CITY OF KIRKLAND
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MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Robin S. Jenkinson, City Attorney

Date: May 22, 2006

Subject: Proposed Amendments to Reasonable Use Process

RECOMMENDATION

Staff recommends that the City Council be briefed on proposed amendments to the existing reasonable use process in the Kirkland Zoning Code. Staff would also ask Council for direction on the key issues noted in the discussion below.

BACKGROUND DISCUSSION

On May 2, 2006, the City Council considered two reasonable use applications recommended by the Hearing Examiner. The Council asked staff to examine the existing reasonable use process for possible amendments to be included for consideration by the Planning Commission as part of the annual Zoning Code amendments.

Washington's Growth Management Act (GMA) was passed by the State Legislature in 1990. Under the GMA, all cities and counties in Washington are required to adopt regulations to protect critical or environmentally sensitive areas. The City of Kirkland adopted regulations in 2002 to protect sensitive areas including wetlands, streams, lakes, and frequently flooded areas.

The GMA critical areas requirement frequently restricts the amount of land upon which a property owner can construct buildings or other structures and in many cases eliminates a substantial amount of the economically viable use of the property. The critical areas regulations of almost all cities, including Kirkland's, contain a reasonable use provision to allow exceptions to critical area regulations when strict application of the regulations would deny reasonable use of the property. There is no legal requirement under state statute for cities to enact reasonable use exemptions. Cities have done so to avoid being held liable to property owners for compensation.

With the goal of ensuring that the important sensitive area regulations are enforced to the fullest extent possible, staff has attempted to craft amendments to the reasonable use process which would: 1) retain flexibility in order to adapt to the specific conditions of each site; 2) provide better guidelines for the exercise of this authority.

The first step in the process of drafting the proposed amendments was to collect examples of the reasonable use provisions from other cities and, in some instances, counties. (see **Attachment 1** - examples). In addition, staff closely reviewed the existing reasonable use provision and attempted to more fully describe the required submittals and better organize the approval criteria. (see **Attachment 2** – existing provisions). Finally, staff is recommending an alternative administrative process for improvements which do not exceed 3,000 square feet of site impact, including structures, paved areas, landscaping, decks, utility installation, and grading, as incentive for property owners to limit the size of their proposals. (see **Attachment 3** – draft provisions, subsection 5, page 3).

The issues on which staff seeks Council direction are as follows:

1. Is there additional information which Council would like with applicants' submittals?
2. Are the criteria identified for the decision-making process understandable and acceptable?
3. Does the Council think an alternative administrative process is appropriate?
4. Does the Council think 3,000 square feet of site impact is the correct threshold?

Once Council provides direction to staff, any proposed amendments will be forwarded to the Planning Commission for its consideration. It is anticipated that these and other proposed Zoning Code amendments will be included in a packet to be transmitted to the Planning Commission in July.

ATTACHMENTS

1. Examples of reasonable use provisions from other cities and counties.
2. Existing reasonable use process in Kirkland Zoning Code 90.140.
3. Proposed amendments to reasonable use process.

City of Bellevue WASHINGTON

ATTACHMENT 1

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Part 20.30P Protected Area Development Exception

20.30P.110 Scope.

This Part 20.30P establishes the procedures and criteria that the City will use in making a decision upon an application for a Protected Area Development Exception or Small Lot Protected Area Development Exception. (Ord. 4978, 3-17-97, § 4; Ord. 3775, 5-26-87, § 22)

20.30P.115 Applicability.

This part applies to each application to approve a use or development on a site which contains more than 90 percent protected area defined by LUC 20.25H.070 or protected area setback defined by LUC 20.25H.090. (Ord. 3775, 5-26-87, § 22)

20.30P.120 Purpose.

A Protected Area Development Exception is a mechanism by which the City may approve limited use and disturbance of a protected area defined by LUC 20.25H.070 when no other use of the property constitutes a reasonable alternative. This approval also serves to modify the dimensional standards of LUC 20.20.010 and the dimensional and density/intensity standards of Part 20.25H LUC as necessary to accommodate the appropriate level of use or development. (Ord. 3775, 5-26-87, § 22)

20.30P.125 Who may apply.

The property owner may apply for a Protected Area Development Exception. (Ord. 3775, 5-26-87, § 22)

20.30P.130 Applicable procedure.

A. Protected Area Development Exception.

The City will process a Protected Area Development Exception through Process I, LUC 20.35.100 et seq.

B. Small Lot Protected Area Development Exception.

A Small Lot Protected Area Development Exception applies to a lot of less than 30,000 gross square feet or a lot for single-family development and will be processed through Process II, LUC 20.35.200 et seq. (Ord. 4978, 3-17-97, § 5; Ord. 4302, 11-18-91, § 16; Ord. 3775, 5-26-87, § 22)

20.30P.140 Decision criteria.

The City may approve or approve with modifications an application for a Protected Area Development Exception if:

A. Limiting use of the property to those uses provided in LUC 20.25H.080.B is not reasonable given the physical characteristics of the property, its location and surrounding development potential; and

B. The Protected Area Exception is the minimum necessary to fulfill the purpose of this part; and

C. [redacted]

D. The proposal is compatible in design, scale and use with other development or potential development in the immediate vicinity of the subject property in the same zone and with similar site constraints; and

E. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the protected area; and

F. The proposal incorporates the performance standards of LUC 20.25H.110 to the maximum extent possible; and

G. The proposal complies with other applicable requirements of this Code. (Ord. 5481, 10-20-03, § 13; Ord. 3775, 5-26-87, § 22)

20.30P.145 Limitation on authority.

The City may not grant a Protected Area Development Exception to:

A. The provisions of LUC 20.10.440 establishing the allowable uses in each land use district; or

B. The provisions of Chapter 20.30 and 20.35 LUC or any other procedural or administrative provision of the Land Use Code; or

C. Any provision of the Land Use Code within the primary approval jurisdiction of another decisionmaker as established by the Bellevue City Code; or

D. Any provision of the Land Use Code which, by the terms of that Code, is not subject to a variance. (Ord. 3775, 5-26-87, § 22)

20.30P.150 Time limitation.

A Protected Area Development Exception automatically expires and is void if the applicant fails to file for a Building Permit or other necessary development permit within one year of the effective date of the Exception unless:

A. The applicant has received an extension for the Exception pursuant to LUC 20.30P.155; or

B. The Exception approval provides for a greater time period. (Ord. 3775, 5-26-87, § 22)

20.30P.155 Extension.

A. The Director of Planning and Community Development may extend a Protected Area Development Exception, not to exceed one year, if:

1. Unforeseen circumstances or conditions necessitate the extension of the Exception; and

2. Termination of the Exception would result in unreasonable hardship to the applicant; and the applicant is not responsible for the delay; and

3. The extension of the Exception will not cause substantial detriment to existing uses or sensitive areas in the immediate vicinity of the subject property.

B. The Director of Planning and Community Development may grant no more than one extension. (Ord. 4978, 3-17-97, § 7; Ord. 3775, 5-26-87, § 22)

20.30P.160 Assurance device.

In appropriate circumstances, the City may require a reasonable performance or maintenance assurance device in conformance with LUC 20.40.490 to assure compliance with the provisions of the Land Use Code and the Exception as approved. (Ord. 3775, 5-26-87, § 22)

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RCW). The application shall be processed using the Type 1 review process pursuant to BMC 19.65.

C. Public agency and utility exception review criteria. The *Director's* decision shall be based on the following criteria:

i. There is no other practical or feasible alternative to the proposed development with less impact on the *critical area*; and

ii. The proposal minimizes the impact on *critical areas*; and

iii. The application of this chapter would unreasonably restrict the ability to provide utility services to the public, and

iv. The proposal meets the decision criteria in BMC 19.40.100.

4. Reasonable use exception.

A. If the application of this chapter would deny all *reasonable use* of the property, the *applicant* may apply for a Reasonable Use Exception. All requirements of this chapter apply, except as specifically waived as part of the decision on the exception.

B. Limitations. Reasonable use exceptions are not authorized for changes in density limitations, permitted *uses* or activities in *critical areas* or their required *buffers*, expanding a use otherwise prohibited, and shall not be used to achieve the maximum density allowed without the existence of *critical areas*.

C. Exception request and review process. An application for a reasonable use exception shall be made to the city and shall include a *critical area* study, including mitigation plan, if necessary; and any other related project documents, such as special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The application shall be processed using the Type 1 review process pursuant to BMC 19.65.

D. Reasonable use exception review criteria. The *Director's* decision shall be based on the following criteria:

i. The application of this chapter would deny all *reasonable use* of the property;

ii. There is no other *reasonable use* with less impact on the *critical area*;

iii. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal *site* and is consistent with the general purposes of this chapter and the public interest; and

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

v. The proposal meets the decision criteria in BMC 19.40.100. [Ord. 376 § 1, 2003]

19.40.100 Review criteria.

1. Any *alteration* to a *critical area* or its required *buffer*, unless otherwise provided for in this Chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

A. The proposal limits the impact on *critical areas*;

B. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the *site*;

C. The proposal is consistent with the general purposes of this Chapter and the public interest;

D. Any *alterations* permitted to the *critical area* or its required *buffer* are mitigated in accordance with the critical area study; and

E. The proposal protects the *critical area* functions and value consistent with the *best available science.*

2. 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. [Ord. 376 § 1, 2003]

<u>CRITICAL AREA STUDY</u>

19.40.110 Critical area study – waiver.

The *Director* shall waive the requirement for a critical area study <u>if</u> ~~as follows~~:

~~1. No critical areas present. If the *Director* determines that the project area is not within or adjacent to a *critical area* or buffer, and that the proposed activity is unlikely to degrade the functions or value of a *critical area.*~~

~~2. Critical areas present, but no impact. If the *Director* determines that there are *critical areas* within or adjacent to the project area, and:~~

1. There will be no *alteration* of the *critical area* or *buffer*; and

2. The development proposal will not impact the *critical area* in a manner contrary to the purpose, intent, and requirements of this Chapter; and

3. The proposal is consistent with other City of Burien applicable regulations and standards. [Ord. 376 § 1, 2003], or

19.40.120 Critical area study requirements.

1. General. The critical area study shall be funded by the *applicant* and shall be prepared in accordance with procedures established by the *Director.* If appropriate professional expertise does not exist on City staff, the *Director* may retain experts at the *applicant's* expense to review critical area studies submitted by the *applicant.* <u>Expense to the *applicant* shall be determined at the pre-application meeting.</u>

CARNATION

Chapter 15.88 ENVIRONMENTALLY SENSITIVE AREAS

Section 15.88.050 Reasonable use exception.

A. If the application of this Chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purposes of this ordinance and the public interest.

B. An application for a sensitive areas reasonable use exception shall be filed with the City of Carnation and shall be heard by the Planning Board which shall seek legal advice from and consult with the City Attorney and shall issue a final decision.

C. The Planning Board, in recommending approval of the reasonable use exception must determine that:

1. Application of this Chapter would deny all reasonable use of the property; and,
2. There is no other reasonable use with less impact on the sensitive area; and,
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site; and,
4. Any alterations permitted to these sensitive areas shall be the minimum necessary to allow for reasonable use of the property.

D. Any authorized alteration of a sensitive area under this Chapter shall be subject to conditions established by the City and shall require mitigation under an approved mitigation plan.

critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated or replaced at the responsible party's expense.

A. Normal maintenance or repair of existing legal buildings, structures, roads or development, including damage by accident, fire or natural elements. Normal repair of buildings and structures involves restoring to a state comparable to the original condition, including the replacement of walls, fixtures and plumbing; provided that the value of work and materials in any twelve-month period does not exceed twenty-five percent of the value of the structure prior to such work as determined by using the most recent ICBO construction tables, the repair does not expand the number of dwelling units in a residential building, the building or structure is not physically expanded, and, in the case of damaged buildings and structures, a complete application for repair is accepted by the City within six months of the event and repair is completed within the terms of the permit;

B. Emergency construction necessary to protect life or property from immediate damage by the elements. An emergency is an unanticipated event or occurrence which poses an imminent threat to public health, safety, or the environment, and which requires immediate action within a time too short to allow full compliance. Once the threat to the public health, safety, or the environment has dissipated, the construction undertaken as a result of the previous emergency shall then be subject to and brought into full compliance with this title;

C. Existing agricultural activities normal or necessary to general farming conducted according to industry-recognized best management practices including the raising of crops or the grazing of livestock;

D. The normal maintenance and repair of artificial drainage systems which does not involve the use of heavy equipment, and which does not require permit issuance from other local, state or federal agencies.

E. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, critical area impacts should be minimized and disturbed areas shall be immediately restored; and

F. Passive recreational activities, including, but not limited to: fishing, bird watching, hiking, hunting, boating, horseback riding, skiing, swimming, canoeing, and bicycling provided the activity does not alter the critical area or its buffer by changing existing topography, water conditions or water sources.

18.10 A.040 Reasonable Use

A. The city may modify the requirements of this title in specific cases when necessary to allow reasonable use of an applicant's property. To qualify for such relief the applicant must demonstrate all of the following:

1. That no other reasonable use can be made of the property that will have a lesser adverse impact on the critical area and adjoining and neighboring lands;
2. That the proposed use does not pose a threat to the public health, safety or welfare; and
3. That the amount of relief requested is the minimum necessary to allow reasonable use of the property.

