THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON

IN RE:	**HE-24-PL-027**
GOODSIR PROPERTIES LLC, Applicant	**FINDINGS, CONCLUSIONS, AND DECISIONS**
2302 Alabama Street	
CAP2024-0024 and VAR2024-0008 / Critical Area Permit and Variance from Critical Areas Ordinance	**SHARON A. RICE** **HEARING EXAMINER**

SUMMARY OF DECISIONS

The requested critical area permit and critical areas variance to authorize residential development at 2302 Alabama Street, Bellingham, Washington are **APPROVED** with conditions.

SUMMARY OF RECORD

Request:

Edwin Goodsir of Goodsir Properties LLC (Applicant) requested a critical area permit and a variance from the critical areas ordinance to authorize residential development with a building footprint of 1,415 square feet within a stream buffer. The subject property is addressed as 2302 Alabama Street in Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid virtual open record hearing on the request on December 11, 2024. The record was held open two business days to allow for public comment, with additional days for responses by the parties. No post-hearing public comment was submitted, and the record closed on December 13, 2024.

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

Due to the holidays following the hearing, the Applicant agreed to a five business day extension of the decision deadline. No in-person site visit was conducted, but the Examiner viewed subject property on Google Maps.

Testimony:
At the virtual hearing, the following individuals presented testimony under oath:

Amy Dearborn, Environmental Planner II, City of Bellingham

Steve Sundin, Planner, City of Bellingham

Edwin Goodsir, Applicant

Collin Van Slyke, Senior Wetland Biologist, Northwest Ecological Services

Kendal Mancini

Eydie Carlson

Exhibits:
Through the open record hearing process, the following exhibits were admitted in the record:

Exhibit 1 Staff Report to the Examiner, dated November 9, 2022, with the following attachments:

A. Proposed Site Plan
B. Vicinity Maps
C. Zoning Map
D. Pre-application Site Plan
E. Notice of Application and Public Hearing
F. Critical Areas Assessment, NW Ecological Services, dated January 2024
G. Geotechnical Report, Element Solutions, dated March 2024
H. Variance Application
I. Critical Impact Assessment and Mitigation Plan, NW Ecological Services, dated August 2024
J. Applicant Narrative

Exhibit 2 Email from Collin Van Slyke, re: Critical Areas Impact Assessment and Mitigation Plan (Revised November 2024), dated December 10, 2024

Exhibit 3 Updated Project Materials, including the following:

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

A. Updated Variance Narrative, dated November 26, 2024

B. Site Constraints Map, dated November 2024

C. Conservation Easement Exhibit, dated November 2024

Exhibit 4 Public Comment, including the following:

A. Letter from E. Carlson to Hearing Examiner

B. Letter from E. Carlson to Edwin Williams

C. Email from Cara Wietstock, dated December 11, 2024

After considering the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Edwin Goodsir of Goodsir Properties LLC (Applicant) requested a critical area permit and a variance from the critical areas ordinance to authorize residential development with a building footprint of 1,415 square feet within a stream buffer.[1] The subject property is addressed as 2302 Alabama Street in Bellingham, Washington.[2] *Exhibits 1, 1.A, and 1.H.*

2. The subject property is 10,065 square feet in area and is currently vacant. A previous single-family residence on the subject property, which was constructed in the 1920s, was damaged by fire in 2009 and subsequently demolished pursuant to City demolition permit no. DEM2013-00022. The Applicant purchased the property in 2024. The proposed residence would be in approximately the same location as the previous residence. *Exhibits 1 and 3.A; Amy Dearborn Testimony.*

3. The subject property is within Area 9 of the Roosevelt Neighborhood and is zoned Residential - Multi with a Transition use qualifier and Medium density designation. *Exhibits 1 and 1.C; Bellingham Municipal Code (BMC) 20.00.140.* Although this designation would normally require development of at least two multifamily dwelling units on the subject property, BMC 20.32.040.B(3)(c)

---

[1] The current proposal is for a single-family residence with two accessory dwelling units. Planning Staff submitted that the purpose of this variance process is to establish a reasonable development footprint, and identification of the specific housing type can be deferred until building permit review. *Exhibits 1 and 1.H; Edwin Goodsir Testimony.*

