

**STAFF REPORT TO HEARING EXAMINER
SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT
SMA #20-003**

Applicant: Aquilini Investment Group, C/O Nick Tennant
800 Griffiths Way
Vancouver, British Columbia VGB 6G1

Project Location: East side of the 7500 block of Larimer Road

Project Name: US Golden Eagle Farms LP

Project Description: The Applicant proposes to reroute a stream to another location that had previously been rerouted without required permits.

Zoning: A-1, Agricultural

Shoreline Designation: Urban Conservancy Agriculture

Application Dates: SEPA19-012 – May 2019
SMA20-003 – May 2020

Applicable Codes: Shoreline Master Program 2019
Title 19 Chapter 37, Critical Areas - 2018
Title 19 Chapter 30, Flood Damage Prevention – 2020

Staff Contact: Steve Ingalsbe / singalsbe@everettwa.gov / 425.257.7135

Lead Agency: The City of Everett is Lead Agency responsible for conducting the environmental review on this project. A Determination of Non-Significance was issued.

I. BACKGROUND AND PROJECT DESCRIPTION




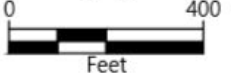




The project site is a 55-acre blueberry farm that is located between Larimer Road to the west and the Marshland Canal to the east. The site was previously dormant agricultural land. The blueberry farm was established in 2017 without required permits. Unauthorized alterations included the grading, excavation, and filling of the site and the rerouting of a stream. This impacted the neighboring property to the south. This resulted in a code enforcement action with a hearing that was held on April 11, 2019.

As shown on the aerial on page 2, the stream originally entered the project site from the south near the center of the site and continued northward until about halfway through the site, then took a 90 degree turn eastward to the canal. The stream was rerouted and still enters the site at the same location, but now takes a 90 degree turn along the south lot line of the site and continues eastward to the canal. The original SEPA application proposed to keep the stream at its present location, but without an agreement with the property owner (Tonnes) to the south, the SEPA application was revised to provide for the

relocation of the stream to a new location. The stream channel is proposed to be located so that it flows northward close to its previous location, but continue northward to the north boundary of the site before turning 90 degrees east to the canal. The new stream channel is proposed to have a minimum buffer width of 25 feet on both sides of the channel. US Golden Eagle Farms has reached an agreement with the property owner (city owned) to the north and an easement has been or will be recorded in the near future to encumber the property with a 25-foot wide planted buffer. Once the stream is relocated, the channel along the south lot line will be filled and contoured to match the grade on the Tonnes property to the south in order to stabilize the Tonnes property.



LEGEND:

- | | | | | |
|---|-------------------|---|---|--|
|  | PROJECT AREA |  | DRAINAGE DITCHES (PRE-2017 CONDITION UNCHANGED) | 

Feet |
|  | PARCEL BOUNDARIES |  | NEW DRAINAGE DITCHES | |
|  | FLOW DIRECTION |  | FILLED DRAINAGE DITCHES (2017) | |
| | | | | |

II. SHORELINE MASTER PLAN ENVIRONMENT DESIGNATION:

The project is located in the Urban Conservancy Agriculture shoreline environment designation. The project exceeds \$7,047 in value and is subject to the City of Everett Shoreline Master Program.

III. GENERAL SHORELINE REQUIREMENTS, CHAPTER 3 OF THE SMP:

Listed below are the elements and their requirements from the City of Everett Shoreline Master Program applicable to this project.

A. Cultural Resources Element

1. All shoreline permits shall contain provisions which require developers to immediately stop work and notify the city and the Tulalip Tribes if anything of possible archaeological interest is uncovered during excavations or development and consult a professional archaeologist to inspect and evaluate the site. Failure to comply with this requirement shall be considered a violation of the shoreline permit. (Regulation #1)

Response: This is recommended as a condition of approval.