B. A request for a reasonable use exception shall be submitted to the city with the application materials for the particular development proposal. The application shall be supplemented with an explanation as to how the reasonable use exception criteria are satisfied. The city may require additional information or studies to supplement the reasonable use exception request.

C. A reasonable use exception shall be processed according to the provisions of the Title 14 CMC governing limited administrative reviews.

18.10 A.050 Reference Maps and Inventories

The distribution of critical areas within the City are described and displayed in reference materials and on maps maintained by the City. These reference materials, in the most current form, are intended for general information only and do not depict site-specific designations. They are intended to advise the City, applicants and other participants in the development permit review process that a critical area may exist and that further study, review and consideration may be necessary. These reference materials shall include but are not limited to the following:

A. Maps.

"Reasonable use" or "reasonable economic use" means a legal concept that has been articulated by federal and state courts in regulatory takings cases.

37.050 Exemptions, exceptions, modifications.

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification as provided in this chapter. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the administrative modifications which can be granted to other requirements of this title of the city code.

A. Exemptions. All activities which are exempted, excepted, or granted modifications shall prevent, minimize and/or compensate for impacts to environmentally sensitive areas to the maximum extent possible. Such activities which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable. The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements:

1. Emergencies that threaten the public health, safety and welfare, as verified by the city;

2. Legally constructed structures in existence on the date the ordinance codified in this chapter becomes effective that do not meet the buffer requirements of this chapter may be remodeled, reconstructed or replaced provided that the new construction or related activity does not further encroach into an environmentally sensitive area. Remodeling or reconstruction shall be subject to all other requirements of the zoning code;

3. Existing and ongoing agriculture in agricultural zones in existence as of the date this chapter becomes effective; provided, however, at such time as the property ceases to be used for agricultural activities, the property shall be brought into compliance with the provisions of this chapter;

4. Normal and routine maintenance of legally constructed irrigation and drainage ditches, provided that this exemption shall not apply to any ditches used by salmonids;

5. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds, provided that such activities shall not involve the conversion of any wetland or stream not used for such purposes on the date this chapter becomes effective;

6. Entirely artificial structures intentionally constructed by humans from upland areas for purposes of storm water drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter;

7. Category III wetlands less than five hundred square feet in area having only one wetland class, which is not forested, and which is hydrologically isolated;

8. Category IV wetlands less than eight thousand square feet in area;

9. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility related activities, public street and public park maintenance activities when undertaken pursuant to best management practices to avoid impacts to environmentally sensitive areas:

a. Normal and routine maintenance or repair of existing utility structures or right-of-way,

b. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,

c. Relocation of natural gas, cable communications, telephone facilities, lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,

d. Installation or construction in improved street rights-of-way and replacement, operation or alteration of all facilities listed in subsections A.9.b and A.9.c of this section,

e. Normal and routine maintenance of public streets, state highways, and public park facilities. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area nor does it include construction of a maintenance road or the dumping of maintenance debris;

10. Buffer management when approved by the planning director and all agencies with jurisdiction;

11. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the State Department of Natural Resources.

B. Reasonable Use Exception. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

1. There is no other reasonable use or feasible alternative to the proposed development with less impact on the environmentally sensitive area; and

2. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

3. Any alterations permitted to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of this chapter; and

5. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible.

C. Reasonable Use Decision Process. Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the proposal shall include the following information which will be used to evaluate the criteria for reasonable use exception:

1. A description of the areas of the lot which are either environmentally sensitive or within setbacks required by this chapter;

2. A description of the amount of the lot which is within setbacks required by other standards of the zoning code;

3. An analysis of the minimum amount of development that would be considered "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;

4. An analysis of the impact that the amount of development described in subsection C.3 of this section would have on the environmentally sensitive areas;

5. An analysis of whether any other reasonable use with less impact on the environmentally sensitive areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the environmentally sensitive areas and buffers;

6. A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the environmentally sensitive areas;

7. An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

8. A description of any modifications needed to the required front, side and rear setbacks; building height; and landscape widths to provide for a reasonable use while providing protection to the environmentally sensitive areas;

9. Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

D. Reasonable Use Administrative Modification. If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

1. If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while still providing protection to the environmentally sensitive areas;

2. If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the environmentally sensitive areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot, provided there is adequate mitigation provided for any reduction in the buffer. This approach shall be preferred in circumstances where the environmentally sensitive areas have already been degraded or imputed by activities occurring prior to the effective date of this chapter, and enhancement/restoration of the degraded environmentally sensitive area can reasonably be expected to be accomplished; or

3. If a reasonable economic use of a lot cannot exist by means of either subsection D.1 or D.2 of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection D.1 or D.2 of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

a. R-S, R-1 and R-2 Zones. The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

i. The number of dwelling units which the planning director determines to be the minimum necessary to

allow for reasonable economic use of the restricted property, or

ii. Twenty percent more dwelling units than would be permitted on the receiving site without the transfer of development rights.

In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. All such lots shall have a minimum lot width of fifty feet. All dwelling units on such lots shall be single-family dwellings.

b. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

c. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

d. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

E. Public Utility and Infrastructure Exception. If the application of this section would prohibit a development proposal by a public agency or public utility to construct utility lines for the conveyance of water, sewage, storm drainage, natural gas, or telecommunications; or the construction of collector or arterial streets and highways, the agency or utility may request an exception pursuant to this subsection. Such a request shall be reviewed by the hearing examiner using the review process described in EMC Title 15, Local Project Review Procedures. The hearing examiner may approve, or approve with modifications such a request only when the following findings are made:

1. There is no other practicable alternative to the proposed development with less impact on the environmentally sensitive area; and

2. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible; and

3. The proposal does not impact a significant fish or wildlife habitat area.

F. Prohibition on Variances—Other Exceptions Permitted by this Chapter. The variance procedures described in Section 41.130 of this title shall not apply to the standards of this chapter. The following subsections permit alteration or modification of the requirements of this chapter for protection of environmentally sensitive areas:

1. Subsection 8 for modification of standards for geologically hazardous areas;

2. Subsections 10 and 11 for modification of standards for wetlands and their required buffers;

3. Subsection 14 for modification of standards for streams and their required buffers. (Ord. 2538-01 §§ 44, 45, 46, 2001; Ord. 1838-91 § 5, 1991.)

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b. Geologic data pertinent to well logs or borings used to identify information;

c. Ambient ground water quality;

d. Ground water elevation;

e. Depth to perched water table, including mapped location;

f. Recharge potential of facility site, respective to permeability and transmissivity;

g. Ground water flow vector and gradient;

h. Currently available data on wells and any springs located within 1,000 feet of the facility site;

i. Surface water location and recharge potential;

j. Water supply source for the facility;

k. Analysis and discussion of the effects of the proposed project on the ground water resource;

l. Proposed sampling schedules;

m. Any additional information that may be required or requested by the Pierce County environmental health department.

3. Review of Geohydrologic Assessment. A geohydrologic assessment prepared under this section shall be submitted to the Pierce County department of environmental health for review and comment. Comments received by the department of health within 60 days of submittal of the assessment shall be considered by the city in the approval, conditional approval or denial of a project.

4. Findings for Consideration of Approval. A hydrogeologic assessment must clearly demonstrate that the proposed use does not present a threat of contamination to the aquifer system, or provides a conclusive demonstration that application of new or improved technology will result in no greater threat to the ground water resource than the current undeveloped condition of the site. Successful demonstration of these findings warrants approval under this section. (Ord. 619 § 1, 1992).

18.12.110 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;

2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);

3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;

4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;

2. The proposed development does not present a threat to the public health, safety or welfare;

3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;

4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;

5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;

6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property.

The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners

adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and

2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and

3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).

18.12.120 Maintenance of existing structures and developments.

Structures and developments lawfully existing prior to the adoption of this section shall be allowed to be maintained and repaired without any additional review procedures under this title; provided, that the maintenance or repair activity itself remains consistent with the provisions of this chapter and does not increase its nonconformity of such structures or development. Additionally, such construction activity shall not prove harmful to adjacent properties. Maintenance consists of usual actions necessary to prevent a decline, lapse or cessation from a lawfully established condition. Repair consists of the restoration of a development comparable to its original condition within two years of sustaining damage or partial destruction. Maintenance and repair shall include damage incurred as a result of accident, fire or the elements. Total replacement of a structure or development which is not common practice does not constitute repair. In addition to the requirements of this section, the requirements of Chapter 17.68 GHMC (Nonconformities) shall apply. (Ord. 619 § 1, 1992).

18.12.130 Exemptions from development standards.

Certain activities and uses may be of such impact and character or of such dependency to the maintenance and welfare of a lawfully permitted use that the requirements of this title shall not apply and may be waived at the discretion of the department. Notwithstanding the requirements of Title 17 GHMC, the following uses and activities are exempt from the requirements of this chapter:

A. Minimum actions necessary to protect life or property in an emergency situation. Qualification as an emergency shall be based upon the factual occurrence of imminent threat or danger;

B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width;

C. Science research and educational facilities, including archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access;

D. Subsurface drilling for geologic exploration associated with a proposed development which is not exempt from the requirements of this title;

E. The placement of signs consistent with Chapter 17.80 GHMC. (Ord. 619 § 1, 1992).

18.12.140 Variances from the minimum requirements.

A. Variance applications shall be considered by the city according to variance procedures described in Chapter 17.66 GHMC and shall be processed as a Type III application under the permit processing procedures of GHMC Title 19. The required showings for a variance shall be according to this section.

B. The examiner shall have the authority to grant a variance from the provisions of this chapter, including variance for buffer widths, when, in the opinion of the examiner, the conditions as set forth in this section have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. Required Showings for a Variance. Before any variance may be granted, it shall be shown:

(2) An application for a public agency and utility exception shall be made to the City and shall include a critical area identification form; critical area report and mitigation plan, if necessary; and any other pertinent project documents/studies. The Director shall prepare a determination approving, approving with conditions, or denying the request. This determination shall be based on review of the submitted information, a site inspection, and the proposal's ability to comply with all of the following criteria:

(a) There is no other practical alternative to the proposed development with less impact on critical areas and all reasonable measures have been taken to minimize impacts to critical areas;

(b) The application of this chapter would unreasonably restrict the ability to provide street or utility services to the public;

(c) The proposal does not pose a significant threat to the public health, safety, or welfare on or off the site; and

(d) The proposal includes measures to compensate for impacts to critical area function and values consistent with the requirements of this chapter.

18.06.430 Reasonable use permitted

(1) A variance to the provisions of this chapter may be considered by the Planning Commission if application of this chapter would deny all reasonable use of the subject property and upon a showing by the applicant of all the following elements:

(a) The proposed activity will result in minimal alteration of existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions and will have a minimal effect on critical area functions;

(b) The proposed activity will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal or state government;

(c) The proposed activity will not cause material degradation of habitat, ground water or surface water quality;

(d) The proposed activity will comply with all local, state, and general laws, including those related to environmental protection, sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

(e) There will be no damage to public or private property and no threat to the health or safety of people on or off the site; and

(f) The inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and/or creating or adding to the undevelopable condition.

18.06.440 Exception for minor new developments in buffers

(1) Remodels and additions to an existing, legally established structure or impervious area that currently encroaches on a critical area buffer shall be exempt from compliance with regulations in this chapter provided that all of the following criteria are met to the Director's satisfaction:

(a) The proposed development is a minor development and is consistent with the existing use of the site;

(b) The impacts on critical area functions and values are avoided and minimized to the maximum extent possible consistent with this chapter;

(c) The affected area is located at least twenty (20) feet from the critical area boundary;

(d) The minor development does not intensify the use or cause the existing structure/impervious surface to encroach any closer to the critical area;

(e) There are no changes in slope stability or drainage; and

(f) The minor development does not increase the affected site structural/impervious surface footprint by more than twenty five percent (25%).

(2) This exception shall not be allowed more than once for any individual site unless a variance for reasonable use is granted pursuant to MCMC Section 18.06.430.

Article V Critical Area Reporting Requirements and Permit Process

18.06.510 Pre-application conference

All applicants are encouraged to meet with the department prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the City's critical area standards and procedures; to review any conceptual site plans prepared by the applicant; to discuss appropriate investigative techniques and methods; and to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the City.

18.06.520 Critical area identification form; initial determination

(1) Prior to the City's consideration of any proposed activity not found to be exempt under MCMC 18.06.410, the applicant shall submit to the department a completed critical area

Joint Model Code for Critical Areas
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Model Code for Critical Areas

For the cities of

Duvall, Carnation, Snoqualmie, North Bend

Produced by the

Snoqualmie Watershed Forum

with assistance from

Adolfson Associates, Inc.

July 20, 2004

Duvall Carnation Snoqualmie North Bend King County

a. The applicant has considered all reasonably possible construction techniques based on available technology that are feasible for the proposed project and eliminated any that would result in unreasonable risk of impact to the critical area; and

b. The applicant has considered all available sites and alignments within the range of potential sites and alignments that meet the project purpose and for which operating rights are available.

