CITY OF KIRKLAND
PLANNING AND BUILDING DEPARTMENT
123 FIFTH AVENUE, KIRKLAND, WA 98033 425.587.3600
www.kirklandwa.gov

MEMORANDUM

Date: **March 16, 2016**

To: **Planning Commission**

From: **Teresa Swan, Senior Planner**
Joan Lieberman-Brill, AICP, Senior Planner
Jeremy McMahan, Development Review Manager
Paul Stewart, AICP, Deputy Director

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:

- Follow-up on Buffer Width Standards
- Non-Conformances
- Permitted Uses and Activities
- Number of Parcels Impacted by the Code Amendments
- Effect of Code Amendments on Prior Approvals and Pending Permits

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 February 25, 2016, the Planning Commission held a study session and discussed 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

The Commission requested additional information of buffer widths and deferred providing direction on the topic until they have a better understanding of how buffers are addressed in neighboring jurisdictions and how Kirkland might regulate nonconformances.

Follow this link to view the current Chapter 90 regulations. A copy is also provided as Attachment 6 to this memorandum.

III. FOLLOW-UP ON WETLAND BUFFER WIDTH STANDARDS

At the February 25, 2016 meeting, the Planning Commission requested that staff bring back an analysis of how other jurisdictions establish buffer widths.

Staff's recommendation is to adopt wetland buffer widths that assume that the existing buffer is of poor quality (lawn, invasive plants, graded, filled, sparsely vegetated). See Table 1 below. Nearly all of the buffers in Kirkland meet these conditions. The size of the buffer widths found in Table 1 provide adequate distance from the critical area to off-set the poor quality of the buffer. The buffers in Table 1 are consistent with Ecology guidance for poor quality buffers. The applicant can choose to vegetate the buffer with native plants to improve the buffer and request a **reduction** in the buffer width of up to one-fourth (25%). Doing so would result in the buffer widths found in Table 2.

Table 1. Recommended Wetland Buffer Widths

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)

Department of Ecology recommends the following buffer widths for buffers that contain native vegetation throughout and are well functioning. Kirkland has very few buffers that are well vegetated and functioning, with the exception of some areas in the Finn Hill annexation area, where development densities are lower, and in some park areas.

Table 2. Department of Ecology Buffer Width for Well Vegetated Buffer

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			

The staff recommendation of using Table 1 as the standard buffer widths represents a more realistic and transparent approach given the general low quality of the buffers throughout Kirkland. It would be misleading to establish the buffer widths in Table 2 as the standard, and to then add a footnote or condition that buffers must be increased by a certain amount or percentage when almost every property would not be eligible for the buffer widths in Table 2. Instead, this approach would provide predictability for a property owner or developer as to the maximum buffer width that would be required. Criteria for buffer width reductions would be established, providing an opportunity for greater flexibility, and the creation of a better functioning buffer where a narrower but enhanced buffer may be superior to a wider buffer in poor condition.

Staff has done a survey of other local jurisdictions which have updated their buffer widths following the 2014 DOE updates. Staff found that many start with a similar Table 2, but require an increase in buffer widths when the buffer is not well vegetated and functioning (see Attachment 1). None of the jurisdictions surveyed indicate the extent to which the buffer width would be required to be increased, resulting in a discretionary, negotiated process which could be time consuming and unpredictable. All of the jurisdictions surveyed provide options for reductions in buffer width that may be considered with a professional wetland study. Reductions from standard buffer widths are generally limited to no more than 75% of the standard buffer, with a variety of different criteria and approaches provided.

IV. SINGLE FAMILY NONCONFORMANCES (High Policy Issue)

To meet current Best Available Science, buffer widths for most wetlands and streams will need to be increased. While there are already many nonconforming structures in Kirkland due to current buffer and buffer setback requirements, the buffer increases will cause additional structures or portions of structures to become nonconforming.

When considering how to address such nonconformances structure, the Planning Commission should review and consider the actions, goals and policies for critical areas adopted in the new **Environment Chapter** of the Comprehensive Plan. Some of these goals and policies include:

- Actions: Restore our natural systems and critical areas including streams, wetlands, habitat areas and Lake Washington for maximum ecological value and functions.

- Goal E-2: Protect, enhance and restore trees and vegetation in the natural and built

Environment.

- Policy E-1.2: Manage activities affecting air, vegetation, water, and the land to maintain or improve environmental quality, to preserve fish and wildlife habitat, to prevent degradation or loss of natural features and functions, and to minimize risks to life and property.
- Policy E-1.3: Manage the natural and built environments to achieve no net loss of the functions and values of each drainage basin; and proactively enhance and restore functions, values, and features

The challenge is to ensure implementation of these important goals and policies while providing property owners with reasonable use of their properties. It should be noted that nonconformance regulations address those activities that can be conducted without a request for buffer modification or averaging or through reasonable use provisions. Activities beyond what is allowed by nonconformance regulations may still be pursued through those other processes.

The City's current nonconformance provisions relating to wetlands and streams are found in KZC Chapter 90 (Drainage Basins) and in KZC Chapter 162 (Nonconformance). KZC Chapter 162 addresses nonconformance citywide unless a section in another chapter supersedes it, such as certain nonconforming provisions in Chapter 90. Staff intends to consolidate all regulations related to critical area nonconformances into either Chapter 90 or 162.

The table below is an overview of the different issues for nonconforming structures, the current applicable code section and staff recommendations that are further discussed in the following sections.