2. An archaeological survey shall be required for any development that includes excavation into native soils (i.e., below any fill) unless an acceptable archaeological survey has previously been completed for the area. Archaeological survey reports and site investigation reports shall be made available to the Tulalip Tribes. (Regulation #2)

3. All permits issued for development in areas known to contain archaeological artifacts and data shall include requirements for the developer to provide for a site inspection and evaluation by a qualified archaeologist. The archaeologist report must include an analysis of the impacts of the development on the artifacts and data, and recommended mitigation measures. The report and mitigation measures must be approved by the City prior to the initiation of any development activity. Significant archaeological data or artifacts shall be reported to the State Office of Archaeology and Historic Preservation and shall be recovered before work resumes or begins on a project. (Regulation #3)

Response: Page 15 and 16 of the Environmental Checklist discusses the archaeological surveys that have been done in the area. The checklist states that an Inadvertent Discovery Plan will be developed. It provides a step-by-step guide about what to do when ground disturbing activities unearth a discovery, including but not limited to, human remains and/or historic or pre-historic resources. This is recommended as a condition of approval.

B. Flood Hazard Reduction Element

1. All development in the Flood Fringe and Floodway overlay zones shall comply with EMC 19.30, as applicable.... (Regulation #2)

Response: EMC 19.30 was recently updated to become compliant with the National Flood Insurance Program. This chapter no longer has Flood Fringe and Floodway overlay zones. See Section VII in this report on Chapter 30.

2. River and stream channel direction modification, realignment and straightening shall be prohibited, unless proposed as part of an ecosystem restoration project. (Regulation #8)

Response: The stream channel will not be further straightened than what it was prior to being altered.

C. Public Access Element

1. Public access shall be required in the review of all shoreline substantial development and conditional use permits (including land division), except for projects which meet the following criteria: Projects involving only ecological enhancement and restoration, except that new dikes shall incorporate public access where feasible. (Regulation #1.c)

2. Projects which meet the following criteria, as determined by the Planning Director or Hearing Examiner, are not required to provide on-site public access but must provide either off-site public access of comparable value or pay an in lieu fee to a fund established by the City: More meaningful public access that is better than that provided by the application of the goals, objectives and policies of this SMP can be provided off-site. (Regulation #2.e) If the applicant opts to pay an in-lieu fee, that fee will be 2% of the project's total construction costs. ...The in lieu fees will be calculated without consideration of applicable sales tax. (Regulation #2.f)

3. Where a project is located within an area covered by an adopted public access plan, public access improvements shall be generally consistent with the adopted plan. However, the City may approve an alternative proposed by the Applicant that meets the goals, objectives and policies in this SMP. Adopted public access plans include, but are not limited to, Shoreline Public Access Plan, Everett Bicycle Master Plan, and the Parks, Recreation and Open Space Plan, or as such shall be superceded or amended. (Regulation #4)

4. Where the required public access improvements are part of an integrated system to be accomplished through a public/private effort, the City may permit the applicant to pay an amount equal to the construction cost of the required improvements in lieu of developing the improvements at the time of development. The funds from this permit will be designated by the City for a programmed capital improvement project which includes the public access improvements required by the project permit. The intent of this provision is to allow greater flexibility and cost effectiveness in creating a public access system than could be achieved if elements of the system were constructed individually. (Regulation #5)

Response: The project site fronts the Marshland Canal along its eastern border. The Shoreline Public Access plan does not provide for a public trail along the Canal. Figure 20, below, of the Shoreline Master Program shows that the project site is within the area of the Marshland Restoration plan. Trails and recreation areas are shown within the Snohomish River estuary restoration plan. The conceptual trails do not front the Canal and would be established at the time of the creation of the estuary which has not been designed at this time. Figure 22 shows that the project site is within Phase 3 and 4 of the Marshland Restoration plan. Phase 1 has yet to be accomplished.

The stream buffer enhancement portion of the project is considered exempt from the public access requirement per regulation #1. The grading, filling, and excavation that has previously taken place requires public access. Instead of constructing a trail on-site along the canal, the Applicant can pay a fee of 2% of the total construction costs towards the City's Public Access fund. This is a recommended condition.