2. The proposal minimizes and mitigates unavoidable impacts to critical areas and/or critical areas buffers.

C. ◀**Reasonable Use**▶. If the application of this Chapter would deny all ◀**reasonable use**▶ of the property, the applicant may apply for an exception pursuant to this section. After holding a public hearing pursuant to XMC XX.XX.XXX (Hearing Examiner review and approval), the hearing examiner may approve the exception if the hearing examiner finds that:

1. This Chapter would otherwise deny all ◀**reasonable use**▶ of the property;

2. There is no other ◀**reasonable use**▶ consistent with the underlying zoning of the property that has less adverse impact on the critical area and/or associated buffer;

3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;

4. Any alteration is the minimum necessary to allow for ◀**reasonable use**▶ of the property;

5. The inability of the applicant to derive ◀**reasonable use**▶ of the property is not the result of actions by the applicant after the effective date of this chapter or its predecessor; and

6. The applicant may only apply for a ◀**reasonable use**▶ exception under this subsection if the requested exception provides relief not otherwise available from a variance approval.

D. Variance. Where avoidance of the impact in wetlands, streams, fish and wildlife habitat and critical aquifer recharge areas is not possible, a variance shall be obtained to permit the impact. Variances will be granted on the basis of a finding of consistency with all the criteria listed below. The hearing examiner shall not consider the fact the property may be utilized more profitably.

1. The variance shall not constitute a grant of special privilege inconsistent with the limitation on use of other properties similarly affected by the code provision for which a variance is requested;

2. That such variance is necessary, because of special circumstances and/or conditions relating to the size, shape, topography, sensitive areas, location, or surroundings of the subject property, to provide it with those relative rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located. The phrase "relative rights and privileges" is to ensure that the property rights and privileges for the subject property are considered primarily in relation to current City land-use regulations;

3. That the special conditions and/or circumstances identified in subsection 2 of this section giving rise to the variance application do not result from the actions of the applicant, property owner, or recent prior owner(s) of the subject property;

4. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property, neighborhood, or improvements in the vicinity and zone in which subject property is situated;

17.52.025 Reasonable use provisions.

A. The standards and requirements of these critical areas regulations are not intended, and shall not be construed or applied in a manner to deny all ⏩reasonable ⏪⏩use ⏪ of private property. If the applicant demonstrates to the satisfaction of the planning director or his or her designee that strict application of these standards would deny all ⏩reasonable ⏪⏩use ⏪ of a property, development may be permitted subject to appropriate conditions. A ⏩reasonable ⏪ ⏩use ⏪ ⏩exception ⏪ is intended as a "last resort" when no plan and/or mitigation can meet the requirements of this chapter and allow the applicant a ⏩reasonable ⏪ viable ⏩use ⏪ of his or her property.

B. The applicant must demonstrate to the planning director or his or her designee all of the following:

1. That no ⏩reasonable ⏪ ⏩use ⏪ with less impact on the critical area and/or the buffer is feasible and ⏩reasonable ⏪;

2. There is no feasible and ⏩reasonable ⏪ on-site alternative to the proposed activity or ⏩use ⏪ that would allow ⏩reasonable ⏪ ⏩use ⏪ with less adverse impacts to the critical area and/or buffer. Feasible on-site alternatives shall include, but are not limited to: reduction in density or building size, phasing of project implementation, change in timing of activities, and revision of road or parcel layout or related site planning considerations;

3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;

4. The proposed activity or ⏩use ⏪ will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions and consideration has been given to best available science;

5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;

6. The proposed activity or ⏩use ⏪ complies with all local, state, and federal laws; and

7. The inability to derive ⏩reasonable ⏪⏩use ⏪ is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after March 23, 1992.

C. Allowed Reductions for Single-Family Residential ⏩Reasonable ⏪⏩Use ⏪ Lots. As provided under state law and the guidelines of the Department of Trade and Economic Development, ⏩reasonable ⏪ ⏩use ⏪ permits shall allow the development of a modest single-family residential home on a critical area lot.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.

2. Development on ⏩reasonable ⏪ ⏩use ⏪ lots shall leave at least seventy percent of the lot undisturbed to protect the critical areas. On small lots seven thousand five hundred square feet or less, a maximum building footprint of two thousand five hundred square feet would be allowed. Additional impervious area for the driveway will be permitted which provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area the ⏩use ⏪ of bridges and open bottom culverts shall be considered minimal impact. Yard areas will be permitted only if they do not encroach into the critical area or buffer.

3. Critical area regulations, buffers and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on ⏩reasonable ⏪ ⏩use ⏪ lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

D. Allowed Reductions for Multifamily, Commercial, and Industrial Lots.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.

2. The number of required parking stalls may be reduced by up to forty percent if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.

3. Critical area regulations, buffers, and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on ⏩reasonable ⏪ ⏩use ⏪ lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse

impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

E. If upon application of the wetland mitigation and buffer reduction options contained in Chapters 17.52A through 17.52D, and ▶▶reasonable ◀◀ provisions contained herein, a development cannot be built without further intrusion into the critical area or buffer, then the applicant can pursue a variance under Chapter 17.64, Conditional Uses and Variances.

F. Subdivisions of ▶▶reasonable ◀◀ ▶▶use ◀◀ lots will not be allowed unless there is sufficient area to construct all buildings, driveways, drainage facilities, landscaping, and yards areas without intruding on the critical area, buffer, or setback. (Ord. 1112 § 3, 2005)

9. The proposal complies with use, area, lot dimension, landscaping and parking requirements of the RD12.5(S) zoning district:

Regulation	Requirement	Submitted
Front setback (MMC 17.20)	25'	74'
Rear setback (MMC 17.20)	5'	113'
Side setbacks (MMC 17.20)	5'	15' – north 6' – south
Lot Coverage (MMC 17.20)	30%	10.4 %

10. This site contains critical areas, including steep slopes greater than forty (40) percent and a Type II wetland is found along a portion of the northern third of the lot (*Ord. 987*). Steep slopes require a twenty-five (25) foot setback and Type II wetlands require a fifty (50) foot buffer. If all associated setbacks and buffers are applied there will be no viable building envelope; therefore, site development is subject to reasonable use provisions.
11. Following the Wetland Saving Provisions (Reasonable Use) 17.52b.180, this project meets reasonable use criteria as shown below: MUKILTEO

That no reasonable use with less impact on the wetland and the buffer is feasible and reasonable.	A single-family residence is a reasonable use of this lot. There are no feasible alternate options for site development due to the lot's steep topography and wetland.
That there is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors.	The applicants provided alternate designs and house plan layouts. Additionally, the applicants proposed different driveway layouts, however feasible alternatives were limited by the steep grade of on-site slopes.
That the proposed activities, as conditioned, will result in the minimum possible impacts to wetlands and buffers.	There is no way to minimize impacts to the wetland and wetland buffer at this site. The applicants are providing limited on-site mitigation measures. Following, MMC 17.52B.130, the applicants will provide off-site compensatory mitigation to offset the impacts to wetland function.
All reasonable mitigation measures have been implemented or assured.	This project will implement mitigation measures to minimize impacts based on the Critical Areas Report and Enhancement Plan, prepared by Talasaea Consultants, Inc. on April 4, 2005.
That the inability to derive reasonable economic uses is not the result of the applicant's actions.	The project location is on an existing undeveloped vacant lot.

12. Following MMC 17.52B.110, the applicant submitted alternate house and site designs for review. Due to the location of the wetland, impacts to the wetland were unavoidable.
13. Following MMC 17.52B.130, the applicants provided an off-site mitigation plan to compensate for wetland impacts. The City approved off-site mitigation for the Type IV wetland at 92nd Street Park on April 4, 2005. The applicant's proposal includes buffer enhancements at a ratio of 3:1 to improve habitat functions at the approved site.

implement this chapter and to prepare and require the use of such forms as are necessary to its administration.

18.24.050 Complete exemptions.

The following are exempt from the provisions of this chapter and any administrative rules promulgated thereunder:

A. Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the city immediately. The director shall confirm that an emergency exists and determine what, if any, mitigation shall be required to protect the health, safety, welfare and environment and to repair any resource damage;

B. Agricultural activities in existence before the date of incorporation, as follows:

1. Mowing of hay, grass or grain crops;

2. Tilling, dicing, planting, seeding, harvesting and related activities for pasture, food crops, grass seed or sod if such activities do not take place on steep slopes;

3. Normal and routine maintenance of existing irrigation and drainage ditches not used by salmonids; and

4. Normal and routine maintenance of farm ponds, fish ponds, manure lagoons and livestock watering ponds;

C. Public water, electric and natural gas distribution, public sewer collection, cable communications, telephone utility and related activities undertaken pursuant to city-approved best management practices, as follows:

1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;

2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency which approves the new location of the facilities;

3. Replacement, operation, repair, modification or installation or construction in an improved public road right-of-way of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less when such facilities are located within an improved public road right-of-way or the city authorized private roadway;

4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by a local governmental agency which approves the new location of the facilities; and

5. Replacement, operation, repair, modification, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or the city authorized private roadway;

B. The grazing of livestock is exempt from the provisions of this chapter and any administrative rules promulgated thereunder, except for the livestock restriction provisions and any animal density limitations established by law, if the grazing activity was in existence before the date of incorporation;

C. A permit or approval sought as part of a development proposal for which multiple permits are required is exempt from the provisions of this chapter and any administrative rules promulgated thereunder, except for the notice on title provisions, NMC 18.24.170 through 18.24.180, if:

1. The city previously reviewed all critical areas on the site;

2. There is no material change in the development proposal since the prior review;

3. There is no new information available which is important to any critical area review of the site or particular critical area;

4. The permit or approval under which the prior review was conducted has not expired or, if no expiration date, no more than five years have lapsed since the issuance of that permit or approval; and

5. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.

18.24.070 Exceptions.

A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this subsection upon payment of the fee established by resolution:

1. The agency or utility shall apply to the department and shall make available to the department other related project documents such as permit applications to other agencies, special studies and SEPA documents. The department shall prepare a recommendation to the hearing examiner.

2. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of applicable city ordinances. The hearing examiner shall make a recommendation to the city council based on the following criteria:

a. There is no other practical alternative to the proposed development with less impact on the critical area; and

b. The proposal minimizes the impact on critical areas.

3. This exception shall not allow the use of the following critical areas for regional retention/detention facilities except where there is a clear showing that the facility will protect public health and safety or repair damaged natural resources:

a. Class 1 streams or buffers;

b. Category I wetlands or buffers with plant associations of infrequent occurrence; or

c. Category I or II wetlands or buffers which provide critical or outstanding habitat for herons, raptors or state or federal designated endangered or threatened species unless clearly demonstrated by the applicant that there will be no impact on such habitat.

D. Maintenance, operation, repair or replacement of publicly improved roadways as long as any such alteration does not involve the expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way when such facilities are located within an improved public right-of-way or city authorized private roadway;

E. Maintenance, operation or repair of publicly improved recreation areas as long as any such alteration does not involve the expansion of improvements into previously unimproved recreation areas; and

F. Public agency development proposals only to the extent of any construction contract awarded before the date of incorporation; provided, that any law or regulation in effect at the time of such award shall apply to the proposal.

G. Measures to control a fire or halt the spread of disease or damaging insects, provided that the removed vegetation shall be replaced in-kind or with similar native species within one (1) year pursuant to a restoration plan meeting the requirements of NMC 18.24.370. Replacement trees may be planted at a different nearby location within the critical area buffer if it can be determined that planting in the same location would create a new fire hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one (1) inch in diameter-at-breast height (dbh) for deciduous treees and minimum of six (6) feet in height for evergreen trees as measured from the top of the root ball.

18.24.060 Partial exemptions.

A. The following are exempt from the provisions of this chapter and any administrative rules promulgated thereunder, except for the notice on title provisions, NMC 18.24.170 through 18.24.180, and the flood hazard area provisions, NMC 18.24.220 through 18.24.260:

1. Structural modification of, addition to or replacement of structures, except single detached residences, in existence before the date of incorporation which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the structure lying within the above-described building setback area, critical area or buffer;

2. Structural modification of, addition to or replacement of single detached residences in existence before the date of incorporation which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 1,000 square feet over that existing before the date of incorporation and no portion of the modification, addition or replacement is located closer to the critical area or, if the existing residence is in the critical area, extends farther into the critical area; and

3. Maintenance or repair of structures which do not meet the development standards of this chapter for landslide or seismic hazard areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair;

B. If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection upon payment of the fee established by resolution:

1. The applicant shall apply to the department, and the department shall prepare a recommendation to the hearing examiner. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of Chapter 18.44 NMC.

2. The hearing examiner shall review the application in consultation with the city attorney and shall conduct a public hearing pursuant to the provisions of the applicable city ordinances. The hearing examiner shall make a recommendation to the city council based on the following criteria:

a. The application of this chapter would deny all reasonable use of the property; and

b. There is no other reasonable use with less impact on the critical area; and

c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and

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

3. Any authorized alteration of a critical area under this subsection shall be subject to conditions established by the city council including, but not limited to, mitigation under an approved mitigation plan.

18.24.080 Critical area maps and inventories.

The distribution of many environmentally critical areas in the city is displayed on maps in the city's critical areas map folio. Many of the wetlands are inventoried and rated and that information is published in the King County or city wetlands inventory notebooks. Many flood hazard areas are mapped by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for King County." If there is a conflict among the maps, inventory and site-specific features, the actual presence or absence of the features defined in this title as critical areas shall govern.