Nonconforming Single Family Structures

Section Below	Action (in order of least impacting)	Current Regulations
A.	Maintenance and repair	Section 90.20.6 KZC **does** allow it
B.	• Reconstruction as part of maintenance of repair project • Reconstruction due to fire or acts of nature	• Section 162.35.13.a **does not** allow it • Section 162.30.1 **does not** allow if exceeds 50% of assessed value of improvement. Shoreline regulations do allow complete rebuild/restore
C.	Expansion of nonconforming structure that **does not increase** the degree of nonconformance	Section 90.20.6 **does** allow expansion of nonconforming structure if it does not increase nonconformance

D.	Expansion of nonconforming structure that **increases the degree of nonconformance**	Section 162.45 **does not** allow

A. Maintenance and Repair of Nonconforming Structures

Issue: Should the regulations continue to allow maintenance and repair of non-conforming structures.

1. Background:

   Maintenance and repair to a nonconforming structure is allowed as an exemption under Section 90.20.6 KZC:

   General Exceptions: Normal and routine maintenance or repair of structures; provided, that such activities do not increase the previously approved structure footprint within a sensitive area or its buffer. Increases in structure footprint outside of such areas shall be allowed, even if all or a portion of the previously approved footprint is within such areas.

2. Other local jurisdictions:

   All other local jurisdictions surveyed allow maintenance and repair of nonconforming structures.

3. Staff recommendation:

   Continue to allow maintenance and repair as an exemption under Chapter 90 for all structures.

   Does the Commission agree?

B. Reconstruction of Nonconforming Structures

Issue: Under what standards should non-conforming structures be allowed to be reconstructed due to casualty damage.

1. Background:

   Maintenance and repair of nonconforming structures is currently limited to that which is "normal and routine". Reconstruction is not currently permitted in Chapter 90 and KZC Chapter 162. The City's existing regulations on structures damaged due to fire or nature are found in Section 162.30.1 KZC as follows:

> *Special Provision for Damaged Improvements: If a nonconforming improvement is damaged by sudden accidental cause and the damage does not exceed 50 percent of the assessed or appraised value of that improvement, whichever is greater, the applicant may reconstruct that improvement. The reconstructed improvement may not be more nonconforming than it was immediately prior to the damage. A building permit to rebuild the nonconforming improvement must be applied for within six (6) months or the nonconformance shall be considered to be terminated and shall not be resumed.*

Thus, a structure must be brought in conformance if a certain percentage of the structure must be replaced or restored due to the casualty damage.

However, Section 83.550.4 for nonconformances under the shoreline regulations allow damaged structures to be replaced, provided that:

a. *The permit process is commenced within 24 months of the date of such damage; and*
b. *The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in this section; and*
c. *The reconstruction locates the structure in the same place where it was, or alternatively if moved, then the least environmentally damaging location relative to the shoreline and any critical areas;*

The 24 month timeline was established to allow for time to process insurance claim, get financing, design rebuild, and apply for building permit.

2. Other local jurisdictions:

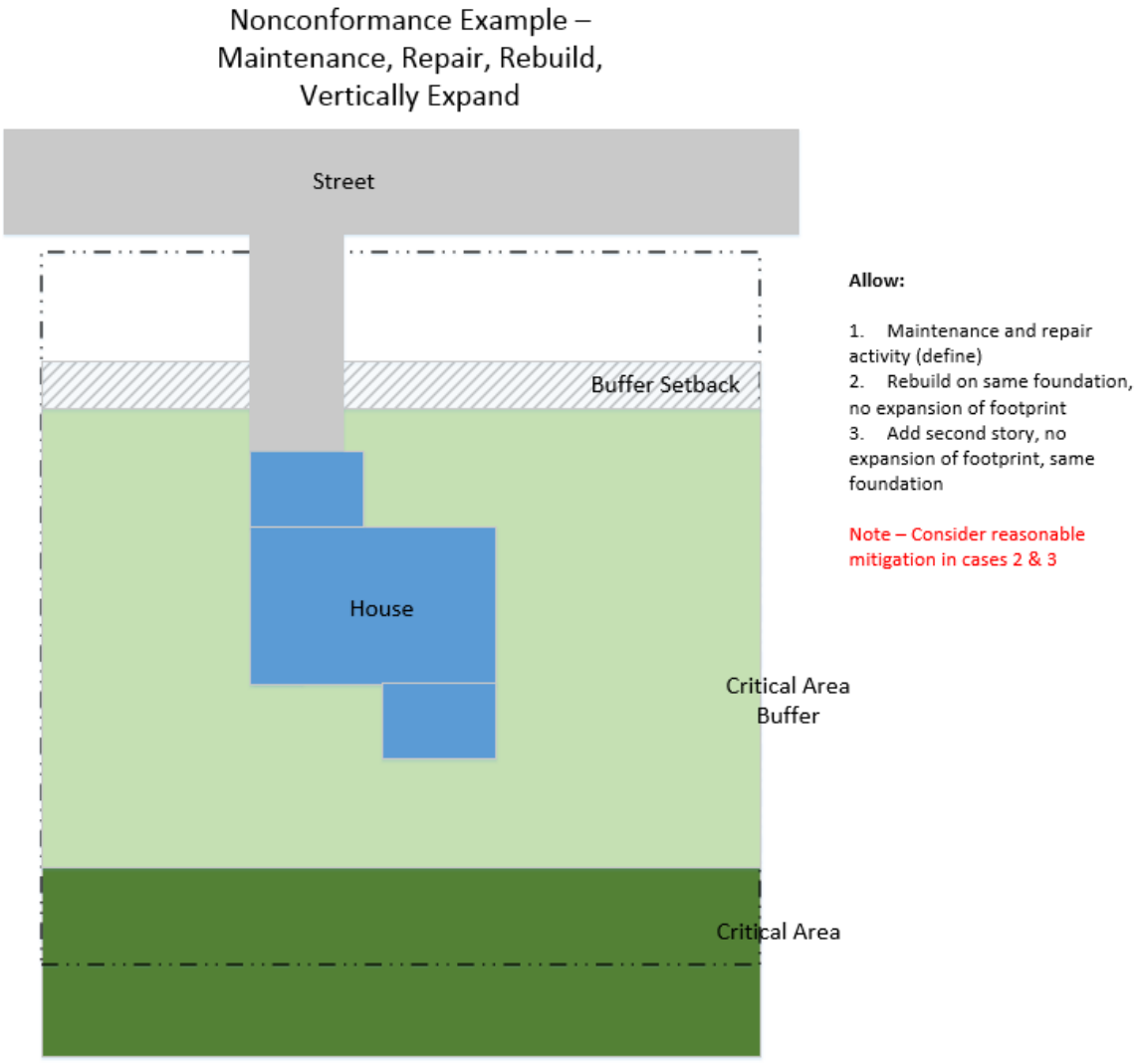
Most local jurisdictions appear to allow reconstruction of nonconforming structures subject to limitations, including no expansion of the existing footprint. Bellevue, Bothell and Woodinville also only allow reconstruction above the foundation (no replacement of the foundation itself). This limitation makes sense because if the foundation is being removed, the development should be subject to mitigation sequencing to other less impactful locations for reconstruction are considered.