Figure 20: Marshland Habitat Opportunities

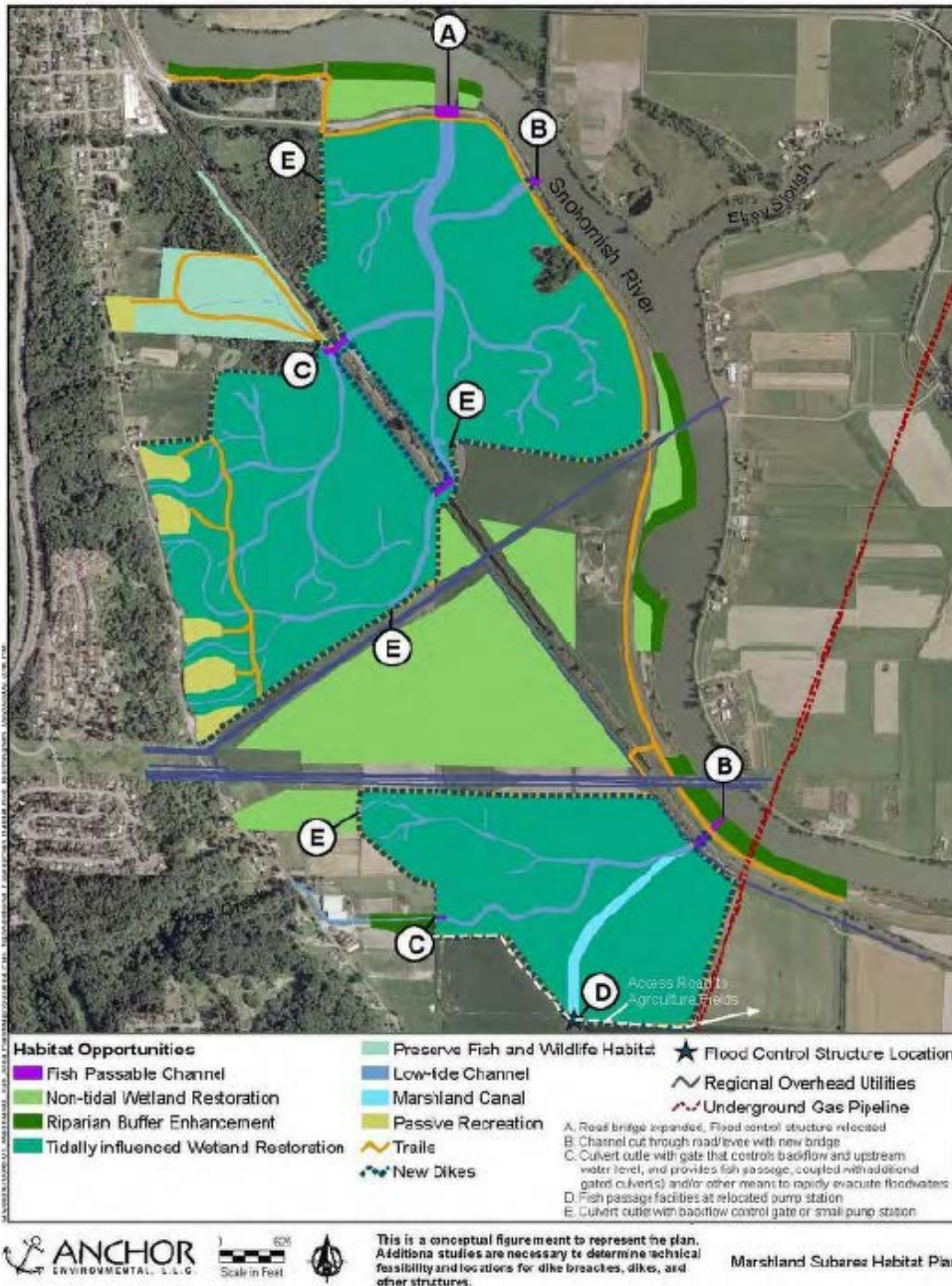
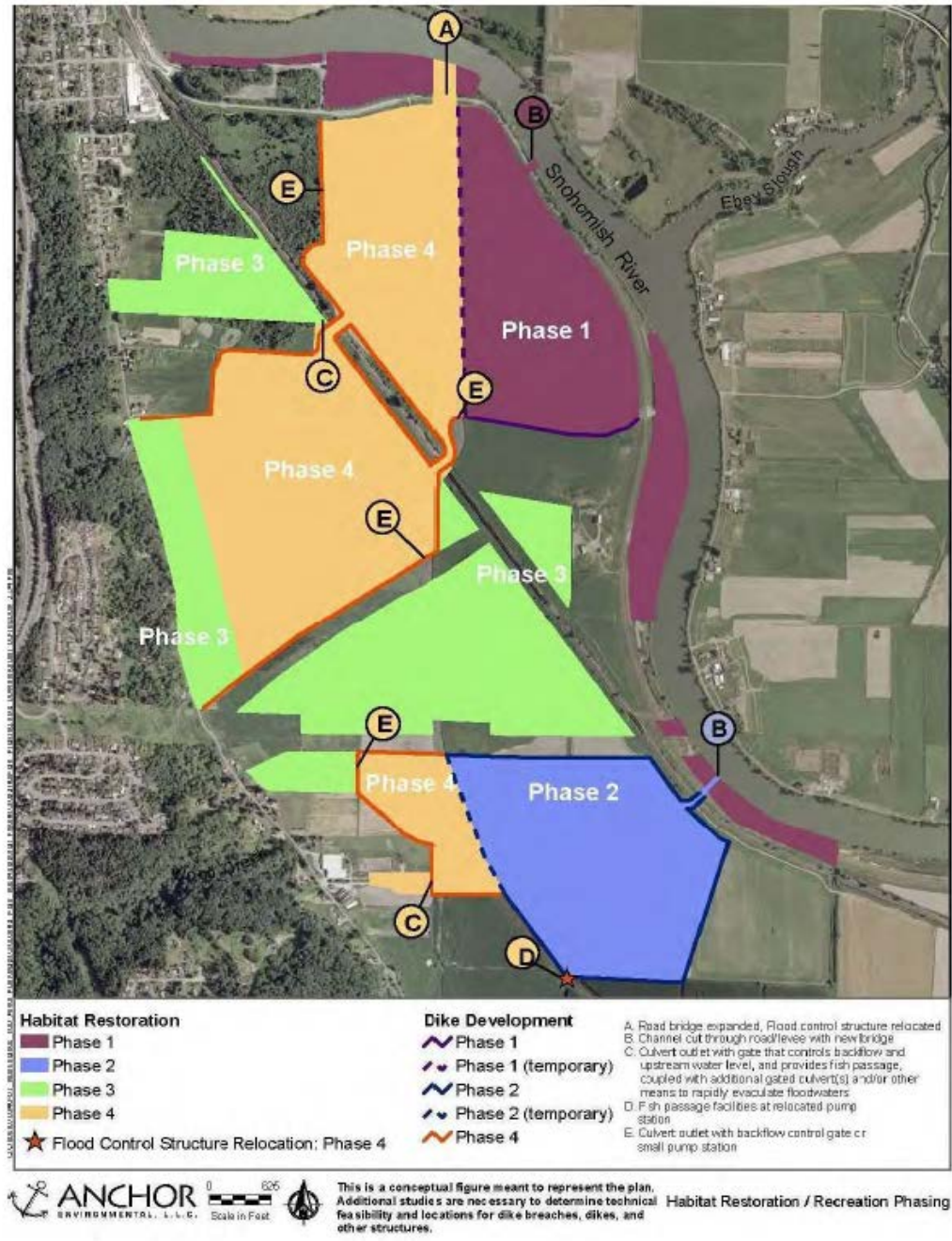


