areas that include development interruptions as described within this chapter.

#### *B. Minimum Requirement.*

1. *Wetlands.* Wetland buffer widths shall be established according to the following tables which are based on wetland classification, habitat function, land use intensity, and local significance:

<b>Table 3. Buffer width for all wetlands*</b>	
<b>Wetland Category</b>	<b>Buffer Width (feet)</b>
Category I	H and M - 200 L - 175
Category II	H and M - 150 L - 100
Category III	H, M, L - 75
Category IV	H, M, L - 50
*Best Available Science Review, City of Tacoma, Critical Areas Preservation Ordinance, Tacoma, Washington, June 15, 2004, prepared by GeoEngineers and modified by CAPO Focus Group, 2012.	

Analysis: The applicant provided a wetland delineation report which identified one wetland on site that extends offsite to the east. The wetland was categorized as a Palustrine, Forested, Emergent, Category IV wetland with a regulated 50-foot buffer.

I concur with the final wetland delineation of the wetland boundaries and the characterization and Wetland Category IV provided by the applicants' consultant.

#### TMC 13.11.330 Wetland Buffer Modifications.

A. *Buffer Requirements.* The standard buffer widths in Table 3 have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington. The use of the standard buffer widths requires the implementation of the measures in Table 1, where applicable, to minimize the impacts of the adjacent land uses. The applicant shall demonstrate mitigation sequencing when using buffer averaging or buffer reduction.

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*E. Buffer Averaging or Buffer Reduction beyond the minimum standards indicated above may be allowed to allow a reasonable use of a legal lot of record when all of the following criteria are met:*

- a. There are no feasible alternatives to the site design that could be accomplished with the standard buffer averaging or buffer reduction provision above; and*
- b. The averaged or reduced buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland expert, and*
- c. The remaining buffer area on site shall be enhanced and/or restored by removing invasive species that do not perform needed functions and replanting with an appropriate plant community, and*
- d. The project shall meet the requirements of one of the three legal tests; No Practicable Alternatives, Public Interest, or Reasonable Use.*

Analysis for Buffer Reduction:

(a) The applicant has provided mitigation sequencing and has taken appropriate action to try to avoid wetland impacts; however, the steeply sloped contours of the site and the complete coverage of critical areas on the site significantly reduce the avoidance potential for wetland and buffer impacts. Wetland and wetland buffer impacts have been minimized to the maximum extent practicable and the remaining areas of wetland and buffer that are not completely vegetated, or impacted by invasive and non-native vegetation will be restored and enhanced as mitigation for the impacts.

(b) Wetland and wetland buffer loss or reduction is part of the unavoidable impacts on the site as a Reasonable Use. In order to construct a single family home on the site of almost any size, a portion of the existing wetland and buffer would need to be eliminated to allow the construction of a single family home.

(c) The remaining wetland buffer area on the site will be enhanced and restored by removing invasive species and replanting with native species increasing or lifting the function of the remaining portion of the wetland and wetland buffer.

(d) The applicant has provided appropriate justification under the Reasonable Use Legal Test.

### **Conclusions**

Provided the conditions of approval are met, the proposal meets the criteria identified in TMC 13.11 Critical Areas.

The "Critical Areas Characterization and Compensatory Mitigation Program for the Development of a Single Family Homesite", December 5, 2018, prepared by Habitat Technologies, including reference to the Wetland Category meets the requirements of TMC 13.11.310 Wetland Classification and TMC 13.11.320 Wetland Buffers.

The project meets the mitigation sequencing requirement per TMC 13.11.270.E and has avoided and minimized impacts to the existing onsite wetland and wetland buffer to the maximum extent possible and provides appropriate mitigation for the reduction of the wetland buffer through the enhancement of the remaining wetland and buffer areas.

The applicant provided arguments for the Reasonable Use Legal Test demonstrating that the proposed development avoided the wetland and wetland buffer where possible through design elements including a two-story home with a smaller footprint and that there is no other economic development option for the site that would result in less impacts to the wetland and buffer areas.

In addition, the restoration and enhancement proposed will elevate the functions of the remaining wetland and buffer system. In addition, the placement of fencing or another approved delimiter along with signage and oversight of the wetland and buffer areas will provide continued preservation and protection of the wetland and buffers.

Based upon the above findings and as conditioned, the proposed development is consistent with the City's Critical Area Ordinance *TMC 13.11*. In accordance with *TMC 13.11* this proposal has developed appropriate mitigation.

Based on the above findings, the requested project is consistent with the provisions of the City's Critical Areas Preservation Ordinance *TMC 13.11*. Therefore, it has been determined that if properly conditioned this project can be approved without the need for a Development Permit as allowed according to *TMC 13.11*.

### **Conditions**

1. The applicant shall record Notice on Title per Section *TMC 13.11.260.G* for the subject site prior to a "Certificate of Occupancy" being issued for the building on the site. An electronic copy of the wetland survey shall be provided for inclusion in the City wetland maps in the following format: Datum: NAD 83/91 (HARN), coordinate system: Washington State Plane, South Zone, US Foot.
2. The applicant shall attend a preconstruction meeting with the Senior Environmental Specialist and building inspector prior to the commencement of site work.
3. The applicant shall erect high visibility fencing along the approved remaining wetland and wetland buffer boundary. The applicant shall inform the City Senior Environmental Specialist when the fence is erected in order to allow the City Senior Environmental Specialist to inspect the silt fence prior to beginning site work. The applicant shall ensure that once erosion control is no longer needed, the silt fence must be removed.
4. Permanent fencing such as split rail fence or an approved delimiter that adequately demarcates the outside perimeter of the on-site remaining portion of the wetland buffer boundary shall be constructed.
5. Critical area signage shall be attached to the split rail fence to demark the boundary limits of the Critical Area. The applicant shall use the approved Critical Area sign template of the City of Tacoma.
6. The applicant shall conduct restoration and enhancement mitigation in accordance with the "*Critical Area Characterization and Compensatory Mitigation Program for the Development of a Single Family Homesite*", December 5, 2018, prepared by Habitat Technologies. The mitigation plan, in general, will provide for restoration and enhancement of the remaining portions of the onsite wetland and buffer.
7. The applicant shall inform the City Senior Environmental Specialist when the plantings will be installed. The applicant shall have a qualified wetland consultant on site during the plant installation. The applicant shall provide a Year 0, or an "As Built" report and associated fees for this review to the City following planting.
8. The applicant shall provide vegetative maintenance and monitoring of the mitigation areas for a period of 5 years and provide monitoring reports to the City of Tacoma

Planning and Development Services Division by October 1 for years 1, 2, 3, 4 and 5 after completion along with the associated fees for this review.

9. The applicant shall provide performance and monitoring bonds prior to the issuance of any development permits.
10. The applicant shall provide copies of any Army Corps of Engineers permits and Department of Ecology permits prior to issuance of any development permits.

**Advisory Notes**

1. This permit is only applicable to the proposed project as described above and based upon the information submitted by the applicant. Modifications to this proposal and future activities or development within the regulated buffers may be subject to further review and additional permits as required in accordance with the *Tacoma Municipal Code*.
2. The applicant must obtain other approvals prior to construction as required by other local, state and federal agencies including the Army Corps of Engineers and State Department of Fish and Wildlife which have requirements regarding work within regulated waters that may be applicable to the project.