3. Staff recommendation:

Allow reconstruction of primary structures, including garages provided there is no expansion of the existing footprint and the reconstruction is built on the existing foundation (no replacement of the foundation itself). Treat structures damaged by fire and natural causes in the same manner but require permits within 24 months consistent with City shoreline rules.

However, staff does not recommend that this provision include accessory structures (such as sheds, play structures, gazebos, or accessory dwelling units), buffer, or buffer setback. Accessory structures are not essential to the use of property and should be relocated out of the critical area, buffer and buffer setback.

Does the Commission concur?



C. Expansion of a Nonconforming Structure that Does Not Increase the Degree of Nonconformance

Issue: Under what standards should a nonconforming structure be allowed to expand if it is outside the buffer and does not increase the degree of nonconformance.

1. Background:

Currently, Section 90.20.6 allows the expansion of a nonconforming structure if the addition is outside of the buffer and buffer setback, and the expansion does not increase the degree of nonconformance.

Section 90.20.6 KZC: General Exceptions: Normal and routine maintenance or repair of structures; provided, that such activities do not increase the previously approved structure footprint within a sensitive area or its buffer. Increases in structure footprint outside of such areas shall be allowed, even if all or a portion of the previously approved footprint is within such areas.

2. Other local jurisdictions:

Many jurisdictions simply allow expansions similar to Kirkland's existing regulations. A number of other jurisdictions (cities of Bellevue, Redmond and Federal Way) limit the exception by floor area or valuation.

3. *Staff recommendation*:

Retain existing provision that allows the expansion of a nonconforming structure if the addition is outside of the buffer and buffer setback, and the expansion does not increase the degree of nonconformance in any way.

Does the Commission concur?

D. Expansion a Nonconforming Structure that Does Increase the Degree of Nonconformance

Issue: Should nonconforming single family homes be allowed to be enlarged, altered or changes if it would increase the nonconformance. If so, what is the preferred approach?

1. Background:

The City's current Section 162.45 KZC **does not permit a structure to be enlarged, altered or changed in any way that would increase the nonconformance**.

> *Section 162.45 Prohibition on Increasing Nonconformances: No nonconformance may in any way be enlarged, expanded, increased, intensified, compounded or in any other way made greater, except as permitted in this chapter.*

Thus, the City's current regulations do not allow a structure located in a buffer or buffer setback to be expanded in any direction into the buffer or buffer setback.

Staff has discussed BAS options with the Department of Ecology. In general, BAS would suggest that structures are not to be expanded into the buffer, even if the existing structure is in the buffer. However, recognizing the constraints on existing nonconforming

structures, the Department of Ecology has indicated that expanding a nonconforming structure further into the buffer is acceptable if the expansion occurs on the side opposite or furthest away from the wetland or stream and if the expansion is limited. They also recognize that it is a policy decision for each jurisdiction based on its goals and policies in the Comprehensive Plan and its extent of urbanization. The policy variability is evident in the range of approaches other jurisdictions have taken on this issue.

2. Other local jurisdictions:

   The table included as Attachment 2 is a list of the regulations for local jurisdictions concerning expansion of nonconforming structures. As reflected in Attachment 2, surveyed jurisdictions are variations on those that allow expansion of existing nonconformances and those that do not. Six of the jurisdiction surveyed do not allow expansions of the footprint. Five jurisdictions allow some limited expansion but no closer than the existing structure.

   The more permissive regulations that allow footprint expansions of 1,000 square feet could result in homes that exceed what Kirkland would consider permissible under current reasonable use (typical 3,000 square foot maximum site disturbance). The City of Bellevue has a more moderate approach for expansion of nonconformances that follows a mitigation sequencing rationale by requiring consideration of options with less impact (away from the critical area). For example, if the objective is to expand the kitchen and there is no feasible means to do this away from the critical area side of the home, then the expansion into the buffer could be approved. However, if the objective is to add a bedroom and this addition can be achieved on the side of the house opposite from the critical area, then that would be the preferred location for the expansion.

3. Discussion:

   One approach to analyzing the different types of changes that would increase the degree of nonconformance is to assess them pursuant to the following four categories. This is most similar to Bellevue's approach:

   a. **No impact:** No new permanent impacts to critical area, buffer, or buffer setback
   b. **Low impact:** New impacts to buffer or buffer setback located on the opposite side of the existing home from the critical area
   c. **Moderate impact:** New impacts to buffer or buffer setback located no closer to critical area than existing home
   d. **High impact:** New impacts to buffer or buffer setback located closer to critical area than existing home

   These options are assessed in the tables and diagrams below.

a. No impact improvements that increase the degree of nonconformance of the existing structure

- Changes within the existing footprint (fill the donut hole, add second story)
- Expansion of existing footprint or additions outside the buffer or buffer setback
- Minimal additions (bay window, eaves, etc.)

