



MEMORANDUM

Date: February 17, 2016

To: Planning Commission

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Subject: Chapter 90 KZC Amendments (Critical Areas Ordinance/Wetlands, Streams and Frequently Flooded Areas Regulations), File CAM15-01832, #2

This memo addresses the following topics:

- Wetland Rating System
- Wetland Buffer Width Options
- Mitigation Sequencing
- Wetland Compensatory Mitigation Ratios
- Stream Typing System
- Stream Buffers Width Options
- Setback from Wetland and Stream Buffers
- Reasonable Use Exception

I. RECOMMENDATION

Staff recommends that the Planning Commission review the issues discussed in the memo and provide direction or comments to staff for preparation of draft code amendments.

The memo is organized by each topic as noted above. After each topical section is discussed, there is a staff recommendation for the Commission’s consideration.

II. BACKGROUND

On [January 28, 2016](#), the Planning Commission held a joint study session with the Houghton Community Council. Staff and The Watershed Company (TWC), the City’s consultant on the project, gave a presentation on the following:

- City’s regulations must be updated under GMA

- Background information on wetlands, streams, rating system of the features, buffer widths, buffer reduction options, mitigation, wildlife habitat, and frequently flooded areas
- Best Available Science (BAS) Report (latest science on the protection of these sensitive area features and the condition of the city's sensitive area features) prepared by TWC
- Gap Analysis (general code amendments needed to meet BAS on wetlands and streams and Ecology's guidance on wetlands) prepared by TWC

Background information and the two technical reports addressed in the presentation were provided in the [staff memo](#) dated January 20, 2016 for the January 28, 2016 meeting.

Staff also briefed the [City Council](#) at its February 16th meeting. The City Council asked questions about vesting when a non-conforming use is destroyed by fire or other causes, notifying the development community about the pending amendments, how the new regulations may affect future plans for the Cross Kirkland Corridor, looking for an easier approach to management of monitoring and maintenance programs with possibly different approaches for large and small developments, and encouraging off-site mitigation in the shoreline. The Council requested to be briefed throughout the process.

Topics for the code amendments can be grouped into **three main categories**: General, Flexibility and Administration. The **level of policy discussion** can be divided into High (H), Medium (M) and Low (L) to reflect those that are key policies decisions, involve several many issues of lower policy concern and those that address minor changes. The **level of staff time** can be divided into High (H), Medium (M) and Low (L) to reflect the amount of time to do research, to discuss issues with the City's consultants, other City departments and state agencies, and to develop options and alternatives. See the table below of code amendment topics:

Group	Topic	Policy Level	Staff Time
General	Outline of chapter	L	L
	Definitions	L	M
	Wetland Rating and Stream classification	L	L
	Buffer widths	H	H
	Setbacks from buffer	L	L
	New section on Fish and Wildlife Habitat Areas (endangered, threatened and sensitive species)	L	M
	Frequently flooded areas	L	L
Flexibility	Exceptions to regulations	M	M
	Wetland fill	M	M
	Buffer modifications	H	H
	Mitigation sequencing	L	L
	Compensatory mitigation	L	L
	Off-site banking/fee-in-lieu mitigation	H	H
	Reasonable Use	M	M
	Stream modifications/relocations/daylighting	L	L
	Stream culverts, stabilization, crossings	L	L
	Voluntary restoration standards	L	L
	Public agency projects (utilities, roads, CKC)	M	H
Administration	Wetland delineation and stream determination reports	L	M
	Monitoring and maintenance standards	L	L
	Review processes	M	M
	Non-conformances	H	H
	Maximum developable potential	H	M
	New approach to securities	M	M
	Setback and buffer requirements by prior approval	M	L
	Minor sections: Applicability, Fencing, Pesticides	L	M
	Application of prior buffers and modifications	L	L
	Enforcement	L	L

III. BEST AVAILABLE SCIENCE (BAS)

The BAS Report prepared for the City and provided in the in the [staff memo](#) dated January 20, 2016 for the January 28, 2016, Planning Commission meeting outlined the latest scientific understanding of wetlands and streams based on a detailed and extensive study of scientific findings done for the City of Woodinville. As mentioned in the report, the City of Woodinville has similar conditions and urban setting as Kirkland. Using Woodinville’s study saved the City substantial cost and time.

If the City chooses to not accept current Best Available Science, it must do its own scientific research to develop a different approach. This would be very costly and time consuming with no guarantee of the outcome and the research and conclusions could be appealed by the Department Ecology (Ecology), other state agencies, environmental groups and other interested parties. According to Ecology, no jurisdiction has challenged current BAS before

the Growth Management Hearings Board. One jurisdiction, Island County, looked at a different approach to BAS, but after tremendous cost and time appears to have decided to use the current BAS.

IV. WETLANDS

A. Wetland Rating System (Low Policy Issue)

1. Background:

The wetlands in Washington State differ widely in their functions and values. Some wetlands are part of a large drainage system, such as Yarrow Bay and Juanita Bay, while others are small isolated wetlands. Some are heavily disturbed while others are still relatively undisturbed. All, however, provide some functions and resources that are valued. These may be ecological, economic, recreational, or aesthetic. A rating system is needed to understand the functions and values of individual wetlands in order to protect them effectively.

A rating system categorizes wetlands into categories based on their sensitivity to disturbance, their rarity, the ability to replace them, and the functions they provide.

Rating categories are intended to be used as the basis for developing standards for protecting and managing the wetlands to reduce further loss of their value as a resource. Decisions that can be made based on the rating include the width of buffers needed to protect wetlands from adjacent uses, the amount of mitigation needed to compensate for impacts to the wetland, and permitted uses in wetlands.

The City's existing rating system is based on BAS of the mid 1990's. Since then, the understanding of wetlands and the impacts of adjacent development has expanded significantly such that the new rating system better reflects the range of characteristics and functions found in wetlands and the differences in wetlands in eastern versus western Washington. Ecology adopted the *Washington State Wetland Rating Systems* in 2004 and then updated it again in 2014. The rating system is primarily intended for use with vegetated, freshwater wetlands using the U.S. Army Corps of Engineer's federal wetland delineation manual and applicable regional supplements (Chapter 173-22-035 WAC).

Other local jurisdictions have been using the 2004 rating system and now will be adopting the 2014 rating system. The City is two cycles behind on the BAS rating system.

2. Staff Recommendation:

Staff recommends that the 2014 Washington State Wetland Rating System be the rating system used for the City's revised wetland regulations to be consistent with Ecology's rating system.