[2] The legal description of the property is Lots 18-19 Blk 8 West Eureka Add to New Whatcom; also known as Tax Parcel Number 380320540078 0000. *Exhibit 1.*

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

provides an exception to the minimum density requirement for sites that are wholly or substantially encumbered by a critical area or a critical area buffer. While a single-family residence with two accessory dwellings units (ADUs do not count towards density) could potentially be developed consistent with BMC 20.32.040.B(3)(c), the final housing type would be determined at the time of building permit review. *Exhibit 1.*

4. The subject property is located on the south side of Alabama Street, an arterial street, east of Xenia Street and West of Yew Street. Surrounding properties are within the same zone as the subject property and are developed with single-family and multifamily residences. There is commercial development to the east of the subject property at the southeast corner of Alabama Street and Yew Street. *Exhibits 1.B, 1.C, and 1.F; BMC 20.00.140; Google Maps Site View.*

5. Based on a critical area assessment prepared by ecologists with Northwest Ecological Services, including one who is certified as a professional wetland scientist, the subject property contains Fever Creek and its buffer, a fish and wildlife habitat conservation area that is regulated under the City's critical areas ordinance (CAO) (BMC 16.55). Although City maps suggest that the stream segment is also classified as a frequently flooded area, another type of critical area, the property is not mapped as a special flood hazard area by FEMA. No threatened, endangered, or candidate species of wildlife were observed during the critical areas assessment, and no important habitat areas are mapped on the subject property. *Exhibit 1.F.*

6. Fever Creek runs along the eastern and southern boundaries of the subject property. It is a tributary to Whatcom Creek and discharges to Whatcom Creek approximately 0.88 miles southwest of the site. *Exhibit 1.F.*

7. Based on a Geotechnical Evaluation and Stormwater Feasibility Assessment prepared by geologists with Element Solutions, the banks of Fever Creek are classified as an erosion hazard area. The conclusions of the geotechnical evaluation included that the erosion risk to the proposed development area would be low, and that a 20-foot setback between the top of the bank and the building foundations would be appropriate. The proposed development footprint would be outside of the recommended setback. *Exhibits 1.G and 1.A.*

8. Fever Creek is classified as a Type F stream because the channel morphology is capable of supporting fish populations and it connects to other fish-bearing waters. However, due to multiple downstream blockages, fish are not expected to inhabit the stream in the project area, and none were observed during the

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

critical areas assessment that was conducted for the site. *Exhibit 1.F.*

9. BMC 16.55.500 requires a 75-foot buffer from the ordinary high-water mark of a Type F stream, plus an additional 15-foot building setback from the buffer edge, within which certain improvements (landscaping, uncovered decks, pervious ground surfaces, and water cisterns) are allowed. In this case, the 75-foot buffer encompasses virtually the entire parcel and completely precludes residential development. *Exhibits 1.F and 3.B.*

10. Although BMC 16.55.500.D(3)(b) would allow an administrative reduction of the buffer by 25%, in this case the reduction would not be sufficient to create a building envelope. The potential building area would be in the northwest corner of the site and, while approximately 880 square feet in area, would be wholly encumbered by the minimum 20-foot setback from Alabama Street, the minimum five-foot setback from the west property line, and the 15-foot setback from the buffer edge. A variance from the CAO is therefore required for residential development. *Exhibits 3.A and 3.B.*

11. The Applicant proposes a residential building footprint of 1,415 square feet, which would be placed as far north and west (away from the stream) as possible while maintaining minimum setbacks from the north and west property lines. The proposed building footprint would be smaller than those on the adjacent parcels to the west, south, and east, which also have environmental constraints. These adjacent parcels were developed prior to the City's adoption of its CAO. *Exhibits 1, 3.A, and 3.B; Edwin Goodsir Testimony.*

12. The overall development footprint proposed (including driveway, vehicle maneuvering space, and setback/yard space) would be 4,170 square feet. Comparing the proposed development footprint to the development footprints on properties in the vicinity that are also encumbered by the Fever Creek buffer, the proposed development footprint would be smaller than average. *Exhibits 1 and 1.A; Edwin Goodsir Testimony.*