Figure 22: Marshland Restoration Phases



D. Conservation Element

1. Except for the reasonable use exception, proposed shoreline activities and modifications within shoreline jurisdiction shall comply with Everett’s Critical Areas regulations and other local, state and federal regulations relating to critical areas, as applicable. (Regulation #1)
2. Existing hydrologic connections between water bodies, water courses, and associated wetlands shall be protected and maintained. (Regulation #3)

3. All developments shall mitigate impacts to water quality using best available science. Compliance with City stormwater regulations consistent with state stormwater regulations shall be required. Water quality monitoring during construction and operation may be required by the Planning Director or Hearing Examiner on a project by-project analysis based upon specific characteristics of the proposal. (Regulation #4)
4. Land clearing, grading, filling and alteration of natural drainage features and land forms, where permitted, shall be limited to the minimum necessary for permitted development. (Regulation #9)
5. When this SMP requires mitigation, the following mitigation sequence shall be used:
 - a. Avoid the impact altogether by not taking a certain action or parts of an action;
 - b. Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
 - c. Rectify the impacts by repairing, rehabilitating, or restoring the affected environment;
 - d. Reduce or eliminate the impact over time by preservation and maintenance operations;
 - e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
 - f. Monitor the impact and the compensation projects and take appropriate corrective measures. (Regulation #10)
6. Where buffers are restored or enhanced, plantings shall generally be spaced and composed to mimic native buffer communities. However, plantings shall also be designed to take into account impacts to views and scenic vistas. Measures to protect views and scenic vistas may include, but not be limited to: grouping large trees in clusters, selecting species that grow to heights that allow views without requiring maintenance pruning, and planting evergreens in clusters. (Regulation #14)
7. All plantings within critical areas and their required buffers shall be native species or native hybrids. The City shall encourage developers to use native species for all landscaping within 100 feet of the shoreline.... (Regulation #16)
8. Buffers shall be maintained to eliminate invasive non-native species when practicable. (Regulation #18)

Response: The critical area regulations are found in EMC 19.37. A Restoration Plan by Anchors QEA dated May 2019 includes a planting plan. All areas to be replanted will be with native vegetation. Portions of the stream buffers that are underneath the electrical transmission lines will exclude the planting of trees. Those areas will be planted with native shrubs and grasses along with other areas that are outside the stream buffer.

III. SHORELINE USE REGULATIONS, CHAPTER 5 OF THE SMP:

The Shoreline Master Program defines the current use as “Agriculture”. Agriculture is a permitted use as shown in the Shoreline Use table, Table 1. The project is required to comply with the specific use regulations required under Agriculture of the Shoreline Master Program. The proposed project must meet the following applicable regulations listed below:

1. New agricultural activities shall provide buffers adjacent to the Snohomish River and other water bodies consistent with the SMP. (Regulation #1)
2. The application of agricultural fertilizers, including animal waste, herbicides and pesticides shall be setback at least 100 feet from the shoreline. Aerial spraying of fertilizers, chemical pesticides or herbicides is permitted only when approved by a state agency. (Regulation #4)

3. During the application of agricultural chemicals (including fertilizers and pesticides) direct runoff into adjacent water bodies or aquifer recharge areas shall be prevented. Adequate provisions shall be made to minimize their entry into any body of water. (Regulation #6)
4. Agricultural practices shall prevent and control erosion of soils within shoreline areas and minimize siltation, turbidity, pollution and other environmental degradation of watercourses and wetlands. (Regulation #8)

Response: These are recommended as conditions of approval. The site is not adjacent to the Snohomish River. The Conservation Element of the SMP refers to chapter 37 for regulations pertaining to buffer width requirements. The designation of the stream is now a Type S Stream (previously a Category III stream under the previous SMP) and is defined as follows: “Those streams, within their ordinary high water mark, as inventoried as “shorelines of the state” under Chapter 90.58 RCW and the rules promulgated pursuant thereto, including the periodically inundated areas of their associated wetlands.” Chapter 37 requires a 150-foot buffer for Type S streams for altered buffers but may be reduced to 75 feet with buffer enhancement. A buffer of 25 feet wide is proposed and is discussed further in Section VI of this report.

IV. SHORELINE MODIFICATION, CHAPTER 6 OF THE SMP:

The alteration of the stream channel and the previous activity that involved grading, filling, and excavating is considered “Landfill”. Landfill is permitted in the Urban Conservancy Agriculture Environment as shown in the Shoreline Modification Activities table, Table 2. The project must meet all the following applicable regulations listed below:

1. Landfills are permitted only when used as preparation for an activity otherwise allowed by the Shoreline Master Program. (Regulation #2)
2. Applications for landfills must address impacts to wetlands and streams; aquatic habitats; flooding; ecosystem wide processes such as sediment transport; navigation; and public access. All projects involving a landfill shall include the following information: physical and biological characteristics of the landfill site, source and quality of landfill material, grading plan showing the site and adjacent properties and waters, method of placement and compaction, type of proposed surfacing and runoff control devices, method of perimeter erosion control, and proposed use of the fill area. Depending upon the nature and location of the proposed landfill, additional information/studies will be required to address impacts of the proposal. Landfills that will result in significant adverse impacts that cannot be mitigated are prohibited. (Regulation #6)
3. The perimeter of all landfills shall be provided with some means to control erosion, unless the geotechnical and/or hydrological information documents that there will be a public benefit by not providing erosion control. Erosion control measures must be consistent with Shoreline Stabilization policies and regulations. (Regulation #7)
4. Landfills in floodplains and floodways must comply with the regulations in the Zoning Code, Floodplain Overlay Districts and Regulations. (Regulation #8)
5. Fill materials shall be sand, gravel, soil, rock, or similar material. Clean dredge material from a permitted dredging operation shall be permitted. Materials such as wood waste may be approved for fill in limited situations...(Regulation #9)

Response: Erosion will be controlled by recontouring grades and replanting. A Geotechnical Investigation and Recommendations report was submitted and will be reviewed by the Public Works department as a Public Works permit is required for the proposed fill.

V. ZONING CODE, A-1, AGRICULTURAL, REGULATIONS

EMC 19.5, Table 5.2, Nonresidential uses, lists farming as a permitted use in the A-1 zone.

VI. REVIEW PROCESS II 20-018, EMC 19.37, STREAM AND BUFFER

The Conservation Element of the Shoreline Master Program requires compliance with the Critical Areas regulations in Title 19. EMC 19.37.190.D requires a biological assessment for areas within the special flood hazard area. Anchor QEA's ESA No Effect Letter recommends that the proposed project will have no effect on ESA-listed species. A Critical Areas and Habitat Assessment Report was submitted as required by EMC 19.37.190.G. EMC 19.37.190.H.1 requires compensation for impacts within the 100 year floodplain as follows: "Compensation must be provided for any effects to floodwater storage and fish habitat function within the one-hundred-year floodplain. Indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) must be mitigated such that equivalent or better salmon habitat protection is provided." Section 4.4, Special Flood Hazard Areas Impact Assessment, of the Critical Areas and Habitat Assessment Report dated May 2019 addresses impacts to the floodplain. It states that there is no net fill within the floodplain and will not impact the base flood elevation. However, in the Floodplain Regulations Compliance Memorandum dated April 2020, there will be import of 1,355 cubic yards of fill. The Critical Areas and Habitat Assessment must be updated to show how it will meet the requirements of EMC 19.370.H.

Although EMC 19.37 does not permit or prohibit the alteration of Type S streams, as this was an unauthorized stream alteration, EMC 19.37.250.B.2 authorizes the planning director to "require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered critical area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that which has been altered if the alternative location will result in a net improvement in functions or a higher quality critical area than possible in the area which has been previously altered." An analysis is addressed in the Stream Functions Assessment report by Anchors QEA. By relocating the stream channel with appropriate contoured banks and buffers to prevent erosion, this will provide restoration equal or greater stream functions than what was and what is currently on-site.

Additional measures are required to protect the stream and its buffer per EMC 19.37.220 as follows: "The city shall require that any development proposed on a lot which contains or adjoins a critical area provide a fence or other structural protection along the outer edge of a buffer to minimize encroachment and disturbance. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas." and "Except as provided for below, the city shall require that all features classified as critical areas by this chapter and their buffers, including fish and wildlife habitat conservation areas, be placed in critical area protective covenants."

VII. FLOOD DAMAGE PREVENTION, EMC 19.30

The project site is designated as Zone AE, a special flood hazard area with the flood base elevation determined, and a Special Development Area on the Flood Insurance Rate Map by FEMA. The following regulations are applicable to the alteration of the stream channel and filling of the site within the floodplain as follows:

1. EMC 19.30.080.C.4. Alteration of Watercourse. Whenever a watercourse is to be altered or relocated:
 - a) Notify adjacent communities and the Department of Ecology prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means,
 - b) Assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