These improvements would have no new permanent impact on the functions and values of the critical area or its buffer.

b. Low impact improvements that increase the degree of nonconformance of the existing structure

- Expand footprint of structure into the building setback or buffer that is on the opposite side of the structure from the wetland or stream

These improvements would have relatively low permanent impact on the critical areas because the function of the buffer that is separated by the existing structure is of lesser value compared to the buffer between the structure and the wetland or stream.

c. Moderate impact improvements that increase the degree of nonconformance of the existing structure

- Expand structure into the building setback or buffer that is on the same side of as the wetland or stream

These improvements would have a permanent impact to the critical area since it additional encroachment into the buffer that is protecting the wetland or stream. Prohibiting encroachment of improvements and closer to the critical area than the existing home would constitute relatively moderate impacts. Construction disturbance and future maintenance and repair of the expansion would further increase the impact to the critical area.

d. High impact improvements that increase the degree of nonconformance of the existing structure

- Expand structure into the building setback or buffer that is on the same side of as the wetland or stream

These improvements would have a high permanent impact to the critical areas since it a reduction of the buffer that is protecting the wetland or stream. Construction disturbance and future maintenance and repair of the expansion would further expand the impact to the critical area.

Staff recommendation:

Staff recommends the following approaches to nonconforming homes:

*a. Allow outright **No impact** modifications to an existing nonconforming structure.*

- *Require native revegetation of disturbed area if the buffer is disturbed for construction of these improvements.*
- *Require the application to address any surface water issues*

*b. Allow, subject to review, **Low impact** modifications to an existing nonconforming structure.*

- *Only allow for those structures that have not received prior buffer modifications or reasonable use exceptions*
- *Limit to maximum footprint expansion to 1,000 square feet but not to exceed 50% of the assessed valuation of the structure*
- *Require 1:1 compensatory mitigation of remaining buffer area*
- *Require native revegetation of disturbed area if the buffer is disturbed for construction of these improvements*

*c. Allow, subject to review, **Moderate impact** modifications to an existing nonconforming structure*

- *Only allow for those structures that have not received prior buffer modifications or reasonable use exceptions*
- *Limit to maximum footprint expansion to 500 square feet but not to exceed 50% of the assessed valuation of the structure*
- *Require 1:1 compensatory mitigation of remaining buffer area*
- *Require native revegetation of disturbed area if the buffer is disturbed for construction of these improvements*

*d. Allow, subject to review, **High impact** modifications to an existing nonconforming structure*

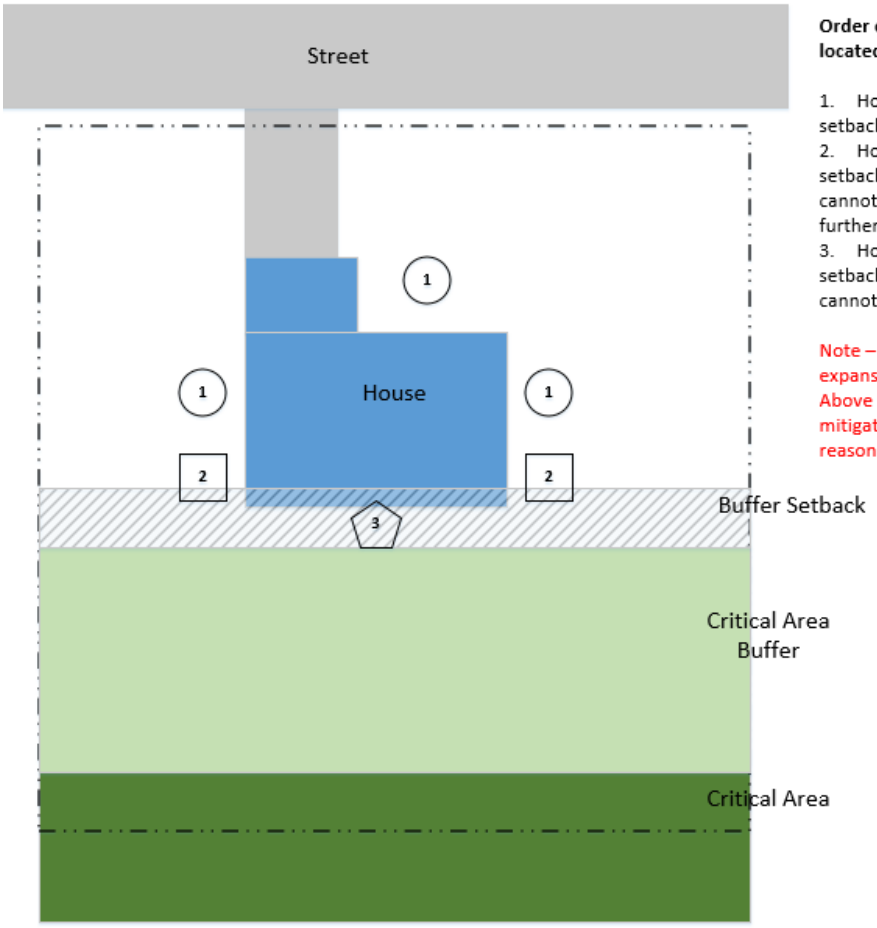
- *Only allow for those structures that have not received prior buffer modifications or reasonable use exceptions*
- *Limit to maximum footprint expansion to 250 square feet but not to exceed 50% of the assessed valuation of the structure*
- *Require minimum 1:1 compensatory mitigation of remaining buffer area. The 1:1 ratio may be appropriate if the expansion is into an existing disturbed area, but a higher ratio is appropriate if the expansion would disturb a forested buffer*
- *Require native revegetation of disturbed area if the buffer is disturbed for construction of these improvements*

For options b, c and d (if considered) mitigation sequencing should be required as diagrammed below to ensure that less impactful alternatives are considered and that temporary and permanent impacts are mitigated. If option d. is considered by the Planning Commission, staff would recommend that we establish a <u>minimum</u> buffer width to avoid impact at or near the edge of a stream of wetland.