B. Wetland Buffer Widths Options (**High Policy Issue**)

1. Background:

Wetlands and their associated buffers are important in that they help maintain water quality; store and convey storm and flood water; recharge ground water; provide fish and wildlife habitat; and serve as areas for recreation, education, scientific study, and aesthetic appreciation. These functions and values need to be protected from impacts caused by adjacent uses. Impacts include toxic runoff, lights, noise, stormwater runoff, a change in water flow from impermeable surfaces and lawns, and pet and human disturbances.

Buffers (which are protective setbacks from the edge of the wetland) reduce impacts to wetlands from adjacent land uses. The physical characteristics of the buffers (slope, soils, vegetation and width) determine how well buffers reduce the various adverse impacts of adjacent uses on wetland functions.

The City's existing wetland buffer widths are based on Best Available Science in the 1990's (see Attachment 1). Ecology's guidance on wetland buffers is based the latest Best Available Science that support the need for **wider buffers** than Kirkland has to protect the functions and values of wetlands from the impacts associated with urban uses and activities.

2. Wetland Buffer Widths Options

Under Ecology BAS guidance the City can offer several **buffer width options** to provide property owners with choices and flexibility while still meeting BAS. The options are based on the two tables presented below. Table 1 represents Ecology's BAS for **Functioning Buffers** and Table 2 represents Ecology's BAS for **Degraded Buffers**. The buffer width options are:

1. Functioning buffer width (Table 1)
2. Averaging the functioning buffer width (Table 1) if certain criteria are met
3. Reduction of degraded buffer width (Table 2) with mitigation
4. Combined reduction and averaging of degraded buffer width (Table 2) with mitigation

Option 1: Functioning Buffer Standards Using Table 1

Ecology's **buffer width for functioning buffers** listed below in **Table 1** is based on **best available science** for wetlands. These buffer widths assume that the existing buffer is **well vegetated** with native plants and has the other characteristic of a high functioning buffer. Therefore, the buffer is the minimum buffer width needed to protect a wetland.

Looking at the table below, a score of 3 indicates low function for each of the three habitat scores. A score of 9 indicates a high function for each of the three habitat scores. There is no score below 3 or above 9.

**Table 1. Buffer Width Standards for Functioning Buffer
 (Minimum buffer width with no reduction)**

Wetland Category and Type	Buffer width (in feet) based on habitat score (3-9)			
	3-4	5	6-7	8-9
I: Bogs and wetlands of high conservation value	190			225
I: All others	75	105	165	225
II	75	105	165	225
III	60	105	165	225
IV	40			

(Note that it is unlikely that the Kirkland has bogs or wetlands of high conservation value)

However, nearly all of the buffers in Kirkland are **degraded** (e.g., containing lawn or non-native plants), **are sparsely vegetated or contain invasive species**, and thus would not meet the standards for a Table 1 buffer width.

Option 2: Averaging the Functioning Buffer Width Standard using Table 1

Under Ecology’s BAS guidance, the width of buffers may be **averaged** if it will improve the protection of the wetland functions or it is the only way to allow for reasonable use of the parcel (see Reasonable Use Exception discussion below). Averaging a buffer means to reduce the buffer width in one location and enlarge the width in another location on the property but the total buffer area after averaging is equal to the area required before averaging. The narrowest point of the buffer width using averaging cannot be less than **¾ (75%)** of the standard buffer width. The wetland functions are improved with averaging by increasing the width of the buffer next to a higher functioning portion of the wetland while decreasing it next to the lower functioning portion of the wetland. An **illustration** of this option is provided below on page 7.

This option would use the functioning buffer widths in **Table 1**. However, few if any would be eligible for averaging because very few sites would be able to demonstrate that averaging would improve function. Therefore, this option may not provide much actual flexibility in practice because it could rarely be used.

ILLUSTRATIONS OF BUFFER WIDTH AVERAGING AND BUFFER WIDTH REDUCTION

WETLAND BUFFER IMPACT ANALYSIS

The diagrams illustrate four scenarios of wetland buffer impact analysis:

- CURRENT BUFFER:** Shows a building with a standard buffer zone adjacent to a wetland area.
- PROPOSED BUFFER:** Shows a building with a buffer zone that is wider than the current buffer.
- BUFFER REDUCTION:** Shows a building with a buffer zone that is narrower than the current buffer, labeled "REDUCED BUFFER".
- BUFFER AVERAGING:** Shows a building with a buffer zone that is narrower than the current buffer, but with a "BUFFER GAIN" area (indicated by a blue shaded area) that offsets the "BUFFER LOSS" (indicated by a red shaded area), resulting in "NO NET BUFFER LOSS".

 THE WATERSHED COMPANY

Option 3: Reduction of Degraded Buffer Width Standard using Table 2

Based on Ecology’s BAS guidance, Table 2 reflects the buffer widths needed for a degraded buffer that would allow for reduction with mitigation. The buffer widths in Table 2 are wider than in Table 1, but after reduction and mitigation, the buffer widths are the **same buffer width as the functioning buffer widths in Table 1**. Mitigation would improve the quality and function of the wetland.

Table 2. Wetland Buffer Width Standards for Degraded Buffers (Wider buffer width to allow for reduction and averaging)

Wetland Category and Type ¹	Buffer width (in feet) based on habitat score (3-9)			
	3-4	5	6-7	8-9
I: Bogs and wetlands of high conservation value	250			300
I: All others	100	140	220	300
II	100	140	220	300
III	80	140	220	300
IV	55			

(Note that it is unlikely that the Kirkland has bogs or wetlands of high conservation value)

Based on BAS, Ecology has accepted reduction in buffer widths at **up to ¼ (25%)** of the buffer using with the wider buffer standard in Table 2 in conjunction with planting of native vegetative and implementing the **mitigating measures** in Table 3 below. The reduction option allows the entire buffer area to be reduced to the same smaller width along the entire wetland boundary. An **illustration** of this option is provided above on page 7. Mitigation sequencing analysis (see Section C below on page 10) should be required in most cases before a buffer reduction is proposed.

Table 3. Measures to Minimize Impacts to Wetlands for Reduced Buffer Width

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate outdoor activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing development adjacent to the site • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (per Puget Sound Action Team publication on Low Impact Development techniques)

Disturbance	Required Measures to Minimize Impacts
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust
Disruption of corridors or connections	<ul style="list-style-type: none"> • Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

The City’s **current regulations** allow a buffer reduction of up to **33%**, but this standard of reduction no longer meets Best Available Science because the resulting buffer widths are not adequate to protect the values and functions of the wetlands. As indicated above, BAS only allows for a **25%** reduction using a wider buffer as a starting point.