13. The Applicant proposes to demarcate the reduced buffer edge with a split-rail fence and signs. The residential structure would be set back at least five feet from the fence to the east and 15 feet from the fence to the south. BMC 16.55.500.D(7) allows the required 15-foot building setback to be administratively reduced, and the proposed reduction along the east side of the residence would maximize the buffer width at its narrowest point (25 feet, as measured between the split-rail fence and the ordinary high-water mark). In support of the reduction request, the Applicant submitted that the mitigation

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

plantings to be installed adjacent to the reduced setback would consist of shrubs not requiring a 15-foot-wide root zone. The buffer width to the south of the development site would be approximately 56 feet. *Exhibits 1, 1.A, 3.A, and 2; Collin Van Slyke Testimony.*

14. It would not be feasible to reduce the front setback from Alabama Street as a means of further minimizing the buffer reduction, because, due to the arterial street classification and high traffic volume, the front setback is needed for safe vehicle maneuvering. *Exhibit 1; Amy Dearborn Testimony.*

15. The proposed development would affect a portion of the stream buffer that was previously developed and is currently in poor condition, with vegetation largely consisting of lawn grass. Only two trees would be removed as a result of the development, one of which is already dead. *Exhibit 2; Collin Van Slyke Testimony.*

16. As mitigation for proposed buffer impacts, which would total 3,763 square feet, the Applicant proposes to enhance 4,550 square feet of degraded on-site buffer (an amount exceeding the 1:1 ratio required by the CAO) by removing invasive species such as Himalayan blackberry, de-compacting areas not currently containing native woody vegetation, and planting native trees (20), shrubs (180), and ground cover (30). The enhanced on-site stream buffer and stream would be preserved through fencing, signage, and a permanent conservation easement. The mitigation plantings would be monitored for five years. Exceeding the required 1:1 mitigation ratio is among the Applicant's primary objectives, and thus the proposal would maximize buffer enhancement potential as part of site development. *Exhibits 2 and 3.C; Collin Van Slyke Testimony.*

17. With the submitted mitigation plan, the proposed development is expected to result in no net loss of stream buffer functions. The plantings are expected to improve the filtration of stormwater runoff, provide increased stream shading, slow the velocity of runoff, and support a wider range of wildlife. The proposed mitigation is expected to result in a functional uplift in the habitat that would remain permanently available to wildlife. *Exhibit 2; Collin Van Slyke Testimony.*

18. Planning Staff identified the following goals and policies of the Bellingham Comprehensive Plan as applicable to the proposal:

Land Use

Goal LU-5 Support the Growth Management Act's goal to encourage growth in urban areas.

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

Policy LU-66 Encourage design flexibility (e.g. clustering and low impact development) to preserve existing site features, including trees, wetlands, streams, natural topography, and similar features.

Environment

Goal EV-3 Protect and restore ecological functions and habitat.

Policy EV-10 Incorporate sustainable land use and design elements into projects early in the planning stages to avoid impacts to critical areas (see Land Use and Community Design Chapters).

Policy EV-12 Safeguard the long-term functions and values of critical areas through effective mitigation measures when avoidance is not feasible.

Exhibit 1. In addition, Staff submitted that the Roosevelt Neighborhood Plan contains the following open space goal that is relevant to the project:

> Fever Creek should be restored to once again support fish. Buffer enhancements and removing culverts are needed for fish habitat improvements.

Exhibit 1.

19. Notice of the application and public hearing was mailed to property owners within 500 feet of the site on November 19, 2024, and posted on-site on November 20, 2024. *Exhibits 1 and 1.E.*

20. Public comment on the application raised concerns on the following topics: potential impacts to wildlife that currently use the site, including deer, racoons, squirrels, and birds; concerns that development of the site would increase stormwater runoff and flooding risk to surrounding properties and streets, and that the runoff would contaminate the stream and exacerbate erosion along the stream banks; concern that off-street parking would be inadequate and result in parking along Xenia Street; and concern that future tenants or owners would not maintain the mitigation area. *Exhibit 4; Testimony of Kendal Mancini and Eydie Carlson.*