18.24.085 Salmonid use – Rebuttal of presumption.

The presumption in NMC 18.06.686 that a stream is used by salmonids may be rebutted by:

A. Documenting a lawful blockage which prevents salmonids from entering a stream or portion thereof, and the stream has no known resident salmonids present; or

B. Subject to the conditions of any Washington Department of Fish and Wildlife scientific sampling permit, sampling carried out by trapping or electrofishing the stream or other applicable water body during the high flow period from January 31st through March 31st which shows that salmonids are not present. The

21.06.1410 Reasonable use.

If an applicant demonstrates to the satisfaction of the director that application of these standards would deny all reasonable economic use of the property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the director:

(1) That no reasonable use with less impact on the environmentally critical area and its buffer is possible;

(2) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to environmentally critical areas and associated buffers;

(3) That the proposed activities will result in minimum feasible alteration or impairment to the environmentally critical area's functional characteristics and its existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions;

(4) That the disturbance of the environmentally critical area has been minimized by locating any necessary alteration in the environmentally critical area buffers to the extent possible;

(5) That the proposed activities will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal government or the state of Washington;

(6) That the proposed activities will not cause significant degradation of ground water or surface water quality;

(7) That the proposed activities comply with all state, local and general laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

(8) That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and

(9) That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter. (Ord. 2324 § 2(14), 1992).

(5) The granting of the variance constitutes an equitable application of the requirements of the land use regulations where strict adherence in a given situation would create unnecessary hardship for the property owner; and

(6) The variance is the minimum necessary to grant relief to the applicant; and

(7) The variance does not relieve an applicant from conditions established during prior permit review; and

(8) All approved variances otherwise comply with the requirements of the Redmond Community Development Guide, including the Comprehensive Plan.

6. Staff has analyzed the criteria and the application here at pages 15-17 of the Technical Committee Report. Applicant seeks a variance from the 18 foot setback for garages. Clearly, it should be granted. The site slopes so steeply that a garage located 18 feet down the slope would require extensive long piling, or a dangerous driveway to the garage. Locating the garage one foot from the right-of-way will provide a safe parking area off this narrow street.

7. [redacted]

(1) No reasonable use with less impact on the sensitive area and the buffer is feasible and reasonable; and

(2) There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in the site layout, reductions in density and similar factors; and

(3) The proposed activities, as conditioned, will result in the minimum possible impacts to affected sensitive areas; and

(4) All reasonable mitigation measure have been implemented or assured; and

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Redmond, WA 98073-9710

(5) The inability to derive reasonable economic use is not the result of the applicant's actions. The purchase price of the property shall not be construed to be an applicant's action.

8. Staff has analyzed the reasonable use exception at pages 12-15 of the Technical Committee Report. Here too, Applicant has made out a case for the reasonable use exception. There is simply not enough buildable space on this property to locate the garage/accessory dwelling unit outside the sensitive area. Other properties in the vicinity, with the same or similar conditions, have been given the relief Applicant seeks here. Without the reasonable use exception, the lot could not be developed for residential use.

9. Any finding of fact deemed to be a conclusion of law is adopted as such.

DECISION

The application of Kien Truong for a variance for the 18 foot setback for a garage and a reasonable use exception from the landslide hazard standards of a sensitive area is **GRANTED**, subject to the conditions in Attachment B.

Done this 7th day of November, 2005

Gordon F. Crandall

Gordon F. Crandall
Hearing Examiner

City of Redmond
Office of the Hearing Examiner
P.O. Box 97010
Redmond, WA 98073-9710

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9. 5 letters of comment, concerning the proposed reasonable use exception were received within the comment period. The letters of comment indicate concerns with access to the site, drainage, height of retaining walls, and slope stability.

10. Current zoning of the subject property and the vicinity is R-4 du/ac.

11. Per the Sammamish Municipal Code (SMC) 20.05.020, reasonable use exception applications are processed as a Type 2 permit.

12. The Comprehensive Plan designation for this site is R4 Urban Residential;

13. Per SMC 21A.25, the maximum amount of impervious surface allowed for a property zoned R-4 is 55%. The Director has determined that 35% is the minimum necessary for reasonable use.

14. WAC 197-11-800 governs the application of SEPA regulations in conjunction with land use development. The proposed single family residence, which meets the definition of minor new construction, is specifically exempted from SEPA per WAC 197-11-800(1)(b);

15. 21A.50280 steep slope regulations require that a minimum buffer of fifty feet shall be established from the top, toe, and along the sides of any slope 40% in inclination or steeper. All of the parcels lie in an area of over 40% slopes or their buffers.

16. ~~Per 21A.50.070(2), if the application of if the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection.~~

    a. The applicant may first apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of ISDC chapter 21A.44. The applicant shall apply to the Department, and the Department shall make a final decision based on the following criteria:

        i. the application of this chapter would deny all reasonable use of the property;

        The properties are completely constrained by sensitive areas, their buffers and the required building setbacks. Without relief no structures could be constructed on the lots.

        ii. there is no other reasonable use with less impact on the sensitive area;

        Construction of a single family residence will have the least impact on the sites of any of the allowed uses in the zone.

        iii. the proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and

The construction of single family residences will not pose an unreasonable threat to the public health, safety, and welfare if the conditions of this permit are met.

iv. any alterations permitted to the sensitive areas shall be the minimum necessary to allow for reasonable use of the property.

The permit as conditioned will limit development while permitting the construction of a single family residence on each of the parcels.

Conclusions:

1. Single family residential development is permitted in the R-4 zone and is consistent with established residential development within the vicinity of the subject site and is consistent with the Interim Sammamish Comprehensive Plan;

2. Construction of the proposed single family home is consistent with surrounding development and single family development is generally considered a reasonable use of property zoned R-4;

3. The proposed reasonable use exception is exempt from the State Environmental Protection Act (SEPA) requirements per WAC 197-11-800(1) (b.)(i);

4. Issuance of a reasonable use exception will alleviate strict enforcement of the provisions of Title 21A.50 of the Sammamish Development Code that create an unnecessary hardship to the property owner, which results in it being unfeasible and prohibitive to construct a single-family residence on the property;

5. Based upon the geotechnical studies (Exhibit C) generated by the applicant's consulting engineer and reviewed by city engineering staff, the Reasonable Use Exception, as conditioned, does not create health and safety hazards, is not materially detrimental to the public welfare, nor is it unduly injurious to property or improvements in the vicinity.

6. Based upon Eastside Fire and Rescue's review, the Reasonable Use Exception does not create health and safety hazards, is not materially detrimental to the public welfare, or is not unduly injurious to property or improvements in the vicinity. However, due to access issues all of the residences are required to have fire sprinklers installed.(Exhibit D)

7. As conditioned, the development proposal will only be permitted to generate new impervious surface totals of only 35% on each lot and will disturb only 47 to 48 percent of the lots, the applicant has demonstrated the proposal is the minimum necessary to allow for reasonable use of the property; based on access and engineering recommendations (Exhibit B).

8. As conditioned, the proposed development will decrease the potential for erosion and / or steep slope failure.

CARNATION

Chapter 15.88 ENVIRONMENTALLY SENSITIVE AREAS

Section 15.88.050 Reasonable use exception.

A. If the application of this Chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purposes of this ordinance and the public interest.

B. An application for a sensitive areas reasonable use exception shall be filed with the City of Carnation and shall be heard by the Planning Board which shall seek legal advice from and consult with the City Attorney and shall issue a final decision.

C. The Planning Board, in recommending approval of the reasonable use exception must determine that:

1. Application of this Chapter would deny all reasonable use of the property; and,
2. There is no other reasonable use with less impact on the sensitive area; and,
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site; and,
4. Any alterations permitted to these sensitive areas shall be the minimum necessary to allow for reasonable use of the property.

D. Any authorized alteration of a sensitive area under this Chapter shall be subject to conditions established by the City and shall require mitigation under an approved mitigation plan.

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b. Geologic data pertinent to well logs or borings used to identify information;

c. Ambient ground water quality;

d. Ground water elevation;

e. Depth to perched water table, including mapped location;

f. Recharge potential of facility site, respective to permeability and transmissivity;

g. Ground water flow vector and gradient;

h. Currently available data on wells and any springs located within 1,000 feet of the facility site;

i. Surface water location and recharge potential;

j. Water supply source for the facility;

k. Analysis and discussion of the effects of the proposed project on the ground water resource;

l. Proposed sampling schedules;

m. Any additional information that may be required or requested by the Pierce County environmental health department.

3. Review of Geohydrologic Assessment. A geohydrologic assessment prepared under this section shall be submitted to the Pierce County department of environmental health for review and comment. Comments received by the department of health within 60 days of submittal of the assessment shall be considered by the city in the approval, conditional approval or denial of a project.

4. Findings for Consideration of Approval. A hydrogeologic assessment must clearly demonstrate that the proposed use does not present a threat of contamination to the aquifer system, or provides a conclusive demonstration that application of new or improved technology will result in no greater threat to the ground water resource than the current undeveloped condition of the site. Successful demonstration of these findings warrants approval under this section. (Ord. 619 § 1, 1992).

18.12.110 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;

2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);

3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;

4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;

2. The proposed development does not present a threat to the public health, safety or welfare;

3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;

4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;

5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;

6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property.

The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners

adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and

2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and

3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).

18.12.120 Maintenance of existing structures and developments.

Structures and developments lawfully existing prior to the adoption of this section shall be allowed to be maintained and repaired without any additional review procedures under this title; provided, that the maintenance or repair activity itself remains consistent with the provisions of this chapter and does not increase its nonconformity of such structures or development. Additionally, such construction activity shall not prove harmful to adjacent properties. Maintenance consists of usual actions necessary to prevent a decline, lapse or cessation from a lawfully established condition. Repair consists of the restoration of a development comparable to its original condition within two years of sustaining damage or partial destruction. Maintenance and repair shall include damage incurred as a result of accident, fire or the elements. Total replacement of a structure or development which is not common practice does not constitute repair. In addition to the requirements of this section, the requirements of Chapter 17.68 GHMC (Nonconformities) shall apply. (Ord. 619 § 1, 1992).

18.12.130 Exemptions from development standards.

Certain activities and uses may be of such impact and character or of such dependency to the maintenance and welfare of a lawfully permitted use that the requirements of this title shall not apply and may be waived at the discretion of the department. Notwithstanding the requirements of Title 17 GHMC, the following uses and activities are exempt from the requirements of this chapter:

A. Minimum actions necessary to protect life or property in an emergency situation. Qualification as an emergency shall be based upon the factual occurrence of imminent threat or danger;

B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width;

C. Science research and educational facilities, including archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access;

D. Subsurface drilling for geologic exploration associated with a proposed development which is not exempt from the requirements of this title;

E. The placement of signs consistent with Chapter 17.80 GHMC. (Ord. 619 § 1, 1992).

18.12.140 Variances from the minimum requirements.

A. Variance applications shall be considered by the city according to variance procedures described in Chapter 17.66 GHMC and shall be processed as a Type III application under the permit processing procedures of GHMC Title 19. The required showings for a variance shall be according to this section.

B. The examiner shall have the authority to grant a variance from the provisions of this chapter, including variance for buffer widths, when, in the opinion of the examiner, the conditions as set forth in this section have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. Required Showings for a Variance. Before any variance may be granted, it shall be shown:

17.52.025 Reasonable use provisions.

A. The standards and requirements of these critical areas regulations are not intended, and shall not be construed or applied in a manner to deny all ⏩reasonable ⏪ ⏩use ⏪ of private property. If the applicant demonstrates to the satisfaction of the planning director or his or her designee that strict application of these standards would deny all ⏩reasonable ⏪ ⏩use ⏪ of a property, development may be permitted subject to appropriate conditions. A ⏩reasonable ⏪ ⏩use ⏪ ⏩exception ⏪ is intended as a "last resort" when no plan and/or mitigation can meet the requirements of this chapter and allow the applicant a ⏩reasonable ⏪ viable ⏩use ⏪ of his or her property.

B. The applicant must demonstrate to the planning director or his or her designee all of the following:

1. That no ⏩reasonable ⏪ ⏩use ⏪ with less impact on the critical area and/or the buffer is feasible and ⏩reasonable ⏪;

2. There is no feasible and ⏩reasonable ⏪ on-site alternative to the proposed activity or ⏩use ⏪ that would allow ⏩reasonable ⏪ ⏩use ⏪ with less adverse impacts to the critical area and/or buffer. Feasible on-site alternatives shall include, but are not limited to: reduction in density or building size, phasing of project implementation, change in timing of activities, and revision of road or parcel layout or related site planning considerations;

3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;

4. The proposed activity or ⏩use ⏪ will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions and consideration has been given to best available science;

5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;

6. The proposed activity or ⏩use ⏪ complies with all local, state, and federal laws; and

7. The inability to derive ⏩reasonable ⏪ ⏩use ⏪ is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after March 23, 1992.

C. Allowed Reductions for Single-Family Residential ⏩Reasonable ⏪ ⏩Use ⏪ Lots. As provided under state law and the guidelines of the Department of Trade and Economic Development, ⏩reasonable ⏪ ⏩use ⏪ permits shall allow the development of a modest single-family residential home on a critical area lot.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.