The City’s shoreline regulations for wetlands, adopted in 2010, are similar to the buffer widths listed in Table 2, except are narrower for the highest rated wetlands (Type 8-9). The regulations are consistent with Ecology’s buffer reduction standard of ¼ (25%) of the buffer.

The buffer width reduction option of up to 25% is standard for other local jurisdictions.

Option 4: Combined Reduction and Averaging of the Degraded Buffer Width Standard Using Table 2

The buffer width can be both reduced and averaged provided that the total buffer square footage of the reduced buffer is provided. The averaged portion of the buffer can be no narrower than 25% of the reduced buffer width. Mitigation sequencing, mitigation with native plantings, and the list of measures in Table 3 above should be required in most cases.

3. Establishing Wetland Buffer Width based on the Adjacent Uses

A few local cities have established buffer widths based on the adjacent uses. This may be helpful for very low impact uses, such as passive parks where the buffer width would be less (but then these low impact types of uses would have wide buffers anyway because of the nature of their use). Uses in urban cities, such as residential, office and retail, have generally the same high impacts to a wetland and its buffer so creating a complex buffer standard based on uses would not be beneficial to property owners or to the City.

4. **Recommendation:**

Staff recommends the following wetland buffers for the revised Chapter 90:

<p>Buffer Option 3</p>	<p>Buffer Reduction (Table 2) of up to ¼ (25%) of the buffer width for the degraded buffer width and planted with native planting. Conceptually, this may allow a property with a fully functioning buffer to request a lower buffer width, but staff believes that there are very few cases in Kirkland where at least some enhancement would also be required.</p>
<p>Buffer Option 4</p>	<p>Combined Reduction and Averaging (Table 2) of degraded buffer width. The portion of the averaged buffer cannot be narrower than 25% of the reduced buffer width. This provides an additional degree of flexibility where buffer conditions merit.</p>

Options 1 and 2 are not recommended because it is rare that an existing buffer in Kirkland is of high quality and fully functioning. If the options are made available, many applicants would try to make the case that the buffers are functioning when they are actually not.

The recommendation provides applicants with flexibility to consider several options depending on the quality of the existing buffer, their proposed development and their willingness to financially and time wise commit to a long term monitoring and maintenance program when enhancement is required.

Staff does not recommend establishing buffer widths based on **types of uses** since under BAS, typical urban uses found in Kirkland are all high impacting to wetlands and their buffers.

C. Mitigation Sequencing (**Low Policy issue**)

1. Background:

Under BAS, when wetlands are proposed to be filled or altered in some way or wetland or stream buffers are proposed to be modified, in most cases the proposal must first be reviewed through a series of steps known as **mitigation sequencing** to reduce the severity of impacts from adjacent uses and activities. Mitigation sequencing mirrors the rules for mitigation under the State Environmental Policy Act (SEPA) [Chapter 197-11-768 WAC](#). This approach is the accepted and widely adopted method to analyze proposed impacts to wetlands.

Mitigation sequencing steps in the **order of preference** are as follows:

- (1) **Avoiding the impact** altogether by not taking a certain action or parts of an action;

- (2) **Minimizing impacts** by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (3) **Rectifying the impact** by repairing, rehabilitating, or restoring the affected environment;
- (4) **Reducing or eliminating the impact** over time by preservation and maintenance operations during the life of the action;
- (5) **Compensating for the impact** by replacing, enhancing, or providing substitute resources or environments; and/or
- (6) **Monitoring the impact** and taking appropriate corrective measures.

In most cases, before a modification to a wetland or wetland or stream buffer can be approved, an applicant would need to provide a written analysis of each of these steps to explain why the impact is necessary and is the only viable option based on the proposal. An example where it may not be appropriate to require full mitigation sequencing is for a City master plan that has already been approved by the City Council.

These steps are used to consider ways to reduce impacts on the wetlands and streams. Avoiding an impact does not require that a proposal is to be denied or must be located on another site, but rather an analysis is done to see if there is a design or other measures that could avoid an impact. For example, if an applicant proposes to build a home on a lot, the City could not ask that an applicant to simply build on another lot to avoid the impact.

The same mitigation sequencing is required in the City's wetland regulations for the shoreline area of the City in Chapter 83 KZC. It has also been adopted by other local jurisdictions and is the standard accepted approach to mitigation for most projects.

2. **Recommendation:**

Staff recommends the use of mitigation sequencing for the steps to analyze proposed impacts to wetlands, wetland buffers and in some cases stream buffers for the revised Chapter 90. This approach is consistent with BAS, the City's shoreline regulations, and is used by federal, state and other local jurisdictions.

D. Wetland Compensatory Mitigation

1. Background:

Compensatory mitigation standards are used to replace lost or impacted wetland and/or buffer functions. Compensatory mitigation is also required by state and federal agencies. The US Army Corps of Engineers requires "no net loss" of wetlands to prevent further loss of wetland acreage, which is the basis of mitigation sequencing analysis. The EPA issued its Wetlands Compensatory Mitigation Rule which emphasizes Best Available Science. The City's shoreline regulations include the same compensatory mitigation standards. Other local jurisdictions have also adopted the use of compensatory mitigation.

2. Wetland Mitigation Options in Order of Preference:

Mitigation for lost or diminished wetland or buffers requires wetland compensation mitigation based on the following **order of preference**:

- 1) **Re-establishment or rehabilitation:** returning a degraded or past wetland into its former condition through such measures as removing fill or removing a dike that holds back water. This measure does not add new wetland.
- 2) **Creation/establishment:** developing a new wetland where no wetland existed. This would require a water source, a certain slope design and other factors.
- 3) **Enhancement:** adding native plantings. This mitigation results in loss of wetland area when a wetland is being modified.
- 4) **Preservation:** protecting a high functioning at-risk wetland elsewhere, usually in conjunction with one or more of the mitigations noted above. This mitigation results in loss of wetland area when a wetland is being modified.

Compensatory mitigation is already required in the City’s wetland regulations for the shoreline area of the City in Chapter 83 KZC. It has also been adopted by other federal, state and local jurisdictions and is the accepted approach to addressing mitigation.