21. With respect to the wildlife issues of concern, the Applicant's environmental consultant submitted that the types of wildlife present on-site are well-adapted to human presence, and while the buffer width available to them would be reduced, the buffer quality would be improved. *Collin Van Slyke Testimony.*

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

22. With respect to the stormwater issues of concern, Planning Staff submitted that the stormwater management system for the project, including water quality and quantity, would be reviewed in conjunction with the building permit. Based on the studies conducted to date and preliminary review by the City Engineer, stormwater runoff from the project would likely be directed to the existing City stormwater system in Alabama Street. *Amy Dearborn Testimony.* Chemical treatments would be prohibited within the conservation easement. *Collin Van Slyke Testimony.*

23. With respect to parking, a single-family residence would require two off-street parking spaces. Each ADU requires one parking space, but in this case the Applicant might be able to request a waiver due to transit availability. All parking would have to fit within the approved development envelope and would not be allowed to intrude into the preserved critical areas. Of note, the City could not prevent residents or visitors from parking on public streets such as Xenia Street. Compliance with applicable parking standards would occur at time of building permit. *Steve Sundin Testimony.*

24. Having heard all testimony, Planning Staff maintained their recommendation for approval of the critical area permit and critical areas variance subject to the conditions stated in the staff report. *Exhibit 1; Amy Dearborn Testimony.* The Applicant waived objection to the recommended conditions of approval. *Edwin Goodsir Testimony.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted authority to hold hearings and make decisions on variance permit applications pursuant to BMC 20.18.020.A and BMC 16.55.120.A.

Criteria for Review:

Pursuant to Bellingham Municipal Code 16.55.120.B, a variance from the critical areas ordinance may be granted only if an applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;
2. The special conditions and circumstances do not result from the actions of the applicant;

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

3. A literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;
4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances;
5. The granting of the variance is consistent with the general purpose and intent of this chapter, and will not have a significant adverse impact on functions and values of the associated critical area or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;
6. The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance fish habitat; and
7. The granting of the variance is consistent with the general purpose and intent of the comprehensive plan and adopted development regulations.

Pursuant to BMC 16.55.090.B, a critical area permit may be granted if the City can make all of the following findings:

1. Require a critical area report from the applicant that has been prepared by a qualified professional, to be reviewed and evaluated;
2. Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the criteria in BMC 16.55.200, Review criteria;
3. Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
4. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

Applicable Code Provisions:

BMC 16.55.200 - Review criteria.

A. Any alteration to a critical area, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

denied based on the proposal's ability to comply with all of the following criteria:

1. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (BMC 16.55.250);
2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
3. The proposal is consistent with the general purposes of this chapter and the public interest;
4. Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements in BMC 16.55.240 and 16.55.260 and additional requirements as outlined in specific critical area sections;
5. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
6. The proposal is consistent with other applicable regulations and standards.

B. The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this chapter.

C. Except as provided for by this chapter, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in BMC 16.55.250 shall be denied.

BMC 16.55.250 - Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas and buffers. When an alteration to a critical area is proposed, applicants shall follow the mitigation sequential order of preference below:

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

B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

C. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

F. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

G. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Conclusions Based on Findings:

A. Addressing the criteria established in BMC 16.55.120.B for approval of a critical areas variance, the following conclusions are entered.

1. Special conditions and circumstances exist that are peculiar to the site. Fever Creek runs along two of the property lines. The creek and its buffer encumber virtually the entire parcel, preventing residential development. Surrounding parcels contain residential structures that were developed prior to the City's adoption of the CAO. *Findings 4, 5, 6, 9, 10, and 11.*

2. The special conditions and circumstances are not the result of the Applicant's actions. *Finding 2.*

3. Because the site is almost entirely encumbered by critical areas, a literal interpretation of the CAO would deprive the Applicant of all reasonable economic uses permitted to other properties in the vicinity and zone. The subject property is zoned for medium density multifamily residential uses, and most other properties in the vicinity are developed with single-family and multifamily residences. The proposed building footprint and development envelopes represent the minimum variance needed for residential development. The building envelope is modest in scale and is as far from the stream as possible while maintaining a sufficient front setback from the arterial street along the site's frontage needed to provide safe vehicle maneuvering. *Findings 3, 4, 5, 6, 9, 10, 11, 12, 13, and 14.*