<u>Does the Commission agree with these approaches?</u>

Below are examples of the various approaches described above.

Nonconformance Example – Buffer Setback

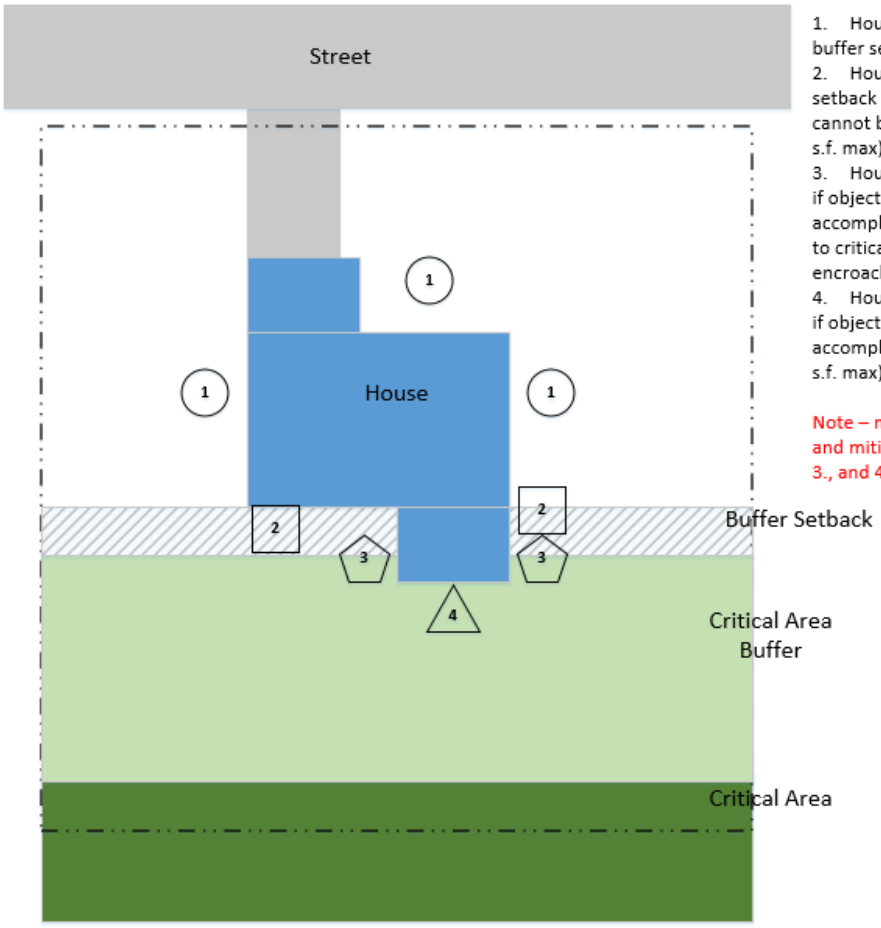


Order of preference when structure is located in <u>Buffer Setback</u>:

1. House expanded outside of buffer setback and buffer
2. House expanded into buffer setback only if objective of expansion cannot be accomplished with 1. No further than existing encroachment
3. House expanded into buffer setback only if objective of expansion cannot be accomplished with 1. or 2.

Note – 250 s.f. maximum footprint expansion is recommended in case 3. Above the limit should be subject to mitigation sequencing and/or reasonable use

Nonconformance Example – Partial Buffer

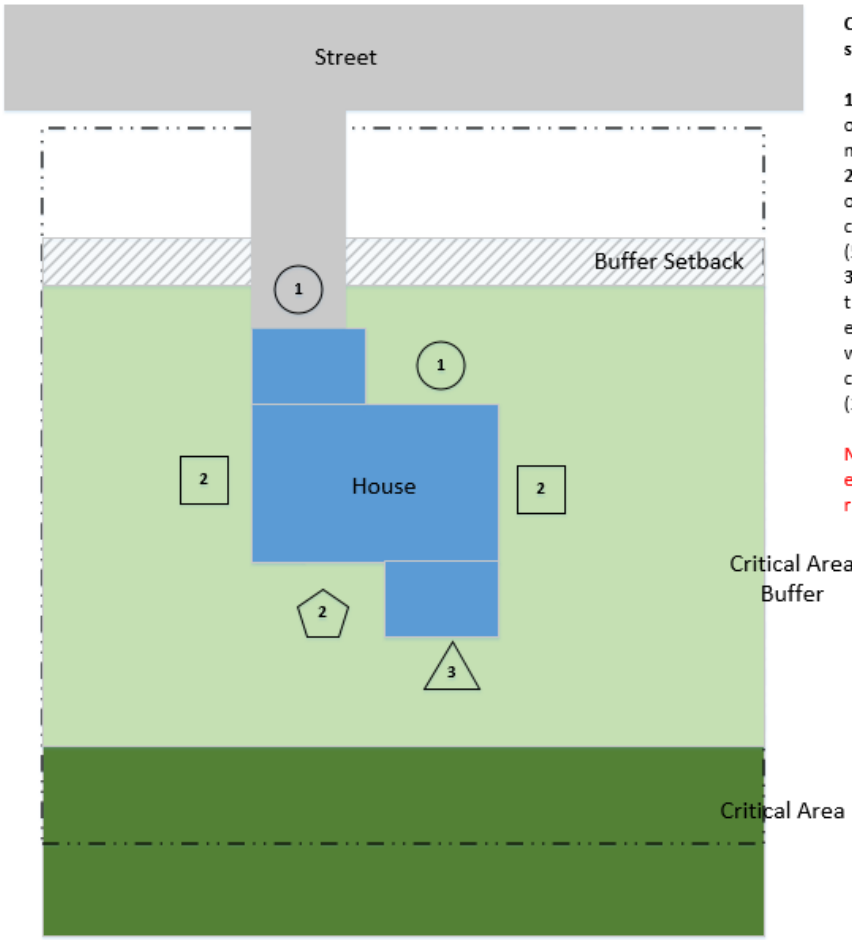


Order of preference when structure is partially located in Buffer:

1. House expanded outside of buffer setback and buffer
2. House expanded into buffer setback only if objective of expansion cannot be accomplished with 1. (500 s.f. max)
3. House expanded into buffer only if objective of expansion cannot be accomplished with 1. or 2. No closer to critical area than existing encroachment (500 s.f. max).
4. House expanded into buffer only if objective of expansion cannot be accomplished with 1., 2., or 3. (250 s.f. max)

Note – maximum footprint expansion and mitigation recommended for 2., 3., and 4.

Nonconformance Example – Full Buffer



Order of preference when entire structure is located in Buffer:

1. House expanded on side opposite the critical area (1,000 s.f. max)
2. House expanded on the sides only if the objective of expansion cannot be accomplished with 1. (500 s.f. max)
3. House expanded further into the buffer only if objective of expansion cannot be accomplished with 1. or 2., but no closer to the critical area that the existing house (250 s.f. max)

Note – maximum footprint expansion and mitigation recommended in all cases

V. PERMITTED USES AND ACTIVITIES (Medium Policy Issue)

The chart below lists the issues that are covered in this section of the memorandum. For each issue noted in the chart, the memo provides background, a summary of other jurisdiction's regulations, and a staff recommendation.

Section Below	Issue	Current Regulations	Staff recommendation
A.	Uses and Activities to which Sensitive Area Regulations Apply	**Very general** description. 90.05 states "The regulations in this chapter apply to activities, work, and conditions in or near	Specify **specific activities** that are regulated by Chapter 90.

		any stream, wetland, frequently flooded area or lake in the City."	
B.	Exceptions - Prior Authorization and Best Management Practices (BMP's)	Section 90.20 **does not** state that all exceptions are subject to prior approval and BMP's.	Add purpose section. Clarify that exceptions are subject to **prior authorization** of the planning official, except for emergency actions, and all exempt activities are subject to **Best Management Practices**. Staff will propose standards based on BMP's for the exempt activities as part of the draft code amendments.
C.	Exceptions- Documentation of Submittal Requirements and Provisions for Authorization and Tracking	Section 90.20.1-9 **does not** include formal submittal requirements or minimum standards for all exceptions. No formal authorization or tracking	• Codify that planning official evaluation to authorize or deny an exception request is required. • Codify that submittal materials as determined by planning official may be required. • Similar to the Shoreline exemption, issue a Sensitive Area exception authorization, noting any required restoration, mitigation or maintenance requirements. • Develop an application checklist listing submittal requirements and describing the exception process (separate from regulations). • Staff will propose submittal requirements for the exempt activities as part of the draft code amendments.
D.	Exceptions – Definition of Maintenance and repair	Section 90.20 **does not** define maintenance and repair.	Define terminology. Staff will bring back a definition.
E.	Exceptions – Prohibition on Increases in Impervious Areas for Roads and Utilities	Section 90.20.4 states: "Such activities **shall not increase the impervious area** (excluding utility poles) or reduce flood storage capacity,"	Continue with existing provision. Clarify by adding provision **prohibiting expansions into areas not previously disturbed.**
F.	Exceptions – Clarify Expeditiously Restored	Section 90.20.4 **does not** set time limit	Restore sensitive areas **prior to final inspection**.

G.	Exceptions – **Structure** Maintenance and Repair 1. Add private roads/driveways as exempt 2. Clarify that complete replacement not exempt	Section 90.20.6 **does not** 1. allow maintenance and repair of private roads/driveways 2. does not state the extent of repair allowed	1. **Allow private roads/driveway** maintenance and repair, and if converting from gravel to pavement, require pervious material 2. Clarify that complete replacement of a building foundation is **prohibited** as an exception, would be treated as a non-conformance
H.	Exceptions – Clarify that Maintenance and Repair **Applies to Utilities**	Section 90.20.4 **does not** state that utility maintenance/repair is exempt	Include Utility maintenance and repair as exempted activities
I.	Exceptions – Require **Retroactive Mitigation** for Emergencies:	Section 90.20.9 **does not** require restoration or mitigation after emergency activity in sensitive area or buffer.	**Require restoration/mitigation** pursuant to mitigation plan prepared by qualified professional and subject to review by the City's wetland consultant
J.	Exceptions – Consider Additional Exemptions: 1. Maintenance or Repair of Existing Non-motorized Park Trails 2. New Non-motorized Park Trails 3. New Non-motorized Public trails, connecting to the Cross Kirkland Corridor 4. New Electrical and other Utility Lines Connecting to Existing Lines and Poles	Section 90.20 **does not** exempt these activities.	Allow these as exceptions, **subject to specific criteria, BMP's and restoration/mitigation**

A. <u>Consider Specifying which Uses and Activities are subject to Sensitive Area Regulations</u>:

Issue: The purpose of this discussion is to be clearly identify what specific uses and activities are regulated by the code.

1. <u>Background</u>: The intent of Chapter 90 is to regulate uses and development activities in order to protect the ecological functions of sensitive areas and their

buffers. Except for specific activities listed in B. below, all improvements in sensitive areas or their buffers (structure or manmade feature) and land surface modification (e.g. grading, excavation, and filing and vegetation or tree removal), are subject to permit approval.