3. Wetland Mitigation Ratios:

Mitigation ratios are intended to replace lost functions and values of wetlands and the associated buffer from proposed adjacent developments based on the category of wetland and the type of mitigation. Wetland creation and restoration are preferable to enhancement alone for impacts to wetlands because enhancement does not replace wetland area. Ecology recommends the following ratios of mitigation when a wetland is proposed to be altered. Even though wetland enhancement/planting (far right column below) does not replace loss wetland area (thus not does not meet the literal “no net loss standard” of the Army Corps of Engineers), Ecology’s guidance does allow enhancement but at a much higher ratio to mitigate for wetland loss than creation or re-establishment of a wetland.

The same mitigation ratios are required in the City’s wetland regulations for the shoreline area of the City in Chapter 83 KZC. It has also been adopted by other local jurisdictions and is the accepted approach to mitigation.

Table 4. Mitigation Ratios for Wetland Modifications (BAS Ecology guidance)

Category of Wetland Impacted	Creation	Re-establishment-Rehabilitation Only	Creation and Rehabilitation	Creation and Enhancement	Enhancement Only
Category IV	1.5:1	3:1	1:1 C and 1:1 RH	1:1 C and 2:1 E	6:1
Category III	2:1	4:1	1:1 C and 2:1 RH	1:1 C and 4:1 E	8:1
Category II	3:1	6:1	1:1 C and 4:1 RH	1:1 C and 8:1 E	12:1

Category of Wetland Impacted	Creation	Re-establishment-Rehabilitation Only	Creation and Rehabilitation	Creation and Enhancement	Enhancement Only
Category I: Forested	6:1	12:1	1:1 C and 10:1 RH	1:1 C and 20:1 E	24:1
Category I: Bog	Not possible	6:1 RH of a bog	Not possible	Not possible	Case-by-case
Category I: based on total functions	4:1	8:1	1:1 C and 6:1 RH	1:1 C and 12:1 E	16:1 E

Appendix 8-C of *Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands* (Granger et al. 2005)

Legend: C = Creation, RH = Rehabilitation, E = Enhancement

For buffer modifications, enhancement ratio is 1:1.

4. **Recommendation:**

Staff recommends the mitigation ratios listed in Table 4 for the revised Chapter 90. These ratios are consistent with BAS, the City's shoreline regulations and have been adopted by other local jurisdictions.

V. STREAMS

A. System Typing

1. Background:

Stream typing was established in 2005 in Washington State under [WAC 222-16-030](#). The streams are basically of three types:

- Fish bearing streams that flow year round or part of the year
- Non fish bearing streams that flow year around
- Non-fish bearing steams that flow part of the year

The state stream typing system is provided in Table 5 (Type S is not included because Kirkland does not have a stream that is a "shoreline of the state"):

Table 5. Permanent Water Typing System (WAC 222-16-030)

Permanent Water Typing	Brief Description	Full Description
Type F	Fish bearing stream (may be perennial or seasonal)	Segments of natural waters other than Type S Waters (<i>streams of shoreline significance</i>), which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four

Permanent Water Typing	Brief Description	Full Description
		categories: (a) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria: (i) The site must be connected to a fish habitat stream and accessible during some period of the year; and (ii) The off-channel water must be accessible to fish.
Type Np	Non-fish bearing perennial stream	All segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
Type Ns	Non-fish bearing seasonal stream	All segments of natural waters within the bankfull width of the defined channels that are not Type F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type F, or Np Waters.

The stream typing in Table 5 is similar to the stream typing used in the City’s shoreline regulations for streams and used by other local jurisdictions.

2. **Recommendation:**

Staff recommends the stream typing in Table 5 to be used in the revised Chapter 90. The stream typing is mandated by WAC 222-16-030 and is used in the City’s shoreline regulations and by other state and local jurisdictions.

B. Stream Buffer Width **(High Policy Issue)**

1. Background:

Stream buffers protect the functions and values of streams. The functions include water quality and temperature, bank stability, environment for invertebrates (e.g., insects, and worms), and woody debris important for wildlife habitat. Similar to wetlands, these functions and values need to be protected from impacts caused by adjacent uses, such as toxic runoff, lights, noise, storm water runoff, change in water flow from impermeable surfaces and lawns, and pets and human disturbances.

Stream buffers reduce impacts to stream from adjacent land uses and activities. Similar to wetlands, characteristics important to a functioning buffer are the slope, soils, vegetation and width.

The City’s existing stream buffer widths are based on Best Available Science in the 1990’s (see Attachment 1). **Current Best Available Science guidance for streams supports the need for wider buffers** than the City currently has to protect the

functions and values of wetlands from the impacts associated with urban uses, and human and pet activities.

2. Stream Buffer Width Options:

Under Ecology BAS guidance and similar to wetlands, the City can offer several **buffer width options** for streams to provide property owners with choices and flexibility while still meeting BAS. The options are based on the two tables presented below. Table 1 represents Ecology’s BAS for **Functioning Buffers** and Table 2 represents Ecology’s BAS for **Degraded Buffers**. The buffer width options are:

1. Functioning buffer width (Table 6)
2. Reduction of degraded buffer width (Table 7) with mitigation
3. Combined reduction and averaging of degraded buffer width (Tables 7 and 8) with mitigation

Option 1: Functioning Stream Buffer Widths Using Table 6

The **buffer widths for functioning buffers** listed below in **Table 6** are based on BAS for streams. These buffer widths assume that the existing buffer is **well vegetated** with native plants and has the other characteristic of a high functioning buffer to protect streams.

**Table 6. Functioning Stream Buffer Width Standard
 (Minimum buffer width with no reduction option)**

Stream Type	Buffer Width
F	100 feet
Np	50 feet
Ns	50 feet

However, nearly all of the stream buffers in Kirkland are **degraded** (e.g., containing lawn or non-native plants), **are sparsely vegetated or contain invasive species**, and thus would not meet the standards for the buffers in Table 6.

Option 2: Reduction of Degraded Buffer Width Standard Using Table 7

Table 7 below is the stream buffer widths for **degraded buffers** based on Best Available Science. The buffer widths provide sufficient width to allow for reductions while still protecting the streams.

**Table 7. Degraded Stream Buffer Width Standard
 (Wider buffer width to allow for reduction and averaging options)**

Stream Type	Buffer Width
F	115 feet
Np	65 feet
Ns	50 feet

Similar to wetlands, the stream buffer width can be reduced by up to $\frac{1}{4}$ (**25%**) of the buffer width in Table 7, provided that mitigation sequencing is done in most cases and native plantings and the mitigating measures in Table 3 are met.