4. Granting the variance would not confer on the Applicant any special privilege. All surrounding properties are developed despite environmental constraints. The overall development footprint would be smaller than average for other constrained properties in the area. *Findings 4, 11, and 12.*

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

5. With implementation of the mitigation plan, granting the variance is consistent with the purpose of the CAO established in BMC 16.55.010.A to protect, maintain, and restore environmentally sensitive areas while allowing for reasonable use of private property. Approval would not have a significant adverse impact on the functions and values of the critical areas on-site and would not be materially detrimental to the public welfare or injurious to property in the vicinity. With respect to injury to property, credible evidence was presented that stormwater runoff from proposed improvements could be managed consistent with City standards. Compliance with City stormwater regulations would be addressed in detail during building permit review and is expected to ensure that development of the subject property would not cause the flooding and erosion impacts feared by neighbors. *Findings 11, 12, 13, 15, 16, 17, 20, 21, and 22.*

6. The decision to grant the variance is based on best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance fish habitat. The critical area assessment and mitigation plan were prepared by qualified professionals and include enhancement plantings designed to improve the functions of the stream buffer. *Findings 5, 13, 16, and 17.*

7. Granting the variance is consistent with the general purpose and intent of the comprehensive plan and adopted development regulations. The variance would result in implementation of a mitigation plan that would protect and restore the ecological functions of Fever Creek and would facilitate residential development consistent with the adopted zone. *Findings 3, 8, 13, 16, 17, and 18.*

B. Addressing the critical area permit criteria for approval established at BMC 16.55.090.B, the following conclusions are entered.

1. The Applicant submitted critical areas reports that were prepared by qualified professionals and evaluated by City Staff for compliance with the relevant criteria. *Findings 5, 7, and 24.*

2. The proposal conforms to the purposes and performance standards of the critical areas ordinance, including the criteria in BMC 16.55.200, Review criteria, as follows:

   a. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing. Specifically, the proposal does the following: avoids impacts to Fever Creek; minimizes impacts to the stream buffer by locating the development footprint as far from the stream as possible, within a poorly functioning portion of the buffer; rectifies impacts by restoring disturbed areas; reduces impacts by preserving the retained buffer and stream within a

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

fenced and signed conservation easement; compensates for impacts by enhancing the buffer at a 1:1 ratio of impacts to mitigation; and provides for monitoring of the mitigation plantings. *Findings 11, 12, 13, 14, 15, 16, and 17.*

b. As concluded in A.5 above, the proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the site. All development would meet or exceed the minimum setbacks from the erosion hazard area recommended in the geotechnical report. The site is not within a FEMA-designated flood hazard zone. The proposed mitigation plantings would slow the velocity of stormwater runoff. *Findings 5, 7, 16, 17, and 22.*

c. As concluded in A.5 and A.7 above, the proposal is consistent with the general purposes of the critical areas ordinance and the public interest. *Findings 3, 11, 12, 13, 15, 16, 17, 18, 20, 21, and 22.*

d. As conditioned, the permitted buffer reduction would be mitigated consistent with BMC 16.55.240 and 16.55.260 and other relevant provisions. The conditions of approval address financial surety requirements, as-built and annual monitoring report requirements, fencing, and signage. *Findings 13, 16, and 17.*

e. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values as concluded in A.5 and A.6 above. *Findings 5, 7, 15, 16, and 17.*

f. The proposed building footprint has been designed for consistency with the building setbacks required by the zoning code. Compliance with these and other standards, including parking, development density, and stormwater management, would be evaluated at the time of building permit review. *Findings 3, 10, 11, 14, 20, 22, and 23.*

3. The reports submitted by the Applicant's critical areas consultants demonstrate code-compliant assessment of the critical areas and of all potential impacts of the proposed development. The proposal avoids impacts to Fever Creek and the erosion hazard area and minimizes impacts to the stream buffer. As concluded .in A.3 above, the proposal represents the minimum buffer encroachment needed to make reasonable use of the property. *Findings 7, 8, 9, 10, 11, 12, 13, and 15.*

4. Based on the determination of qualified professionals, with the concurrence of Planning Staff, the proposed mitigation is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the requirements of the critical areas ordinance. *Findings 5, 6, 7, 8, 16, 17, 20, 21, 22, and 24.*

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

DECISIONS

Based on the preceding findings and conclusions, the requested critical area permit and critical areas variance to allow residential development at 2302 Alabama Street are **APPROVED** subject to the following conditions.