2. Development on ⏩reasonable ⏪ ⏩use ⏪ lots shall leave at least seventy percent of the lot undisturbed to protect the critical areas. On small lots seven thousand five hundred square feet or less, a maximum building footprint of two thousand five hundred square feet would be allowed. Additional impervious area for the driveway will be permitted which provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area the ⏩use ⏪ of bridges and open bottom culverts shall be considered minimal impact. Yard areas will be permitted only if they do not encroach into the critical area or buffer.

3. Critical area regulations, buffers and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on ⏩reasonable ⏪ ⏩use ⏪ lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

D. Allowed Reductions for Multifamily, Commercial, and Industrial Lots.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.

2. The number of required parking stalls may be reduced by up to forty percent if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.

3. Critical area regulations, buffers, and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on ⏩reasonable ⏪ ⏩use ⏪ lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse

impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

E. If upon application of the wetland mitigation and buffer reduction options contained in Chapters 17.52A through 17.52D, and ▶▶reasonable ◀◀ provisions contained herein, a development cannot be built without further intrusion into the critical area or buffer, then the applicant can pursue a variance under Chapter 17.64, Conditional Uses and Variances.

F. Subdivisions of ▶▶reasonable ◀◀ ▶▶use ◀◀ lots will not be allowed unless there is sufficient area to construct all buildings, driveways, drainage facilities, landscaping, and yards areas without intruding on the critical area, buffer, or setback. (Ord. 1112 § 3, 2005)

21.06.1410 Reasonable use.

If an applicant demonstrates to the satisfaction of the director that application of these standards would deny all reasonable economic use of the property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the director:

(1) That no reasonable use with less impact on the environmentally critical area and its buffer is possible;

(2) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to environmentally critical areas and associated buffers;

(3) That the proposed activities will result in minimum feasible alteration or impairment to the environmentally critical area's functional characteristics and its existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions;

(4) That the disturbance of the environmentally critical area has been minimized by locating any necessary alteration in the environmentally critical area buffers to the extent possible;

(5) That the proposed activities will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal government or the state of Washington;

(6) That the proposed activities will not cause significant degradation of ground water or surface water quality;

(7) That the proposed activities comply with all state, local and general laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

(8) That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and

(9) That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter. (Ord. 2324 § 2(14), 1992).

37.050 Exemptions, exceptions, modifications.

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification as provided in this chapter. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the administrative modifications which can be granted to other requirements of this title of the city code.

A. Exemptions. All activities which are exempted, excepted, or granted modifications shall prevent, minimize and/or compensate for impacts to environmentally sensitive areas to the maximum extent possible. Such activities which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable. The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements:

1. Emergencies that threaten the public health, safety and welfare, as verified by the city;

2. Legally constructed structures in existence on the date the ordinance codified in this chapter becomes effective that do not meet the buffer requirements of this chapter may be remodeled, reconstructed or replaced provided that the new construction or related activity does not further encroach into an environmentally sensitive area. Remodeling or reconstruction shall be subject to all other requirements of the zoning code;

3. Existing and ongoing agriculture in agricultural zones in existence as of the date this chapter becomes effective; provided, however, at such time as the property ceases to be used for agricultural activities, the property shall be brought into compliance with the provisions of this chapter;

4. Normal and routine maintenance of legally constructed irrigation and drainage ditches, provided that this exemption shall not apply to any ditches used by salmonids;

5. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds, provided that such activities shall not involve the conversion of any wetland or stream not used for such purposes on the date this chapter becomes effective;

6. Entirely artificial structures intentionally constructed by humans from upland areas for purposes of storm water drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter;

7. Category III wetlands less than five hundred square feet in area having only one wetland class, which is not forested, and which is hydrologically isolated;

8. Category IV wetlands less than eight thousand square feet in area;

9. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility related activities, public street and public park maintenance activities when undertaken pursuant to best management practices to avoid impacts to environmentally sensitive areas:

a. Normal and routine maintenance or repair of existing utility structures or right-of-way,

b. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,

c. Relocation of natural gas, cable communications, telephone facilities, lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,

d. Installation or construction in improved street rights-of-way and replacement, operation or alteration of all facilities listed in subsections A.9.b and A.9.c of this section,

e. Normal and routine maintenance of public streets, state highways, and public park facilities. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area nor does it include construction of a maintenance road or the dumping of maintenance debris;

10. Buffer management when approved by the planning director and all agencies with jurisdiction;

11. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the State Department of Natural Resources.

B. Reasonable Use Exception. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

1. There is no other reasonable use or feasible alternative to the proposed development with less impact on the environmentally sensitive area; and

2. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

3. Any alterations permitted to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of this chapter; and

5. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible.

C. Reasonable Use Decision Process. Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the proposal shall include the following information which will be used to evaluate the criteria for reasonable use exception:

1. A description of the areas of the lot which are either environmentally sensitive or within setbacks required by this chapter;

2. A description of the amount of the lot which is within setbacks required by other standards of the zoning code;

3. An analysis of the minimum amount of development that would be considered "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;

4. An analysis of the impact that the amount of development described in subsection C.3 of this section would have on the environmentally sensitive areas;

5. An analysis of whether any other reasonable use with less impact on the environmentally sensitive areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the environmentally sensitive areas and buffers;

6. A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the environmentally sensitive areas;

7. An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

8. A description of any modifications needed to the required front, side and rear setbacks; building height; and landscape widths to provide for a reasonable use while providing protection to the environmentally sensitive areas;

9. Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

D. Reasonable Use Administrative Modification. If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

1. If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while still providing protection to the environmentally sensitive areas;

2. If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the environmentally sensitive areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot, provided there is adequate mitigation provided for any reduction in the buffer. This approach shall be preferred in circumstances where the environmentally sensitive areas have already been degraded or imputed by activities occurring prior to the effective date of this chapter, and enhancement/restoration of the degraded environmentally sensitive area can reasonably be expected to be accomplished; or

3. If a reasonable economic use of a lot cannot exist by means of either subsection D.1 or D.2 of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection D.1 or D.2 of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

a. R-S, R-1 and R-2 Zones. The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

i. The number of dwelling units which the planning director determines to be the minimum necessary to

allow for reasonable economic use of the restricted property, or

ii. Twenty percent more dwelling units than would be permitted on the receiving site without the transfer of development rights.

In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. All such lots shall have a minimum lot width of fifty feet. All dwelling units on such lots shall be single-family dwellings.

b. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

c. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

d. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

E. Public Utility and Infrastructure Exception. If the application of this section would prohibit a development proposal by a public agency or public utility to construct utility lines for the conveyance of water, sewage, storm drainage, natural gas, or telecommunications; or the construction of collector or arterial streets and highways, the agency or utility may request an exception pursuant to this subsection. Such a request shall be reviewed by the hearing examiner using the review process described in EMC Title 15, Local Project Review Procedures. The hearing examiner may approve, or approve with modifications such a request only when the following findings are made:

1. There is no other practicable alternative to the proposed development with less impact on the environmentally sensitive area; and

2. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible; and

3. The proposal does not impact a significant fish or wildlife habitat area.

F. Prohibition on Variances—Other Exceptions Permitted by this Chapter. The variance procedures described in Section 41.130 of this title shall not apply to the standards of this chapter. The following subsections permit alteration or modification of the requirements of this chapter for protection of environmentally sensitive areas:

1. Subsection 8 for modification of standards for geologically hazardous areas;

2. Subsections 10 and 11 for modification of standards for wetlands and their required buffers;

3. Subsection 14 for modification of standards for streams and their required buffers. (Ord. 2538-01 §§ 44, 45, 46, 2001; Ord. 1838-91 § 5, 1991.)

Ordinance, shall be considered as a valid scientific process and the "best available science (BAS)" for assessment of that particular site.

WHEREAS, the City of Spokane is committed to seeking funding to conduct a city-wide site-specific inventory and associated analysis, simultaneous with the studies required by the SMA, to determine the site-specific riparian habitat and buffer zones, and at the time such studies are compiled to make such revisions to this Ordinance as may be appropriate. To that extent the city is willing to enter into a memorandum of understanding (MOU) with interested groups to make sure the studies are completed.

WHEREAS, the City of Spokane intends to comply with the State GMA provisions.

NOW, THEREFORE, THE CITY OF SPOKANE DOES ORDAIN:

Section 1. That there be added to SMC Chapter 11.19 a new section designated 11.19.2560 to read as follows:

11.19.2560 TITLE, PURPOSE, INTENT, AND SEVERABILITY

A. Title
This ordinance shall be known and may be cited as the "Spokane Interim Fish and Wildlife Habitat Conservation Area Ordinance."

B. Purpose
The purpose of this Ordinance is to protect environmentally sensitive areas, the public health, safety and welfare by preserving and protecting fish and wildlife habitat conservation areas through the regulation of development and other activities.

C. Intent
The provisions of this Ordinance shall be construed liberally to carry out its purpose effectively and if any provisions of this Ordinance conflict with other regulations, ordinances, or other authorities, that which provides more protection to fish and wildlife habitat conservation areas should apply.

D. Severability
Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstance is not affected.

Section 2. That there be added to SMC Chapter 11.19 a new section designated 11.19.2562 to read as follows:

11.19.2562 GENERAL PROVISIONS

A. Applicability
The requirements of this Ordinance apply to all activities and development occurring in a Fish and Wildlife Habitat Conservation Area as defined in Section 11.19.2566A. Property located in a Fish and Wildlife Habitat Conservation Area, as defined in this ordinance, is subject to both zoning classification regulations and the additional requirements imposed under this Ordinance. In any case where there are differences between the provisions of the underlying zone and this ordinance, the provisions of this Ordinance shall apply.

B. Compliance by Owners
It is the specific intent of this Ordinance to place the obligation of complying with requirements upon the owner of the property or land within its scope and provisions.

C. Reasonable Use Exception
Requirements: If an applicant for a development proposal demonstrates to the satisfaction of the Director that application of the standards of this Ordinance would deny all reasonable use of the property according to current takings case law. The applicant shall pay a fee as determined by the Director, which may cover mailing and processing, and shall submit documentation on forms provided by the department demonstrating all of the following to the satisfaction of the Director:

1. Applications of this Ordinance would deny all reasonable use of the property.
2. There is no reasonable use with less impact on the fish and wildlife habitat.
3. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the property.
4. Any alteration to the fish and wildlife habitat is the minimum necessary to allow for reasonable use of the property.
5. The inability of the applicant to derive reasonable use is not the result of actions by the applicant in subdividing the property or adjusting boundary lines, thereby creating the undevelopable conditions after the effective date of this Ordinance.

Decision: The Director shall include findings on each of the evaluation criteria listed above in a written decision. The written decision shall be mailed to the applicant and adjacent property owners, including property owners across public rights-of-way or private easements. The written decision shall include conditions necessary to serve the purposes of the Ordinance and shall provide an appeal procedure as contained in Section 11.02.0710. The Director should also advise the applicant as to the applicability of transfer of development rights, planned unit developments, and any other innovative land use techniques.

D. Exemptions
The following activities are exempt from the provisions of this Chapter, provided that the work is conducted using best management practices and any unavoidable impact affecting the environment will be minimized. However, nothing herein shall be construed to relieve the property owner of requirements imposed by the State Environmental Policy Act.

1. Existing and ongoing agricultural activities, including construction of structures that support agricultural activities: The activities cease to be existing when either of the following conditions occurs:
   a. The area on which they were conducted has been converted to a nonagricultural use.
   b. The area has lain idle more than five years, unless the idle land is registered in a federal or state soils conservation program.
2. Maintenance or repair of public rights-of-way, legally existing roads, structures, or facilities used in the service of the public to provide transportation, electricity, gas, water, telephone, telegraph, telecommunication, sanitary sewer, stormwater treatment, and other public utility services.

Expansions of sanitary sewer treatment plants are exempt from the requirements of this Ordinance subject to an approved habitat management plan.

city shall require recording of a covenant on the title of the property, stating as follows:

"Persons with interest in this property are advised that this property is potentially subject to flooding, geologic (seismic), and volcanic lahars (mudflow) hazards."

17.114.120 Exception – Public agency and utility.

(1) If the application of this chapter or chapters 17.115 - .135 would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception request and review process. An application for a public agency and utility exception shall be made to the city planning department and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The planning director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (4).

(3) Hearing examiner review. The hearing examiner shall review the application and planning director's recommendation, and conduct a public hearing pursuant to the provisions of the SMC 17.85. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4).

(4) Public agency and utility review criteria. The criteria for review and approval of public agency and utility exceptions are as follows:

(a)There is no other practical alternative to the proposed development with less impact on the critical areas;

(b) The application of this chapter or chapters 17.115-.135 would unreasonably restrict the ability to provide utility services to the public;

(c) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(d) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and

(e) The proposal is consistent with other applicable regulations and standards.

(5) Burden of proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

17.114.130 Exception – Reasonable use.

(1) If the application of this chapter or chapters 17.115 - .135 would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section.

(2) Exception request and review process. An application for a reasonable use exception shall be made to the city and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The planning director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (4).
(3) Hearing examiner review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of the SMC 17.85. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (4).
(4) Reasonable use review criteria. One or more of the following criteria for review and approval of reasonable use exceptions follow may apply:

(a)The application of this chapter or chapters 17.115-.135 would deny all reasonable economic use of the property;
(b) No other reasonable economic use of the property has less impact on the critical area;
(c) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
(d) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter, or its predecessor;
(e) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
(f) The proposal will result in no net loss of critical area functions and values consistent with the best available science; or
(g) The proposal is consistent with other applicable regulations and standards.