The buffer widths in Table 7 are the same as the buffer widths for the shoreline regulations, except for the last stream type, Ns, which is wider in Table 7 to reflect current BAS. According to The Watershed Company, the buffer widths for the shoreline regulations are slightly below BAS standards to allow for a reduction, but the consultants believe that a case can be made to use the same buffer widths so that Chapter 83 and Chapter 90 are consistent.

Option 3: Combination of Reduction and Averaging of Stream Buffer Width Using Tables 7 and 8

It is acceptable under BAS to both reduce and average stream buffer widths when the buffer is degraded and a wider buffer is used. As explained in the Wetland section above, averaging a buffer means to reduce the buffer width in one location and enlarge the width in another location on the property so that the total square footage of buffer area after averaging is equal to the area required before averaging.

Under BAS, the **narrowest width of a stream buffer** using averaging is the width listed below in **Table 8**:

Similar to Option 2, mitigation sequencing, native plantings and the mitigating measures in Table 3 should be required in most cases.

Table 8. Averaging Degraded Stream Buffer Width Standard)

Stream Type	Narrowest Buffer Width
F	75 feet
Np	30 feet
Ns	30 feet

3. **Recommendation:**

Staff recommends the following options for stream buffer widths:

Buffer Option 2	Buffer Reduction of up to ¼ (25%) of the degraded buffer width in Table 7 and planted with native planting.
Buffer Option 3	Combination of Buffer Reduction and Averaging of the degraded buffer width . This provides an additional degree of flexibility where buffer conditions merit. Buffer averaging portion cannot be narrower than listed in Table 8.

Option 1 is not recommended because it is rare that an existing buffer in Kirkland is of high quality and fully functioning. If the options are made available, many people would try to make the case that the buffers are functioning when they are actually not.

The recommendation provides applicants with flexibility to consider several options depending on the quality of the existing buffer, their proposed development and their willingness to financially and time wise commit to a long term monitoring and maintenance program when enhancement is required.

VI. SETBACK FROM A BUFFER (Low Policy Issue)

A. Background:

The **purpose of the setback from a wetland or stream buffer** is to allow access for maintenance and repair of the primary structure without disturbing the actual buffer. The buffer setback provides protection to the buffer from development activities, use, and routine maintenance occurring adjacent to the buffer (e.g. staging area for building construction, window washing, painting and other repair and maintenance activities). Therefore, buildings and other above ground structures need to be set back from the wetland or stream buffer.

Buffer setback and minor improvements are currently defined as:

- Buffer Setback (KZC 90.30.3): The existing regulations require a setback distance of **10 feet** from a designated or modified wetland or stream buffer within which no buildings or other above-ground structures may be constructed, except as provided in [KZC 90.45\(2\)](#) and [90.90\(2\)](#). The buffer setback serves to protect the wetland or stream buffer during development activities, use, and routine maintenance occurring adjacent to these resources.
- Minor Improvements (KZC 90.30.9): Walkways, pedestrian bridges, benches, and similar features, as determined by the Planning Official, pursuant to KZC [90.45\(5\)](#) and [90.90\(5\)](#).

B. Width of the Setback from the Wetland or Stream Buffer:

As noted above, Chapter 90 KZC currently requires a 10' setback from the buffer. Some local cities require a 20' setback while most require a 10'. TWC and BAS both would support continuing with the 10' setback. This width is sufficient for maintenance of the primary structure while allowing minor improvements (see below) into the 10' setback. A 20' setback is greater than what is needed to maintain primary structures.

C. Decisional Criteria and Allowed Minor Improvements in Buffer Setback:

Under the current [KZC 90.45\(2\)](#) and [90.90\(2\)](#), the Planning Official (aka, the project planner) may approve minor improvements in the 10 foot wide setback area "*which would clearly have no adverse effect during their construction, installation, use, or maintenance, on fish, wildlife, or their habitat or any vegetation in the buffer or adjacent wetland or steam.*"

The current Chapter 90 KZC decisional criterion requires that the buffer setback not only provide a setback for maintenance of structures, but also to **protect fish, wildlife and their habitat**, but this is not the intent of the buffer setback. The current criterion is more restrictive than is needed under BAS.

Based on this distinction, TWC supports allowing the following minor improvements outright in the buffer setback that can be maintained without disturbing the wetland and stream buffer areas. These are also the same minor improvements that the planners have been permitting as a matter of practice.

- Ground level decks, patios and railings
- Chimneys, bay windows, greenhouse windows, eaves, cornices, awnings and canopies
- Flag poles
- Benches, paths and pedestrian bridges
- Rockeries, retaining walls, maximum 4' high
- Driveways and parking areas
- Garden sculpture, light fixtures, trellises, and similar decorative structures,
- Non- native landscaping
- Stormwater conveyance that results in sheet flow such as rain gardens, and similar techniques

Planning staff has been allowing these minor improvements because they do not impact the habitat or water quality in the wetland or streams and provide the property owner with the option of locating improvements that are typically found in the yard area.

The following more general list of minor improvements would also be appropriate in the buffer setback because they can be maintained without impacting the buffer. These are minor improvements that are similarly permitted in **KZC 115.115, Required Yards**, to extend into the required front/rear/side yards. Some of the improvements below also include those listed above:

- Extend no more than **18 inches** into buffer setback - chimneys, bay windows, greenhouse windows, eaves, cornices, awnings and canopies, and decks above the ground floor.
- Extend no more than **5 feet** into buffer setback – minor improvements not more than 18 inches above finished grade, except those noted below
- Extend no more than **9 feet** into the buffer setback – minor improvements not more 4 inches above finished grade, benches, paths and pedestrian bridges; garden sculpture, light fixtures, trellises, and similar decorative structures; landscaping; flag poles; stormwater conveyance that results in sheet flow such as rain gardens, and similar techniques; and rockeries and retaining walls not exceeding 4 feet above finished grade.

Other local jurisdictions currently allow these types of improvements in the buffer setback.

D. Staff Recommendation:

Staff recommends that:

1. A **10' wide buffer setback continues** to be required and that the required setback buffer is not reduced or enlarged.
2. The **list of minor improvements listed above is permitted outright** in the buffer setback. The proposed minor improvements listed above require minimal maintenance, do not necessitate encroachment into the wetland buffer to maintain, are consistent with the improvements allowed in required yards under Chapter 115 KZC and are supported by BAS. To implement this recommendation, the current definition of minor improvements (KZC 90.30.9) would be revised to include this list.
3. Revise the existing decisional criteria to **delete the criteria** about degradation of habitat or water quality functions of the wetland buffer for considering minor improvements in a buffer setback that are not on the above list of outright allowed improvements.