2. EMC 19.30.090.C. AE and A1-30 Zones with Base Flood Elevations but No Floodways.

In areas with BFEs (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

A Floodplain Regulations Compliance Memorandum was submitted with the application addressing the above regulations as follows: "The Project is anticipated to have no measurable effect on the BFE in the floodplain in which it is located. The project will result in a net imported clean fill volume of approximately 1,355 cubic yards related to soil augmentation activities on the Tonnes property as required as part of the Settlement Agreement. The Project is located in a floodplain that is over 5,000 acres in area. The import of 1,355 cubic yards of fill (36,585 cubic feet) was calculated to result in a BFE rise of approximately 0.0002 foot (0.002 inch). Even if just the Tonnes and Golden Eagle Farms properties were considered, the BFE would only rise by approximately 0.012 foot (0.1 inch). The stream was approximately 1,685 feet long from the boundary with the Tonnes property and its outlet at the drainage canal. The average cross-sectional area of the UNT prior to the modifications was approximately 30 to 40 square feet. After the proposed restoration of the UNT, the length will be approximately 2,050 feet with an average cross-sectional area of approximately 100 square feet. The proposed restoration activities are expected to increase the flood-carrying capacity of the UNT."

RECOMMENDATIONS:

The Planning and Community Development Department recommends **approval** of the proposal with the following conditions:

1. The proposed project must meet the policies and regulations of the City of Everett Shoreline Master Program and must be generally consistent with the application materials presented to the City. Any revisions to this proposal are subject to review by the Planning Director in accordance with the provisions of WAC 173.27.100.

2. Significant archaeological data or artifacts shall be reported to the State Office of Archaeology and Historic Preservation and shall be recovered before work resumes or begins on a project. Work must stop immediately and the city and the Tulalip Tribes must be notified if anything of possible archaeological interest is uncovered during excavations and a professional archaeologist must inspect and evaluate the site. Failure to comply with this requirement shall be considered a violation of the shoreline permit. Provide an Inadvertent Discovery Plan prior to issuance of the Public Works permit.
3. Construct an on-site trail along the canal or pay a fee of 2% of the total construction costs of the proposed and past grading, filling, and excavating activities (excluding buffer enhancement) towards the City's Public Access fund. The fee must be paid prior to issuance of the Public Works permit.
4. The application of agricultural fertilizers, including animal waste, herbicides and pesticides shall be setback at least 100 feet from the shoreline. Aerial spraying of fertilizers, chemical pesticides or herbicides is permitted only when approved by a state agency. During the application of agricultural chemicals (including fertilizers and pesticides) direct runoff into adjacent water bodies or aquifer recharge areas shall be prevented. Adequate provisions shall be made to minimize their entry into any body of water. Agricultural practices shall prevent and control erosion of soils within shoreline areas and minimize siltation, turbidity, pollution and other environmental degradation of watercourses and wetlands. Provide a fertilizer pesticide management plan that addresses the 100-foot setback from the shoreline.
5. Comply with other local, state and federal regulations relating to critical areas, as applicable.
6. Provide a buffer at least 25 feet in width from the top of each side of the newly created stream channel along its entire length. This buffer shall be replanted with native vegetation in accordance with the Restoration Plan by Anchors QEA dated May 2019. Minor changes such as plant substitutions to the plan may be made with the Planning's approval. Install fencing and critical area signs along the stream buffer and record a "Critical Area" covenant with the Snohomish County Auditor's Office. The covenant must be recorded prior to issuance of the Public Works permit.
7. Update the Critical Areas and Habitat Assessment report and comply with the requirements of EMC 19.370.H.
8. Every effort must be made to relocate the stream, establish the buffers, and fill the abandoned channel within the time frame allowed by government agencies prior to the end of 2020. If unable to accomplish this project in 2020, the project must be finished in 2021.
9. Provide a five-year set-aside maintenance assurance device in the amount of at least 10% of the costs of the plants, installation of the plants, and monitoring. Monitoring reports shall be submitted at the end of years one, three, and five following installation. Contingencies must be implemented based upon the findings of the monitoring.

Exhibits:

1. Staff Report
2. Land Use Application
3. JARPA
4. Environmental Checklist
5. Reports
 - a) Critical Areas and Habitat Assessment Report
 - b) ESA No Effect Letter
 - c) Geotechnical Investigation and Recommendations
 - d) Floodplain Regulations Compliance Memorandum
6. Affidavit of Publication
7. Mailing List
8. Restoration Plan
9. Stream Functions Assessment
10. Regulations for Flood Damage Prevention, Ordinance No 3766-20