(5) Burden of proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

17.114.140 Allowed permitted activities.
(1) Allowed permitted activities—defined. Allowed activities are similar to exemptions in that they do not require critical area review. However, unlike exemptions, allowed activities must follow the critical areas standards. Conditions may be applied to the underlying permit, such as the building permit, to ensure critical area protection.
(2) Critical area report. Activities allowed under this section and corresponding sections in 17.115-.135 shall be reviewed and permitted or approved by the city or other agency with jurisdiction, but do not require submittal of a separate critical area identification form or critical area report, unless such submittal was required previously for the underlying permit. The planning director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this chapter and chapters 17.115 - .135 to protect critical areas.

Note: this version shows changes only. Sections that require no changes will remain as currently in the Stanwood code. If you need a copy of a section of the current code, please call Stanwood Community Development at (360)629-4577 to request a copy.

B. **Exception request and review process.** An application for a public agency or utility exception shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW).
C. **Review and Decision.** The Town Administrator shall review the application and shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in Subsection (D) pursuant to SMC 14.20.010.
D. **Public agency and utility review criteria.** Public agency and utility exceptions shall be granted when all of the following criteria are demonstrated:
1. There is no other practical alternative to the proposed development with less impact on the critical areas.
2. The application of this Chapter would unreasonably restrict the ability to provide utility services to the public.

3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.
4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science.
5. The proposal is consistent with other applicable regulations and standards.

E. **Burden of proof.** The burden of proof shall be on the applicant to provide evidence in support of the application and to provide information sufficient for any required decision.

16.16.140 Exception – Reasonable use
A. If the application of this Chapter would deny all reasonable economic use of the subject property, the property owner may apply for an exception pursuant to this Section and SMC 14.08.050.
B. **Exception request and review process.** An application for a reasonable use exception shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The Town Administrator shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in Subsection (D).
C. **Hearing examiner review.** The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of SMC 14.08.050. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in Subsection (D).
D. **Reasonable use review criteria.** A reasonable use exception shall be granted if all of the following criteria are met:

1. The application of this Chapter would deny all reasonable economic use of the property.

2. No other reasonable economic use of the property has less impact on the critical area.
3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property.
4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this Chapter, or its predecessor.
5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.

6. The proposal will result in no net loss of critical area functions and values consistent with the best available science.
7. The proposal is consistent with other applicable regulations and standards.

E. **Burden of proof.** The burden of proof shall be on the applicant to provide evidence in support of the application and to provide information sufficient for any required decision.

16.16.150 Allowed activities

A. **Permits.** Allowed activities do not require critical area permits, however, they may require other permits or approvals. The Town Administrator may apply conditions to the other permit or approval to ensure that the allowed activity is consistent with the provisions of this Chapter to protect critical areas.

B. **Best management practices.** Allowed activities shall use best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. Best management practices shall ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. **Allowed activities.** The following activities are allowed:

1. **Permit requests subsequent to previous critical area review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) are allowed if all of the following conditions have been met:

a. The provisions of this Chapter have been previously addressed as part of another approval.

b. There have been no material changes in the potential impact to the critical area or buffer since the prior review.

c. There is no new information available that is applicable to any critical area review of the site or particular critical area.

d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval.

15.20.420 Aquifer Recharge Area Designation.

Aquifer recharge areas shall be designated based on meeting any one of the following criteria:

A. Wellhead Protection Areas designated per WAC 246-290;
B. Sole Source Aquifers designated by the U.S. EPA per the Federal Safe Drinking Water Act;
C. Areas designated for special protection as part of a groundwater management program per RCW 90.44, 90.48, or 90.58 or WAC 173-100 or 173-200.

15.20.430 Aquifer Recharge Area Detailed Study Requirements.

All proposals that require SEPA review and are located within a designated aquifer recharge area shall be reviewed by the Zoning Administrator to determine the potential for adverse impacts to groundwater resources. If the potential for significant adverse impacts is present, then the Zoning Administrator shall require preparation of an aquifer recharge area Detailed Study. The Detailed Study shall be prepared by a qualified consultant with experience in preparing hydrogeologic site assessments. Evidence of these qualifications shall be included within the study. The Detailed Study shall include the following, in addition to the minimum requirements established in section 15.20.200(B):

A. A description of the existing hydrogeologic conditions of the project site and the proposed activity's potential to result in contamination of groundwater resources.

15.20.440 Aquifer Recharge Area Performance Requirements.

Activities requiring preparation of an aquifer recharge area Detailed Study shall only be permitted if the Detailed Study indicates that the activity does not pose a significant threat to the underlying aquifer system. The Zoning Administrator shall establish mitigating conditions necessary to insure protection of groundwater resources.

15.20.450 Reasonable Use Exceptions.

A. An exception from the provisions of this Chapter may be granted by the City Council. An application for a exception shall be processed as a Class III action pursuant to the provisions of Chapter 20.08 SMC. A filing fee as established in Chapter 20.108 SMC shall be paid to the city clerk-treasurer at the time of application.
B. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision on the application will be made. The City Council shall grant such an exception only when the applicant demonstrates that the requested exception is consistent with all of the following criteria:
    1. Special circumstances and conditions exist which are peculiar to the land or lot, and which are not applicable to other lands or lots;
    2. The special conditions or circumstances are not the result of actions taken by the applicant;
    3. Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties under the terms of this Chapter;
    4. The granting of the exception requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures under similar circumstances;
    5. The granting of the exception is consistent with the general purpose and intent of this Chapter and will not create significant adverse impacts to the identified critical areas or otherwise be detrimental to public health, safety, or welfare.
C. In granting any exception, the City Council may prescribe such conditions and safeguards as are deemed necessary to secure adequate protection of critical areas, public health, safety and welfare, and to ensure conformity with this Chapter.
D. If the City Council decides to grant the exception, the City Council shall make a finding that the reasons set forth by the applicant justify the granting of the exception, and that the exception granted is the minimum necessary to allow reasonable use of land, building or structure.

E. In granting any exception, the City Council may prescribe time limits within which the action for which the exception is requested shall commence or be completed or both. Failure to conform to any such time limits shall void the exception.

15.20.460 Enforcement.

The Zoning Administrator is authorized to make site inspections and take such actions as necessary to administer and enforce this Chapter. City representatives shall make a reasonable effort to contact the property owner before entering onto private property. Activities found to be not in compliance with this Chapter or any applicable performance requirements or any conditions established through the Critical Areas Review and approval process, such as required mitigation, shall be subject to enforcement actions necessary to bring the activity into compliance. The City shall have the authority to require restoration, rehabilitation or replacement measures to compensate for violations of this chapter which result in destruction, degradation, or reduction in function of critical areas or required buffer areas.

15.20.470 Violations and Penalty.

A. Violation – Penalty. Each day that a violation of this section continues shall constitute a separate offense and be punishable as such. Any violation of this section shall be punished as follows:
   1. First Offense: The first offense shall be punished by a penalty of not more than $250.00, including all costs and assessments, and not less that $150.00, which minimum amount shall not be suspended or deferred.
   2. Second Offense: The second offense within a 5-year period shall be punished by a penalty of not more than $500.00, including all costs and assessments, and not less that $200.00, which minimum amount shall not be suspended or deferred.
   3. Third or Subsequent Offense: A person committing a third or subsequent offense within a 5-year period shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed $1,000.00 or imprisonment in jail not to exceed 90-days or by both such fine and imprisonment. The minimum sentence shall be $250.00, which amount shall not be suspended or deferred.

   Law enforcement officers commissioned by the City are authorized to issue a Notice of Infraction upon certification that the officer has probable cause to believe, and does believe, that a person has committed an infraction contrary to the provisions of this Chapter. The infraction need not have been committed in the issuing officer's presence except as otherwise provided by law.

B. Additional Remedies. In addition to the penalties provided in this Chapter and any other remedy allowed by law, the City may bring an action to enjoin a violation of any provision of this chapter. In any action or suit brought under this Section, the City, if it prevails, shall recover reasonable attorney's fees to be set by the Court, in addition to its costs and disbursements.

15.20.480 Definitions.

"Adjacent" or "adjacent to" generally means within a distance of 50 feet from a critical area or, in some circumstances involving upland wildlife habitat conservation areas, within a greater distance within which the project is likely to impact the critical area.

"Agriculture" or "Agricultural activities" means those activities directly pertaining to the production of crops or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, the operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities, or improved areas.

20.740.070 Minor Exceptions

A. Minor Exceptions Authorized. Minor exceptions of no greater than 10% from the standards of this Chapter may be authorized by the City in accordance with the procedures set forth in VMC 20.210.060, Type II Applications. Minor exceptions from the elevation standards of VMC 20.740.120 may exceed the 10% limit. Minor exceptions shall not be combined with buffer averaging (20.740.140(C)(1)(b)(2))or buffer reduction(20.740.140(C)(1)(b)(3)).

B. Minor Exception Criteria. A minor exception from the standards of this Chapter may be granted only if the applicant demonstrates that the requested action conforms to all of the following criteria. Additional approval criteria applying to minor exceptions in frequently flooded areas are set forth in VMC 20.740.120(D)(3).

1. Unusual conditions or circumstances exist that are peculiar to the intended use, the land, the lot, or something inherent in the land, and that are not applicable to all other lands in the same vicinity or district;

2. The unusual conditions or circumstances do not result from the actions of the applicant;

3. Granting the minor exception 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;

4. The minor exception is necessary for the preservation and enjoyment of a substantial property right of the applicant such as is possessed by the owners of other properties in the same vicinity or district;

5. The minor exception requested is the least necessary and no greater than 10% of the subject standard (except in the case of the elevation standards of VMC 20.740.120 where the least necessary may exceed the 10% limit) to relieve the unusual circumstances or conditions identified in Subsection VMC 20.740.070(B)(1) above;

6. The granting of the minor exception or the cumulative effect of granting more than one minor exception is consistent with the general purpose and intent of the City of Vancouver Comprehensive Plan, this Title, this Chapter, and the underlying zoning district;

7. Degradation of the functions (including public health and safety) of the subject critical areas and any other adverse impacts resulting from granting the minor exception will be minimized and mitigated to the extent feasible in accordance with the provision of this Chapter;

8. Granting the minor exception will not otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;

9. The proposed development complies with all other applicable standards.

C. Conditions May Be Required. In granting any minor exception, the City may attach such conditions and safeguards as are necessary to secure adequate protection of critical areas and developments from adverse impacts, and to ensure conformity with this Chapter.

D. Time Limit. The City shall prescribe a time limit within which the action for which the minor exception is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the minor exception.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.

20.740.080 Reasonable Use Exceptions

A. Exception Request and Review Process.

If the application of this Chapter would deny all reasonable economic use of the subject property, the City shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this Section. Exceptions from the standards of this Chapter may be authorized by the City in accordance with the procedures set forth in VMC 20.210.060, Type III Applications.

An application for a reasonable use exception shall be made to the City and shall include a Critical Areas Report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (RCW 43.21C). The Planning Official shall prepare a recommendation to the Hearings Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in VMC 20.740.080(B).

B. Reasonable Use Review Criteria. The City shall approve applications for reasonable use exceptions when all of the following criteria are met:

1. The application of this Chapter would deny all reasonable economic use of the property;

2. No other reasonable economic use of the property has less impact on the critical area;

3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this Chapter, or its predecessor;

5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;

6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible and contributes to the Critical Areas Restoration Fund for any impacts that cannot be mitigated.

7. The proposal is consistent with other applicable regulations and standards.

C. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

20.740.090 Unauthorized Critical Areas Alterations and Enforcement

A. Enforcement.

1. It shall be unlawful to violate the provisions of VMC Chapter 20.740. Any violation of this Chapter shall constitute a public nuisance.

2. VMC Title 22 shall provide the enforcement provisions for VMC Chapter 20.740. VMC Title 22 may impose any of the remedies, requirements or corrective actions contained in this Chapter. In lieu of or in addition to the enforcement provisions contained in VMC Title 22, the City may also seek injunctive or other relief from any court of competent jurisdiction.

3. The City shall deposit all monetary penalties collected pursuant to VMC Title 22 into the Critical Areas Restoration Fund. Accrued monies in the Critical Areas Restoration Fund shall be used to protect and restore critical areas within the City of Vancouver.

B. Requirement for Restoration Plan. In the event the City initiates enforcement action under VMC Title 22 or files a complaint in court, the City may require a restoration plan consistent with the requirements of this Chapter. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in VMC 20.740.090(C). The Planning Official shall, at the violator's expense, seek expert advice in determining whether the plan restores the affected area to its pre-existing condition or, where that is not possible, restores the functions of the affected area. Inadequate plans shall be returned to the applicant or violator for revision and re-submittal.

C. Minimum Performance Standards for Restoration

1. For alterations to frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

   a. The structure and functions of the critical area or buffer prior to violation shall be restored, including water quality and habitat functions;

   b. The soil types and configuration prior to violation shall be replicated;

   c. The critical area and buffers shall be replanted with native vegetation; and

   d. Information demonstrating compliance with the requirements in VMC 20.740.050(F) Mitigation Plan Requirements shall be submitted to the Planning Official.