VII. REASONABLE USE EXCEPTION (Medium Policy Issue)

A. Background:

Reasonable use is 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 benefit 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 benefit factors considered are the seriousness of the harm of the impacts, the extent to which the land involved contributes to the harm, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions.

The City's existing Reasonable Use Exception (RUE) addresses the takings issues by allowing use of the land when strict application of KZC Chapter 90 would deny all economically viable

use of the property. An applicant is eligible after it can demonstrate that even after proposing to reduce the wetland and its buffer to the maximum extent allowable under Chapter 90 KZC, there is no buildable area on the property.

Under the City’s RUE regulations, one **single family home** can be proposed in a **residential zone** and an **office building** can be proposed in a **commercial or industrial** zone. Development is limited to the following area of disturbance based on the total lot area of the property:

Lot Size	Area of Disturbance
Less than 6,000 sq. ft. lot	50% of the lot area can be disturbed
Between 6,000 and 30,000 sq. ft. lot	3,000 sq. ft. area can be disturbed
Larger than 30,000 sq. ft. lot	Between 3,000 sq. ft. area and 10% of the lot area can be disturbed, determined on a case by case basis.

RUE developments must meet all mitigation, maintenance and monitoring requirements of KZC Chapter 90. Compensatory mitigation to achieve no net loss (creation or restoration and enhancement of the wetland or wetland or stream buffer) must be provided on site or within the city’s drainage basin in which the property is located at the same compensatory ratios established for non-reasonable use proposals.

Compensatory mitigation for wetland fill is often impossible to achieve on-site since there is no remaining area beyond the allowed disturbed area and the wetlands, streams and/or the buffer area to add mitigation, particularly at the compensatory ratio shown on Section IV.D. Off-site mitigation is a challenge since there would be very little to no opportunity to find an appropriate site in the drainage basin of the RUE site. Creation of a new wetland or expansion of an existing wetland off site would require new buffers around the wetland that would then encumber the mitigated site and possibly the surrounding properties.

B. Allow Reasonable Use Exceptions in Office and Institutional Zones:

1. Background:

Like the rest of Chapter 90, the RUE section was adopted based on BAS information in the mid 1990’s. Chapter 90 allows RUE’s only in **Commercial, Industrial and Residential** Zones. Current BAS has found that urban uses have a similar range of impacts to wetlands and streams so there is no justification to limit RUE’s to certain zones. The same wetland and stream area functions and values are present regardless of the zone and functioning buffers and other mitigating measures can protect these features. As Kirkland continues to infill, there is more pressure to maximize development regardless of zoning classification.

Other local jurisdictions allow RUEs in a variety of zones (see Attachment 2).

2. **Staff Recommendation**: *Allow RUE's in Office and Institutional Zones so that they are allowed in all zones.*

C. Allow Limited Retail Use in Commercial zones and in Certain Office Zones:

1. Background:

RUE provisions allow **office uses only in Commercial and Industrial zones**. At the time that the City's Chapter 90 regulations were adopted, it was thought that an office use had significantly less impact than a commercial use on a wetland, stream or its buffer. Current BAS indicates that urban uses have a similar range of impacts on a wetland, stream or its buffer.

The City has had requests to allow retail uses eligible for Reasonable Use Exceptions, but they are not eligible. Wayne Seminoff has submitted a letter dated February 12, 2016, requesting to be able to apply for a RUE for a retail use in a commercial zone (see Attachment 3).

BAS identifies and requires measures that minimize impacts to wetlands and streams areas resulting from high intensity land uses whether they may be office or retail use (see Attachment 4). Presumably, similar impacts resulting from either type of use would be minimized by requiring the same measures. The stormwater and toxic runoff from either use would impact the wetland or stream area similarly and measures to reduce these impacts would also be similar.

However, certain types of retail uses, such as uses with drive through facilities or outdoor activities, would have greater impacts on wetlands than other types of retail uses.

As shown in Attachment 2, other local jurisdictions appear to allow unspecified uses in RUE eligible zones.

2. **Staff Recommendation**: *Allow limited retail to be eligible for RUE's in the following zones: Commercial zones and in those Office zones where retail uses are allowed. Staff would propose criteria for the allowable types of retail eligible for RUE's as part of the draft code amendments.*

D. Allow Off-site Compensatory Mitigation in the Kirkland Watershed:

1. Background:

Chapter 90 requires the location of compensatory mitigation to be either on the development site or off-site within the same city drainage basin where the development is proposed, but does not allow the mitigation else in the city or outside of the city. As mentioned earlier, the regulations were based on old BAS and before fee-in-lieu and banking programs were made available.

On-site compensatory mitigation to mitigate for wetland and buffer area loss is often not feasible, and alternative off-site locations are seldom available within the drainage basin where the proposal is located.

TWC recommends adding provisions to allow for off-site compensatory mitigation within the city's watershed pursuant to BAS. Kirkland is located in the Lake Sammamish and Cedar River Watersheds. These off-site options include regional third party wetland mitigation banks, and third party in-lieu fee programs. See discussion of BAS on this subject in [Part A of Technical Report by TWC](#) on page 39-44.

The King County In-lieu fee (ILF) program has been in effect since 2011. Administered by King County, it allows participation by both public and private projects. The permit applicant makes a single payment into the ILF program fund, which pools money for watershed-based projects. Funds are collected by the sponsoring agency or jurisdiction, which is responsible from that point forward for the completion and success of the mitigation, including ensuring that implementation takes place within three growing seasons of receiving funds. The applicant's fee is based directly on the project impact and includes all costs for the mitigation, including design, land acquisition, materials, construction, administration, monitoring, and stewardship. After paying the fee, the applicant has no further responsibility.

Wetland banking is another 3rd party option. The wetland banking option is administered by private parties or non-profits with oversight by Ecology, the Corps and other agencies. It has become more common, but Kirkland is outside the service area of the only site currently in King County (the Springbrook Creek Mitigation Bank). Another mitigation bank site located in Redmond, (Keller Farm Mitigation Bank) is going through review by the Ecology and the Corps and its service area is expected to include Kirkland. But as of now this off-site mitigation option is currently not available to permit applicants. Wetland banks are similar to ILF, except that wetland bank projects are generally improved in advance of impacts at established sites, while with ILF, the project is implemented after enough credits are pooled to purchase a mitigation site. Therefore ILF may result in more lag time between project and compensatory mitigation.