1. Prior to building permit issuance, a pre-construction site visit shall be scheduled. Said site visit shall include a representative from the Planning and Community Development Department, a Public Works stormwater inspector, the property owner, a qualified biologist, and the contractor developing the site. The purpose of the site visit is to specify the location and extent of the site work and to specify the mechanism for demarcation of the boundary between the construction area and the buffer enhancement area as proposed in Exhibits 2 (revised November 2024) and 3C.

2. Prior to the issuance of a building permit, a permanent conservation easement for the prescribed stream buffer area consistent with Exhibit 3C shall be recorded with the Whatcom County Auditor. The easement area shall be shown as the stream and geohazard buffer area east of the proposed location of the split rail fence and is intended for stewardship and mitigation, according to a City-approved mitigation plan. To prepare the conservation easement, a legal description of the property (Exhibit A), a legal description of the conservation easement (Exhibit B), and a legal drawing of the conservation easement area (Exhibit C) shall be prepared by a licensed surveyor.

3. Prior to the issuance of a building permit, a financial surety that is generally consistent with section 4.4 of the mitigation plan in the record at Exhibit 2 (revised November 2024), or a bond quantity worksheet, shall be fully executed. The surety (assignment of savings or bond) shall be provided on the surety form provided by the City. The surety shall remain in place for the required five years of monitoring or longer until the goals, objectives, and performance standards for Year Five are met. If an assignment of savings is used as surety, the specified amount for each monitoring year in the surety schedule may be released.

4. Prior to the final building inspection, a mitigation as-built report prepared by the project wetland biologist shall be submitted within 30 days of completion of the mitigation installation, and in no case later than December 31 of the development year. The as-built report shall include color photos of the mitigation planting area, fence and native growth protection area (NGPA) signs, a site plan of the planting, the list and quantity of plants installed, the installer's name and contact information, and the type and source of mulch used. A site

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

visit with the Staff Planner shall be scheduled by the Applicant within 30 days of submittal of the as-built report. If an assignment of savings is used, the financial surety for the amount specified for installation in the bond quantity worksheet may be released only after as-built report approval by City staff.

5. Prior to the final building inspection by the PCDD, an NGPA sign shall be installed in one visible location at the buffer edge.

6. Prior to the final building inspection by the PCDD, a permanent wooden split-rail fence shall be installed along the entire stream buffer/conservation easement boundary on the subject property as approved by the PCDD.

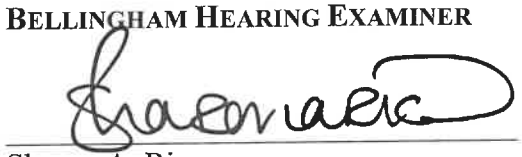
7. Annual mitigation monitoring reports prepared by the project biologist shall be submitted to the City by November 30th of each monitoring year. The first monitoring report (Year 1 Report) shall be due at the end of the first full growing season that has occurred after the as-built mitigation plan has been approved by the City. Annual monitoring reports shall include an assessment of the goals, objectives, and performance standards; a narrative of maintenance tasks completed during the year; and recommendations for the next year of monitoring and maintenance.

8. Maintenance of the mitigation areas shall be conducted in accordance with the Mitigation Plan and the maintenance activities, and needed corrections, reported in the annual monitoring report.

9. The Applicant/owner shall remain responsible for the mitigation project through the duration of the mitigation maintenance and monitoring period unless the City approves, in writing, the transfer of the mitigation responsibility to another party.

DECIDED January 8, 2025.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399