Kitsap County Code

19.100.140 Reasonable use exception.

If the application of this title would deny all reasonable use of the property, the applicant may apply for a reasonable use exception pursuant to this section:

A. The applicant shall apply to the department, and the department shall prepare a recommendation to the hearing examiner. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of the section. The property owner and/or applicant for a reasonable use exception has the burden of proving that the property is deprived of all reasonable uses. The examiner shall review the application and shall conduct a public hearing pursuant to the provisions of Title 21 of the Kitsap County Code (Land Use and Development Procedures). The examiner shall make a final decision based on the following criteria:

1. The application of this title would deny all reasonable use of the property;
2. There is no other reasonable use which would result in less impact on the critical area;
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this title and the public interest, and does not conflict with the Endangered Species Act or other relevant state or federal laws; and
4. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.

B. Any authorized alterations of a critical area under this section shall be subject to conditions established by the examiner including, but not limited to, mitigation under an approved mitigation plan. (Ord. 351 (2005) § 11, 2005: Ord. 217 (1998) § 3 (part), 1998)

19.100.145 Appeals.

A. Appealable Actions. The following decisions or actions required by this title may be appealed:

1. Any decision to approve, condition or deny a development proposal, or any disagreement on conclusions, methodology, rating systems, etc. between the department and such person or firm which prepares special reports pursuant to Chapter 19.700 may be appealed by the applicant or affected party to the Kitsap County hearing examiner.
2. Any decision to approve, condition or deny a variance application by the department may be appealed by the applicant or affected party to the Kitsap County hearing examiner.
3. Any decision to require, or not require a special report pursuant to this title may be appealed by the applicant or affected party to the Kitsap County hearing examiner.

B. Appeal Process. The following process shall be followed in submitting an appeal and taking action:

1. Any appeal regarding a decision to require, or not require a special report shall be made within fourteen calendar days of the decision. The appeal shall be in writing stating the basis that such reports should or should not be required for the proposed development. The hearing examiner may (a) remand the decision back to the department requesting that specific issues be reconsidered; (b) modify the decision of the department; or (c) uphold the decision of the department.
2. Any appeal regarding a decision to approve, condition or deny a development proposal based on this title, or any decision to approve, condition or deny a variance, shall be made within fourteen calendar days of the decision. A fee in an amount as established under the Kitsap County Code shall be paid to the department at the time an appeal is filed. The appeal shall be in writing and shall state

specifically the issues that are the subject of the appeal, focusing on the specific inadequacies of the particular decision under dispute. The hearing examiner may (a) remand the decision back to the department requesting that specific issues be reconsidered; (b) modify the decision of the department; or (c) uphold the decision of the department.

3. Kitsap County shall not issue any permit, license or other development approval on the development proposal site pending the outcome of the appealed decision.

(Ord. 351 (2005) § 12, 2005: Ord. 217 (1998) § 3 (part), 1998)

19.100.150 Critical area and buffer notice to title.

Project applicants shall sign a "Critical Area and Buffer Notice to Title" (*See* Chapter 19.800, Appendix "E") to be filed with the Kitsap County auditor on all development proposals subject to this title and containing any critical area or its buffer. After review of the development proposal, the department will condition critical area development in accordance with this title. These standards will be identified on the approved notice to title, which shall run with the land in accordance with this title. This notice shall serve as an official notice to subsequent landowners that the landowner shall accept sole responsibility for any risk associated with the land's identified critical area.

Notice to title may not be required in cases where the clearing or building footprint for minor new development will not adversely impact a critical area or its buffer (i.e., normal repair and maintenance, not adjacent to a critical area). Lack of such notice on a specific parcel does not indicate that Kitsap County has determined critical areas or buffers do not exist on that parcel.

(Ord. 351 (2005) § 13, 2005: Ord. 217 (1998) § 3 (part), 1998)

19.100.155 General application requirements.

A. All applicants for major new development are required to meet with the department prior to submitting an application subject to Title 17 of Kitsap County Code; all applicants for construction of a single-family dwelling are encouraged to do so. The purpose of this meeting is to discuss Kitsap County's zoning and applicable critical area requirements, to review any conceptual site plans prepared by the applicant and to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant, and any recommendations shall not be binding on the applicant or the county.

B. The applicant must comply with the standards and requirements of this title as well as standards relating to Title 12 of the Kitsap County Code (Stormwater Management) set forth by the department, as now or hereafter amended. To expedite the permit review process, the department shall be the lead agency on all work related to critical areas. Development may be prohibited in a proposed development site based on criteria set forth in this title; the applicant should first determine whether this is the case before applying for permits from the department.

C. Application for development proposals, reasonable use exception or variances regulated by this title or for review of special reports shall be made with the department by the property owner, lessee, contract purchaser, other person entitled to possession of the property, or by an authorized agent as listed in Chapter 19.700 (Special Reports).

D. A filing fee in an amount established under the Kitsap County Zoning Ordinance shall be paid to the department at the time an application for a permit relating to a critical area or a special report review is filed.

E. Applications for any development proposal subject to this title shall be reviewed by the department for completeness and consistency or inconsistency with this title.

F. At every stage of the application process, the burden of demonstrating that any proposed development is consistent with this title is upon the applicant.

G. All site plan applications for development proposals subject to this title shall include a site plan drawn to scale identifying locations of critical areas, location of proposed structures and activities, including clearing and grading and general topographic information as required by the department. If the

KITTITAS COUNTY 17A.03.065

17A.03.065 Property rights.

1. All regulatory or administrative actions taken pursuant to this chapter shall not result in an unconstitutional taking of private property, and shall not expand or reduce the scope of private property protections provided in the state and federal constitutions. This chapter shall not prohibit uses permitted prior to its adoption and shall remain in effect until the county adopts development regulations pursuant to RCW 36.70A.120. Classifying or designating critical areas does not imply a change in the landowner's right to use his or her land under current law.
2. In applying this chapter, the planning department shall refer to relevant legal authorities at all levels of government, including federal and state constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof. The application and administration of this chapter shall assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights; and are not arbitrary or discriminatory.
3. Periodic reports shall be made at least annually to the board of county commissioners by the planning director and prosecuting attorney concerning county compliance with constitutional and judicial requirements. The planning director shall immediately advise the board should any provisions of this chapter in his opinion be in violation of state or federal constitutional requirements, or recent court decisions, and whether the provision is required by the state of Washington or discretionary with the county. If the provision which generates concern is a requirement of the state, the board of county commissioners shall immediately advise the appropriate state department or agency. If the provision is discretionary with the county, the board of commissioners shall promptly schedule a public hearing to consider the ordinance provision or policy. (Ord. 94-22 (part), 1994).

Robin Jenkinson

From: Byron Katsuyama [bkatsuyama@mrsc.org]
Sent: Friday, May 12, 2006 2:31 PM
To: Robin Jenkinson
Subject: MRSC Research Request - Reasonable Use Exception Provisions

Hi Robin,

This is in response to your request for sample "reasonable use exception" provisions. Here are a few more for you to ponder (I've pasted in the full text of provisions from Issaquah, Enumclaw, Gig Harbor, Richland, Auburn, Bothell, Des Moines, Edmonds, Federal Way, and Vancouver):

Issaquah Municipal Code:

18.10.390 Definitions.
Reasonable use: A legal concept that has been articulated by federal and state courts in regulatory takings cases. In a takings case, the decision-maker must balance the public's interests against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions.

A reasonable use variance must balance the public interests against the regulation being unduly oppressive to the landowner. The following criteria are guidelines when making a decision regarding a reasonable use variance:

A. The extent to which the proposal would contribute to increasing the level of the harm the regulation is designed to prevent;

B. The feasibility of alternative solutions;

C. The amount and percentage of lost (economic) value to the land owner;

D. The extent of remaining uses available to the land owner, if the regulation were strictly enforced;

E. The past, present and future uses of the property; however, the use does not need to be the owner's planned use, or prior use or the highest and best use;

F. The temporary or permanent nature of the regulation.
...

18.10.430 Variances.

A. Purpose: The variance provision is provided to property owners who, due to the strict implementation of this chapter and/or to unusual circumstances regarding the subject property,

are deprived of privileges commonly enjoyed by other properties in the same vicinity, zone and under the same land use regulations or have been denied all reasonable use of the property; provided, however, that the fact that surrounding properties have been developed under regulations in force prior to the adoption of this Code shall not be the sole basis for the granting of a variance.

B. Variance Granted: Before any variance may be granted, the applicant must file an application with the Permit Center and must demonstrate to the satisfaction of the Hearing Examiner the ability to meet all of the criteria in IMC 18.10.430(C). In the event that the applicant is not able to fulfill all of the criteria in IMC 18.10.430(C), a demonstration must be made to the satisfaction of the Hearing Examiner, regarding the ability to successfully meet all of the criteria established in IMC 18.10.430(D).

A variance application shall be submitted to the Permit Center along with a critical areas special study, where applicable.

C. Variance Criteria Established:

1. The variance is in harmony with the purpose and intent of the relevant City ordinances and the Comprehensive Plan;

2. The variance shall not constitute a grant of special privilege which would be inconsistent with the permitted uses, or other properties in the vicinity and zone in which the subject property is located;

3. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity, located in the same zone as the subject property and developed under the same land use regulations as the subject property requesting the variance;

4. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;

5. That alternative development concepts that comply with the Code provisions to which the variance is requested have been evaluated, and that undue hardship would result if the strict adherence to the Code provisions is required;

6. The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and

7. The need for the variance is not the result of actions of the applicant or property owner.

D. Reasonable Use Variance Criteria Established: Only after the determination, by the Hearing Examiner, that the proposal does not meet all of the variance criteria listed above, may the application be reviewed, by the Hearing Examiner at the same public hearing, under the following criteria:

1. There is no reasonable use of the property left; and

2. That the granting of this variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

3. The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and

4. The need for the variance is not the result of actions of the applicant or property owner.

E. Cumulative Impact of Area Wide Requests: In the granting of variances from this Code, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies and intent set forth in this chapter.

F. Public Hearing: The Hearing Examiner shall hold a public hearing and notice shall be provided under the provisions of the Land Use Code and Issaquah Municipal Code. The applicant or representative(s) shall appear in person at the hearing.

G. Notice of Hearing Examiner's Decision: Copies of the Hearing Examiner's decision shall be mailed to the applicant and to other parties of record not later than three (3) working days following the filing of the decision. "Parties of record" shall include the applicant and all other persons who specifically request notice of the decision by signing a register provided for such purpose at the public hearing.

H. Appeals: Decisions by the Hearing Examiner may be appealed to the City Council in accordance with IMC 18.04.250, Administrative appeals. (Ord. 2301 § 3, 2001; Ord. 2108 § 10.2.10, 1996).

Enumclaw Municipal Code:

19.02.210 Avoiding wetland impacts.

If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purposes of this chapter and the public interest; provided, that the city council finds that:

A. This chapter would otherwise deny all reasonable use of the property;

B. There is no other reasonable use with less impact on the wetland;

C. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;

D. Any proposed alteration of the wetland is the minimum necessary to allow for reasonable use of the property;

E. There is no feasible on-site alternative, including reduction in density and site-planning considerations;

F. The inability to derive reasonable economic use from the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of the ordinance codified in this chapter. (Ord. 1960 § 3, 1998).
19.02.220 Minimizing wetlands impacts.

A. After it has been determined by the city council pursuant to EMC 19.02.210 that losses of wetland are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize wetland impacts.

B. Minimizing impacts to wetlands shall include but is not limited to:

1. Limiting the degree or magnitude of the regulated activity;

2. Limiting the implementation of the regulated activity;

3. Using appropriate and best available technology;

4. Taking affirmative steps to avoid or reduce impacts;

5. Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;

6. Involving resource agencies early in site planning; and

7. Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities. (Ord. 1960 § 3, 1998).

Gig Harbor Municipal Code:

18.12.110 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;

2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);

3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;

4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;

2. The proposed development does not present a threat to the public health, safety or welfare;

3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;

4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;

5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;

6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property. The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners be responsible for providing a current listing of all adjacent property owners along with application
for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be
valid for a period not to exceed one year. The time limit is void if the applicant fails to procure

the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and

2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and

3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).

Richland Municipal Code:

22.10.360 General Savings Provision - Reasonable Use
A. The standards and regulations of this section are not intended, and shall not be construed or applied in a manner, to deny all reasonable economic use of private property. If an applicant demonstrates to the satisfaction of the City of Richland that strict application of these standards and the utilization of cluster techniques, planned unit development, and transfer of development rights would deny all reasonable economic use of its property, development may be permitted subject to appropriate conditions, derived from this ordinance as determined by the Deputy City Manager, Community and Development Services, and after all requests from the Board of Adjustment have been denied.
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B. An applicant for relief from strict application of these standards shall demonstrate the following:
1. That no reasonable use with less impact on the critical habitat and/or hazard area and buffer is feasible and reasonable;
2. That there is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors;
3. That the proposed activities, as conditioned, will result in the minimum possible impacts to wetlands and buffers;
4. That all reasonable mitigation measures have been implemented or assured;
5. That all provisions of the City's regulations allowing density transfer on-site and off-site have been considered; and (Ord. 48-93: Ord. 31-03).

Auburn Municipal Code:

16.10.150Reasonable use provision.

A.The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.
B.Applications for a reasonable use exception shall be processed as a Type III decision, pursuant to ACC 14.03.030 and Chapter 18.66 ACC.