King County's ILF program and the wetland banking option are mitigation alternatives for applications where on-site mitigation is not feasible. The benefits to Kirkland of allowing permittees to use ILF include:

- Providing predictability and consistency to the permitting process;
- Reducing the need for applicants to design and implement mitigation;
- Compensating for impacts by addressing the ecological needs of the watershed;
- Targeting larger, more ecologically viable and sustainable projects than allowed by traditional mitigation; and
- Providing a prioritization strategy for watershed-wide restoration sites and projects; and ensuring that mitigation projects function as intended in perpetuity.

Kirkland in particular could benefit from these options, as opportunities for worthwhile and meaningful on-site, in-kind mitigation dwindle in the developing landscape.

2. **Staff Recommendation:** *Allow off-site mitigation in Kirkland's Watershed where there is a mitigation site identified by King County or approved by the State Departments of Wildlife or Ecology through the in-lieu fee or mitigation banking programs respectively. Staff will come back with more details on how these would be administered and criteria for eligible projects in the draft code amendments.*

E. Make Lapse of Approval for Reasonable Use Exceptions Consistent with other Land Use Decisions:

1. Background:

Chapter 90 requires submittal of a building permit application within one year of approving the RUE, with a one time, one year extension. This is inconsistent with all other permit expiration time limits. Process I, IIA, and IIB allow submittal of complete building permit application up to five years after approval of a development permit, with substantial completion within seven years of the approved development permit. RUE's should be brought into consistency with lapse of approval time limits for other land use decisions.

Chapter 90 currently states that wetland and stream delineation studies are valid for two years. This may be the past reason for the current short lapse of approval time. Based on current BAS, these studies can be valid for five year. Other local jurisdictions allow the studies to be valid for 5 years consistent with BAS. TWC and staff recommend that a code amendment be made to use 5 years as the time period for these studies. This change would align with extending the lapse of approve to be consistent with other zoning permits.

2. **Staff Recommendation:** *Change the lapse of approval for RUE's to be the same as other zoning permits.*

F. Allow Modification to Garage Width Standards:

1. Background:

[KZC 115.43.3.b](#) limits the garage width to no more than 50 percent of the total width of the front façade of a single family home. However this standard **is waived if the lot width as measured from the back of the required yard for the front façade is less than 55 feet wide**. There are situations where more flexibility is needed from the garage width requirement for RUE's if the location of the wetland, stream or buffer area and/or size of the property create a hardship.

RUE provisions currently allow the City to approve specific reductions to required yards and buffer setbacks and specific increases to height for RUE's to minimize impact to the wetland, stream and buffer areas so it makes sense to add flexibility for the garage width standard.

3. **Staff Recommendation:** *Waive restriction on garage width if the **area of disturbance on a reasonable use site is less than 55 feet wide as measured from the back of***

***the required yard** for the front façade. This would be consistent with how we treat other sites constrained by width of the lot that are not encumbered with sensitive areas.*

G. Clarify that a Reasonable Use Exception is not Permitted for a Lot Created through a Subdivision:

1. Background:

A subdivision that would create a lot requiring a Reasonable Use Exception is not allowed based on the Zoning Code and Subdivision Ordinance. The RUE section should also state this restriction. The RUE provision is for an existing constricted lot and not for creation of a lot that becomes constricted from the subdivision.

4. **Staff Recommendation:** *State in the RUE section that a subdivision cannot result in the creating of a lot that needs a Reasonable Use Exception.*

H. Clarify that a Reasonable Use Exception can only be on a Legal Building site:

1. Background:

Some property owners own several contiguous lots that are constrained by wetlands, streams and/or their buffers. A Reasonable Use Exception cannot be proposed for each lot unless each lot is a legal building site as defined in [KZC 115.80](#). The RUE provisions should state this.

2. **Staff Recommendation:** *State in the RUE section that only legal building sites as defined in KZC 115.80 are eligible for the exception.*

VIII. NEXT STEP

The next Planning Commission meeting on Chapter 90 amendments will be March 24, 2016, with an open house preceding the meeting.

ATTACHMENTS:

1. City's existing regulations for wetland and stream buffers, and buffer reduction options
2. Summary of Reasonable Use Exception regulations for other local jurisdictions
3. Wayne Seminoff letter dated February 12, 2016, concerning retail use not eligible for a Reasonable Use Exception
4. Department of Ecology's list of mitigating measures for certain types of uses

City of Kirkland’s Existing Regulations

Chapter 90 KZC –Drainage Basins
(Adopted in 2002 based on interim ordinance in 1999)

WETLANDS:

KZC 90.45 Wetland Typing and Buffer Widths

Wetland Type	Primary Basin	Secondary Basin
1	100 feet	75 feet
2	75 feet	50 feet
3	50 feet	25 feet

KZC 90.55 4. Wetland Compensatory Mitigation

Wetland Type	Primary Basin	Secondary Basin
1	3:1	3:1
2	2:1	1.5:1
3	1.5:1	1:1

STREAMS:

KZC 90.90 Stream Typing and Buffer Widths

Stream Class	Primary Basins	Secondary Basins
A	75 feet	N/A
B	60 feet	50 feet
C	35 feet	25 feet

Buffer Averaging and Reduction: permitted but no lower than 30% of the buffer width

Reasonable Use Exception: permitted for single family home and office use

Chapter 83 KZC – Shoreline Regulations

Adopted in 2011 based on BAS and Rating System at that time

WETLANDS:

KZC 83.500 Wetland Typing and Buffers

WETLAND CATEGORY AND CHARACTERISTICS	BUFFER
Category I	
Natural Heritage Wetlands	215 feet
Bog	215 feet
Habitat score ¹ from 29 to 36 points	225 feet
Habitat score from 20 to 28 points	150 feet
Other Category I wetlands	125 feet
Category II	
Habitat score from 29 to 36 points	200 feet
Habitat score from 20 to 28 points	125 feet
Other Category II wetlands	100 feet
Category III	
Habitat score from 20 to 28 points	125 feet
Other Category III wetlands	75 feet
Category IV	
	50 feet

KZC 85.500 Compensatory Mitigation

Category and Type of Wetland Impacts	Re-establishment or Creation	Rehabilitation Only ¹	Re-establishment or Creation (R/C) and Rehabilitation (RH) ¹	Re-establishment or Creation (R/C) and Enhancement (E) ¹	Enhancement Only ¹
All Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1

Category and Type of Wetland Impacts	Re-establishment or Creation	Rehabilitation Only ¹	Re-establishment or Creation (R/C) and Rehabilitation (RH) ¹	Re-establishment or Creation (R/C) and Enhancement (E) ¹	Enhancement Only ¹
Category I – based on score for functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I Natural Heritage site	Not allowed	6:1 Rehabilitation of a Natural Heritage site	Not allowed	Not allowed	Case-by-case
Category I Bog	Not allowed	6:1 Rehabilitation of a bog	Not allowed	Not allowed	Case-by-case