C.An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:

1.No reasonable use with less impact on the critical area and its buffer is possible.

There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable and economically viable use with fewer adverse impacts;
2.The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas;
3.All reasonable mitigation measures have been implemented or assured;
4.The inability to derive reasonable use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition; and

5.The applicant shall demonstrate that the use would not cause a hazard to life, health or property.
D.The burden of proof shall be on the applicant to provide evidence in support of the application and to provide sufficient information on which any decision has to be made.

E.Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city codes.

F.Except when application of this title would deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the title shall pursue a variance as provided in ACC 16.10.160. (Ord. 5894 § 1, 2005.)

Bothell Municipal Code:

16.10.150Reasonable use provision.
A.The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.
B.Applications for a reasonable use exception shall be processed as a Type III decision, pursuant to ACC 14.03.030 and Chapter 18.66 ACC.

C.An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:

1.No reasonable use with less impact on the critical area and its buffer is possible.
There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable and economically viable use with fewer adverse impacts;
2.The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas;
3.All reasonable mitigation measures have been implemented or assured;
4.The inability to derive reasonable use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition; and
5.The applicant shall demonstrate that the use would not cause a hazard to life, health or property.

D.The burden of proof shall be on the applicant to provide evidence in support of the application and to provide sufficient information on which any decision has to be made.
E.Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city codes.
F.Except when application of this title would deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the title shall pursue a variance as provided in ACC 16.10.160. (Ord. 5894 § 1, 2005.)

Des Moines Municipal Code:

18.86.094 Reasonable use exceptions in wetlands, streams, ravine sidewalls, and bluffs.

(1) Adjustments to Dimensional Requirements.

(a) Yard Reductions for Building One Single-Family Dwelling. When an environmentally sensitive area that is undevelopable
pursuant to DMMC 18.86.060 together with any required yard on the opposite side of the undevelopable area equals more than 50 percent of the property dimension of the development site, such yard shall be reduced as follows:

(i) A required side yard is reduced to five feet.

(ii) A required front or rear yard is reduced to 10 feet.

(b) Other Adjustments. All other adjustments to any dimensional requirements of this title or other land use regulatory provisions of this code shall be processed as either a PUD or variance pursuant to chapter 18.52 DMMC and the hearing examiner code, respectively.

(2) Single-Family Dwelling. Development of one single-family dwelling within the buffer of a wetland or stream on a development site shall be approved by the community development director if the applicant demonstrates that:

(a) The extent of development within the buffer is limited to that which is necessary to create a developable area which is no larger than 5,000 square feet;

(b) The proposal utilizes to the maximum extent possible and best available construction, design, and development techniques
which result in the least adverse impact on the environmentally sensitive area;

(c) The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and

(d) The proposal is consistent with the purpose and intent of this chapter.

(3) Other Development Proposals. An applicant may propose to develop other than one single-family dwelling on a development
site in accordance with subsection (2) of this section pursuant to the following:

(a) Procedure. The city shall process a reasonable use development exception through the office of the hearing examiner, or

if the exception is proposed in conjunction with a development proposal requiring approval of the city council, the exception
shall be processed together with that development proposal. The community development director shall serve as the applicable department director and the hearing examiner or city council shall serve as the hearing body.

(b) Decision Criteria. The city shall approve or approve with modifications an application for a reasonable use development
exception if:

(i) The proposal is limited to the minimum necessary to fulfill reasonable use of the property; and

(ii) The proposal is compatible in design, scale, and use with other development or potential development in the immediate
vicinity of the subject property in the same zone and with similar site constraints;

(iii) The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the environmentally sensitive area or areas;

(iv) The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water
design manual to the maximum extent possible; and

(v) The proposal is consistent with the purpose and intent of this chapter.

(4) Limited Waiver of Hillside Disturbance Limitations. Any one or all of the disturbance limitation requirements of DMMC
18.86.077 may be waived if the community development director determines that the application of such requirements is not feasible for developing one single-family dwelling on a development site and the proposal is consistent with the purpose and intent of this chapter.

(5) Modification of Existing Structures. Existing structures or improvements that do not meet the requirements of this chapter may be remodeled, reconstructed, or replaced; provided, that the new construction does not further intrude into an environmentally sensitive area.

(6) Previously Altered Environmentally Sensitive Areas. If any portion of an environmentally sensitive area has been altered from its natural state, the applicant may propose to develop within the altered area pursuant to the following:

(a) Procedure. The city shall process the proposed development exception through the office of the hearing examiner, or if the exception is proposed in conjunction with a development proposal requiring approval of the city council, the exception shall be processed together with that development proposal. The community development director shall serve as the applicable department director and the hearing examiner or city council shall serve as the hearing body.

(b) Decision Criteria. The city shall approve or approve with modifications an application for a development exception
within a previously altered environmentally sensitive area only if the applicant demonstrates that:

(i) The environmentally sensitive area was lawfully altered in accordance with the provisions of this code and any state and
federal laws at the time the alteration occurred;

(ii) The alteration has significantly disrupted the natural functions of the environmentally sensitive area;

(iii) The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the environmentally sensitive area;

(iv) The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water
design manual to the maximum extent possible; and

(v) The proposal is consistent with the purpose and intent of this chapter. [Ord. 1237 § 3, 1999; Ord. 853 § 9(a), 1990.]

Edmonds Municipal Code:

23.40.210 Variances.

A. Variances from the standards of this title may be authorized through the process of hearing examiner review in accordance with the procedures set forth in Chapter 20.85 ECDC only if an applicant demonstrates that one or more of the following two conditions exist:

1. The application of this title would prohibit a development proposal by a public agency or public utility. A public agency and utility exception may be granted as a variance if:

a. There is no other practical alternative to the proposed development with less impact on the critical areas;

b. The application of this title would unreasonably restrict the ability to provide utility services to the public;

c. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

d. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and

e. The proposal is consistent with other applicable regulations and standards.

2. The application of this title would deny all reasonable economic use (see the definition of "reasonable economic use(s)" in ECDC 23.40.320) ["Reasonable economic use(s)" means the minimum use to which a property owner is entitled under applicable state and federal constitutional provisions in order to avoid a taking and/or violation of substantive due process. "Reasonable economic use" shall be liberally construed to protect the constitutional property rights of the applicant. For example, the minimum reasonable use of a residential lot which

meets or exceeds minimum bulk requirements is use for one single-family residential structure. Determination of "reasonable economic use" shall not include consideration of factors personal to the owner such as a desire to make a more profitable use of the site.] of the subject property. A reasonable use exception may be authorized as a variance only if an applicant demonstrates that:

a. The application of this title would deny all reasonable economic use of a property or subject parcel;

b. No other reasonable economic use of the property consistent with the underlying zoning and the city comprehensive plan has less impact on the critical area;

c. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this title or its predecessor;

e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

f. The proposal minimizes net loss of critical area functions and values consistent with the best available science; and

g. The proposal is consistent with other applicable regulations and standards.

B. Specific Variance Criteria. A variance may be granted if the applicant demonstrates that the requested action conforms to all of the following specific criteria:

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;

3. A literal interpretation of the provisions of this title would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this title, 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 title 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 title, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property; and

6. The decision to grant the variance is based upon the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

C. Hearing Examiner Review. The city hearing examiner shall review variance applications and conduct a public hearing pursuant to the provisions of Chapter 20.100 ECDC. The hearing examiner shall approve, approve with conditions, or deny variance applications based on a proposal's ability to comply with general and specific variance criteria provided in subsections (A) and (B) of this section.

D. Conditions May Be Required. The director retains the right to prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this title for variances granted through hearing examiner review.

E. Time Limit. The director shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance, unless the applicant files an application for an extension of time before the expiration. An application for an extension of time shall be reviewed by the director as provided in ECDC 20.95.050.

F. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of a variance application and upon which any decision has to be made on the application. [Ord. 3527 § 2, 2004].

Federal Way Municipal Code:

22-1244 Reasonable use of the subject property.

(a) The provisions of this section establish a mechanism whereby the provisions of this article may be modified or waived on a case-by-case basis if their implementation would deprive an applicant of all reasonable use of the subject property.

(b) An applicant may apply for a modification or waiver of the provisions of this article using process IV; except, that applications for projects on single-family residential lots platted prior to the incorporation of the city may use process III.

(c) The city may approve a modification or waiver of the requirements of this article on a case-by-case basis based on the following criteria:

(1) The application of the provisions of this article eliminates all reasonable use of the subject property.

(2) It is solely the implementation of this article, and not other factors, which precludes all reasonable use of the subject property.

(3) The applicant has in no way created or exacerbated the condition which forms the limitation on the use of the subject property, nor in any way contributed to such limitation.

(4) The knowledge of the applicant of limitations on the subject property when he or she acquired the subject property.

(5) The waiver or modification will not lead to, create nor significantly increase the risk of injury or death to any person or damage to improvements on or off the subject property.

(d) If the city grants a request under this section, it shall grant the minimum necessary to provide the applicant with some reasonable use of the subject property, considering the factors described in subsections (c)(1) through (c)(5) of this section. The city may impose any limitations, conditions and restrictions it considers appropriate to reduce or eliminate any undesirable effects or adverse impacts of granting a request under this section. (Ord. No. 90-43, § 2(80.35), 2-27-90; Ord. No. 91-105, § 4(80.35), 8-20-91; Ord. No. 91-123, § 3(80.35), 12-17-91; Ord. No. 99-353, § 3, 11-16-99; Ord. No. 04-468, § 3, 11-16-04)

Vancouver Municipal Code:

Section 20.740.080 Reasonable Use Exceptions

A. Exception Request and Review Process.

If the application of this chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section. Exceptions from the standards of this chapter may be authorized by the city in accordance with the procedures set forth in VMC 20.210.060, Type III Applications.

An application for a reasonable use exception shall be made to the city and shall include a Critical Areas Report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (RCW 43.21C). The planning official shall prepare a recommendation to the Hearings Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in VMC 20.740.080(B).

B. Reasonable Use Review Criteria. The city shall approve applications for reasonable use exceptions when all of the following criteria are met:

1. The application of this chapter would deny all reasonable economic use of the property;

2. No other reasonable economic use of the property has less impact on the critical area;

3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter, or its predecessor;

5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;

6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible and contributes to the Critical Areas Restoration Fund for any impacts that cannot be mitigated.

7. The proposal is consistent with other applicable regulations and standards.

C. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

You might also find some samples on our "Critical Areas" Web page.

I hope this helps. Let me know if I can be of any more assistance.

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-----Original Message-----
From: rjenkinson@ci.kirkland.wa.us [mailto:rjenkinson@ci.kirkland.wa.us]
Sent: Wednesday, May 10, 2006 4:06 PM
To: Receptionist
Subject: Research Request

Name: Robin Jenkinson
City or County Employed by: City of Kirkland
Department: City Attorney's Office
Position: City Attorney
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Kirkland, WA 98033-6189
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Research Request:
Good afternoon, The City of Kirkland is looking to rewrite its reasonable use exception for its critical areas ordinances and I am looking for a few good examples. Using your site search, I located provisions from Bellevue, Burien, Cashmere, Spokane, Stanwood, Steilacoom, and Kitsap County. Have you assembled or are you aware of others? Do you have any from other states? Thanks. Robin

2. Development Factor – The f a "percent credit," to be used in computing the maximum pot r a site which contains a sensitive area buffer is derived from t

ATTACHMENT 2

Percentage of Site in			ounted at
< 1	to		100%
> 10	to		90%
> 20	to	30%	80%
> 30	to	40%	70%
> 40	to	50%	60%
> 50	to	60%	50%
> 60	to	70%	40%
> 70	to	80%	30%
> 80	to	90%	20%
> 90	to	100%	10%

90.140 Reasonable Use

This chapter is not intended, and shall not be construed or applied in a manner, to deny reasonable use of a lot, tract, or parcel. An owner of real property may apply for a reasonable use exception to this chapter, which shall be considered under Process IIB of Chapter 152 KZC. The application shall include the proposed use and activities for the property, and shall address the criteria described in this section. The decision maker shall determine whether application of this chapter will deny reasonable use of the property, and whether the proposed use and activities are a reasonable use of the property. In making these determinations, the decision maker shall consider the following three criteria:

1. There is no permitted type of land use for the property with less impact on the sensitive area and the buffer is feasible and reasonable; and

2. No on-site alternative to the proposal is feasible and reasonable, considering possible changes in site layout, reductions in density and similar factors; and

3. The proposal, as conditioned, will result in minimum feasible alteration of or impairment to the functional characteristics of the sensitive areas, and their existing contours, vegetation, fish and wildlife resources, and hydrological conditions; and will not cause significant degradation of groundwater or surface-water quality.

The applicant shall submit a report prepared by a qualified professional selected by the applicant, with the qualified professional's report reviewed by the City's wetland consultant at the applicant's cost and expense. The report shall describe how the proposal will or will not comply with the above three decisional criteria.

In determining whether application of this chapter will deny reasonable use of the property, the decision maker shall consider the following:

1. The inability to derive reasonable use is the result of the applicant's actions, such as segregating or dividing property and creating the undevelopable condition, or taking actions in violation of any local, state, or federal law or regulation; and

2. The land use and environmental regulations which prevent reasonable use of the property were in effect at the time of purchase of the property by the applicant.