STREAMS:**KZC 85.500 Stream Typing and Buffers Widths****Stream Buffers Outside of Annexation Area**

(Note: Retained Chapter 90 standards because streams are within large wetland buffers. City will need to remove this table with next Shoreline update)

Stream Class	Primary Basins	Secondary Basins
A	75 feet	N/A
B	60 feet	50 feet
C	35 feet	25 feet

Stream Buffers within Annexation Area

Stream Types	Stream Buffer Width
Type F: All segments of aquatic areas that are not shorelines of the state (Lake Washington) and that contain fish or fish habitat.	115 feet
Type N: All segments of aquatic areas that are not shorelines (Lake Washington) or Type F streams and that are physically connected to a shoreline of the state (Lake Washington) or a Type F stream by an above-	65 feet

Stream Types	Stream Buffer Width
ground channel system, stream or wetland.	
Type O: All segments of aquatic areas that are not shorelines of the state (Lake Washington), Type F streams or Type N streams and that are not physically connected to a shoreline of the state (Lake Washington), a Type F stream or a Type N stream by an above-ground channel system, pipe, culvert, stream or wetland.	25 feet

Buffer Averaging and Reduction: permitted but no lower than **25%** of the buffer width

Reasonable Use Exception: **not** permitted – requires a Shoreline Variance (based on Ecology’s Shoreline Management Guidelines)

Reasonable Use Provision for wetlands and streams

Jurisdiction	Reasonable use provision and code location	Determining Party and Process	Critical areas report needed	Mitigation plan or proposed mitigations required	Zones applicable	Applicable and eligible development standards	Amount of area permitted to grade, modify, or develop
Kirkland, Chp 90	Yes, KZC 90.140	Planning Director	Yes	Yes	Residential zone: one single family dwelling, commercial or industrial zone: office use.	Not specified	<6,000 sf: no more than 50% of lot. 6,000 to 30,000 sf.: 3,000 sf. 30,000 sf or greater 3,000 plus 10% of lot area (case-by-case).
Kirkland, Chp 83, SMP	Not permitted, requires shoreline variance						
Bellevue	Yes, 20.25H, section X	Critical Areas Land Use Permit, Planning Director	Yes	Yes	All	Not specified	Non Single Family zones: 10% of land area or 3,000 sf whichever is greater. Single family zones, small lots ≤1 acre: varies from 1,410 to 3,000 sf. Single family zones, large lots>1 acre: 10% of lot.
Bothell	Yes, 14.04.140	[Planning] Director	Yes	Not specified	Not specified	Not specified	Not specified
Kenmore	Yes, 18.55.180	City Manager	Yes	Yes	Not specified	Not specified	Not specified
Newcastle	Yes, 18.24.070	Departmental recommendation to Hearing Examiner	Not specified	Varies, case by case determination	Not specified	Not specified	Not specified
Redmond	Yes, 21.76.070 U	Variance, "Approval authority"	Not specified	Yes	Not specified	Not specified	Minimized as much as possible
Renton	Yes, 4-9-250 B (variance chapter)	Variance, Community and Economic Development Administrator		Yes		Wetlands; a) creation/restoration/enhancement ratios; b) buffer width reductions; c) new or expanded single family residence on existing legal lot with a category IV wetland. Streams and lakes: buffer width restrictions, new or expanded single family residential or a pre-platted lot	For single family residential with Category IV wetland, or Type F, Np, or Ns stream/lake: 5,000 sf of impervious surface including access. Otherwise, the minimum amount necessary to accommodate the proposal.
Sammamish	Yes, 21A.50.070, 2	Planning Director	Not specified	Varies, case by case determination	Not specified	Not specified	Minimum necessary to allow for reasonable use of the property
Woodinville	Yes, 21.24.080 2	Development Services Director, Hearing Examiner	Not specified	Varies, case by case determination	Not specified	Not specified	Minimum necessary to allow for reasonable use of the property
King County	Yes, 21A.24.070	Director decision	Yes	Varies, case by case determination		Alterations to critical areas, critical area buffers, critical area setbacks	For single family residential, no more than 5,000 sf or 10% of lot, whichever is greater. Otherwise, minimum necessary to allow for reasonable use of the property.

Wayne Seminoff
P.O. Box 956
Kirkland, WA 98083

Teresa Swan
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

RE: Code Change Request

February 12, 2016

Dear Teresa,

I am writing to you to request a code change to the City of Kirkland's Drainage Basin Chapter (KZC 90) that affects parcel number 1238500100 located at the address 8734 1120th Avenue Northeast in the City of Kirkland, Washington. There is a glitch in the current code that prohibits any kind of retail use to be located within a retail zone under the Reasonable Use Exception pertaining to wetlands properties.

The information published by the City of Kirkland about this property on the King County Department of Assessment's website is shown in the Drainage Basin Chapter. The site describes the current land zoning code to be RH 1B and the current property zoning code to be "C", both of which indicate this parcel being a retail zoned property. Some corrections are needed on the department website that state that no delineation study has been completed to date although a study took place in 2014. Also, the percentage deemed "unusable" is zero percent.

I recently purchased this property with the understanding that I could conduct a retail business on property that was zoned accordingly. If the minor change in the Reasonable Use Exception is not corrected, this will be a tremendous hardship for me and my family.

It appears that the retail-use was inadvertently left off when someone wrote this exception for the reasonable use for wetland properties only.

Please consider changing the reasonable use portion of the code affecting parcel number 12385001000 so that I may run a retail business on this property as the property is zoned for retail use by the City of Kirkland.

Thank you in advance for your consideration.

Sincerely,


Wayne Seminoff

**Modified to use with the 2014 Washington State Rating System
for Western Washington**

Table 8C-8. Examples of measures to minimize impacts to wetlands from proposed change in land use that have high impacts. (This is not a complete list of measures.)

Examples of Disturbance	Activities and Uses that Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Warehouses • Manufacturing • Residential 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland
Toxic runoff*	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Application of agricultural pesticides • Landscaping 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Commercial • Landscaping 	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces • Lawns • Tilling 	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Residential areas 	<ul style="list-style-type: none"> • Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract
Dust	<ul style="list-style-type: none"> • Tilled fields 	<ul style="list-style-type: none"> • Use best management practices to control dust
<p>* These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.</p>		