KZC 90.05 states, "**The regulations in this chapter apply to activities, work, and conditions in or near any stream, wetland, frequently flooded area or lake in the City.**" Sections 90.45 for wetlands and 90.80 for streams further state that "**no land surface modification or tree removal shall occur and no improvement may be located in a wetland/stream or its buffer**, except…" and then goes on to list permitted exceptions from sensitive area provisions.

To aid the user of Chapter 90, it would be helpful to be more explicit regarding the specific types of activities that are regulated. Ecology's guidance (as noted in their sample ordinance -view as a PDF and see page 6 and Appendix-3.) breaks down the general topics into the following specific regulated activities in sensitive areas and their buffers:

- The removal, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- The dumping of, discharging of, or filling with any material.
- The draining, flooding, or disturbing the water level or water table;
- Pile driving;
- The placing of obstructions
- The construction, reconstruction, demolition, or expansion of any structure;
- The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
- Class IV- General Forest Practices" under the authority of the "1992 WA St. Forest Practices Act Rules and Regulations, WAC 222-12-030, or as thereafter amended.
- Activities that result in:
    - A significant change of water temperature,
    - A significant change of physical or chemical characteristic of the sources of water to the wetland
    - A significant change in the quantity, timing or duration of the water entering the wetland/stream;
    - The introduction of pollutants.
- Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:
    - Land that is wholly located within a wetland or its buffer may not be subdivided.
    - Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
        - Located outside of the wetland and its buffer; and

- Meets the minimum lot size requirements of Chapter…

2. Other Jurisdictions: Renton, Kent, Bothell and Redmond identify regulated activities per Ecology's guidance and others are e tailored to activities particular to their jurisdiction. Woodinville regulates "alterations" which include grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation, or any other activity that changes the character of the critical area. Woodinville also explicitly exempts passive recreation or similar activities from regulation.

3. *Staff Recommendation: Specify activities that are regulated by Chapter 90.*

   Does the Planning Commission concur?

B. Exceptions – Consider Clarifying that Exceptions are Subject to Administrative Authorization and Best Management Practices

Issue: The purpose of this issue discussion is to be clear on what activities are exempt from needing a permit but still must be undergo an administrative review and authorization.

1. Background: Section 90.20 cites activities in sensitive areas or their buffers that are exempt from sensitive area permit. Referred to as General Exceptions, they are listed in the chart below. The exceptions are intended to be **activities or conditions** in **wetlands or streams or their buffers that have little or no environmental effect on sensitive area structure and functions** (including its water, soil, or vegetation), are temporary, or are an emergency that threatens public health or safety.

   Although a sensitive area permit is not required to perform these activities, **prior authorization from the planning official** (a.k.a. planner) **is required, except for emergency actions.** While these exempted activities would not be subject to mitigation sequencing, exceptions should not be interpreted as permission to degrade a critical area or ignore risks from natural hazards.

   Ecology and TWC recommend that Chapter 90 regulations should be clear on what activities are exempt from needing a permit but still must comply with the Code and City-approved best management practices (BMP's) to minimize temporary impacts (e.g. erosion control and water quality protection). Section 90.20 currently does not reflect DOE and TWC guidance to explicitly state that exceptions are subject to both authorization and to BMP's even though they do not require a permit.

   While some exceptions do contain standards to limit their impact on the sensitive area, they do not necessarily reflect best management practices in effect since the

Chapter 90 update in 2002 or current guidance from Ecology and TWC. For example, the emergency activities exception 90.20.9 does not stipulate that the site is required to be restored after the fact to minimize long-term impacts to sensitive areas.

The following table summarizes the General Exceptions currently listed in Chapter 90 and the standards that apply. Staff is recommending revising this to be clear.

90.20 General Exceptions	
Exceptions	Standards:
1. Activities involving artificially created wetlands or streams intentionally created from non-wetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, retention and or detention facilities, farm ponds, and landscape features, except activities involving wetlands or streams that are created as mitigation for impacts to regulated sensitive areas, or that support state or federally listed threatened or endangered species.	None
2. Legally filled wetlands, or wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.	None
3. Activities in **Type 3 wetlands ≤ 1000 sq. ft.** in primary basins, or affecting **Type 3 wetlands ≤ 2,500 sq. ft.** in secondary basins	None
4. • **Utility work in improved City r-o-w**, with improvements above and underground, including the Cross Kirkland Corridor, and the Eastside Rail Corridor; *(e.g. maintenance or repair **or new** water, sewer power, gas, storm water infrastructure.)* • Normal and routine **maintenance, operation and reconstruction of existing roads**, **streets, and associated r-o-w and structures;** • **Construction of sewer or water lines that connect to existing lines** in a sensitive area or buffer where no feasible alternative location exists based on an analysis of technology and system efficiency; • **Minor replacement or modification of existing facilities by a public utility** in an **improved utility corridor** *(e.g. Seattle City Light Transmission Line corridor for electricity, Puget Sound Energy Transmission and Distribution Line Corridors for gas and electricity, Olympic Pipeline Corridor for hazardous liquid)*	Provided that: 1. Such activities **shall not increase the impervious area** (excluding utility poles) or reduce flood storage capacity, and 2. The construction drawings shall specify that all affected sensitive areas and buffers will be expeditiously restored to their pre-project condition or better.
5. Construction of public **nonmotorized trails** within the **Cross Kirkland Corridor** and Eastside Rail Corridor	Provided that:

	1. The trail is located in a manner that, to the extent feasible, avoids and minimizes impacts to sensitive areas and buffers such as placement on previously disturbed areas, 2. The trail project includes on-site or off-site mitigation of new impacts to affected sensitive areas and buffers 3. Pervious or other low-impact materials are used where practical.
6. Normal and routine **maintenance or repair of *structures*** *(Residential, Commercial, Industrial, Mixed Use, Institutional, etc.);* Increases in the structure footprint outside of such areas *(i.e. sensitive areas or buffers)* shall be allowed, even if all or a portion of the previously approved footprint is within such areas	Provided that: Such activities **do not increase the previously approved structure footprint** within a sensitive area or its buffer.
7. Site **investigative work and studies necessary for preparing and processing land use applications**, including but not limited to hand-dug holes for soils tests, water quality sampling, wildlife studies, and wetland and stream investigations;	Provided that: 1. Any disturbance of the sensitive area or its buffer shall be the minimum necessary to carry out the work or studies. 2. Use of any mechanized equipment requires prior approval of the Planning Official. 3. Areas disturbed by these activities shall be expeditiously stabilized and replanted, as approved by the Planning Official, to restore them to their previous condition.
8. **Educational** activities, **scientific** research, and **passive outdoor recreational** activities such as bird watching.	None
9. **Emergency activities** necessary to prevent an immediate threat to public health, safety, or welfare.	None

Italicized text added for clarity

2. Other Jurisdictions: The surrounding cities of Renton, Bothell, and Bellevue note that the excepted/exempted activity is subject to administrative authorization, while Woodinville and Redmond do not specify an authorization process. All except Redmond provide BMP guidance.

3. *Staff Recommendation: Add purpose section, clarifying the exceptions/exemptions are for activities that have little or no environmental impact, or are temporary in nature, or emergencies. Clarify that the exceptions are subject to prior authorization of the planning official, except for emergency actions, and exempt activities are subject to BMPs. Staff will propose standards based on BMP's for the exempt activities as part of the draft code amendments.*

   Does the Planning Commission concur with this approach?

C. <u>Exceptions – Consider Clarifying Submittal Requirements and Provisions for Authorizing and Tracking:</u>

Issue: General provisions for requiring submittal materials and planning official evaluation to authorize or deny an exception request are not codified. There is no application checklist or formal tracking mechanism. TWC recommends that the review process be defined.

1. <u>Background</u>:

Planning staff needs information to make a well-informed decision for an exception from a sensitive area permit. Current practice includes requesting plans and information defining the proposal and its location, and depending on the scope of the exception request, a wetland delineation and study with the underlying development or land use permit. Without a recent delineation or buffer evaluation, staff cannot know the location of the wetland, its classification, or required buffer to determine if the proposed alteration is within the scope of an exception.

Below are two examples of exception requests that would require a wetland delineation and study:

- Repair and maintenance of a single-family home would typically not require a wetland delineation and sensitive area report, except if the proposal included an increase of the building footprint. In that case, the location of the sensitive area and a wetland/stream rating would be required to determine if the house is staying outside of the buffer. If the house is encroaching further into the buffer, the applicant may proceed to a sensitive area modification review (wetland/stream buffer reduction or averaging).

- Exempt utility or road reconstruction projects or new utility projects typically do require sensitive area delineation and sensitive area report to determine the location and rating of the sensitive area and its buffer. The planner would then assess whether the project extends past the existing improved portion of the right-of-way that is closer to or in a sensitive area. Staff would also review it to determine if there are any increases to impervious surfaces. Additionally, plans for restoration and maintenance of the temporarily disturbed portion of the right-of-way would be required.

Codifying that submittal materials are or may be required would provide predictability and would enable faster assessment of whether a proposed activity is beyond the scope of the general exception thresholds and instead requires a sensitive area permit. Currently the process may take longer than necessary after all the back and forth between parties to collect the necessary submittal materials.

In addition, uniform documentation and tracking of the authorized sensitive area exception is recommended. Similarly to how shoreline exemptions are documented with a shoreline exemption form, a formal sensitive area exception would document the Code citation authorizing the request, and help track the required follow-up restoration and maintenance of the site (see Attachment 3).

2. Other Jurisdictions: The following jurisdictions vary on their submittal and documentation requirements:

   a. Submittal Requirements:

      - **Bellevue's** CAO notes that the proposal will be reviewed as part of underlying permit process, but is silent on submittal materials.

      - **Renton's** CAO notes that the proposal will be reviewed as part of underlying permit process, and notes requirements for submittals, including delineation.

      - **Redmond's** CAO is silent on exemption process and submittal materials. Planner Kelsey Johnson notes that Redmond staff reviews exemptions with underlying development permit. During that review staff identify possible exemption, and may require delineation and report with the underlying permit. Redmond's Natural Resource Division evaluates and rates streams every 2 yrs. to confirm their stream classification, so they don't need as much information from applicants as required for wetland exemptions. For wetlands exemptions confirmation of rating from the applicant is needed, unless a recent project in the same sensitive area has already provided the classification, and then staff evaluates plans to determine if proposal meets exemption criteria and whether a critical area report is required to identify restoration / mitigation.

      - **Bothell's** CAO is silent on submittal requirements for exemptions

      - **Woodinville's** CAO is silent on submittal requirements for exemptions.

   b. Approval Documentation:

      - **Woodinville** issues an administrative authorization as part of building permit.

      - **Renton** issues a letter of exemption.

      - **Bellevue** authorizes approval as part of the underlying review process.

- **Redmond** authorizes exemption as part of building permit or land use permit and attaches email response to file for tracking purposes. Permit tracking system notes critical area exemption citation.

- **Bothell** email or letter filed to authorize/confirm exemptions; if denied the applicant may proceed to critical area review.

3. *Staff Recommendation:*
   - *Codify planning official evaluation to authorize or deny an exception request.*
   - *Codify that submittal materials as determined by planning official may be required.*
   - *Similar to the Shoreline exemption, issue a Sensitive Area exception authorization, noting any required restoration, mitigation or maintenance requirements.*
   - *Develop an application checklist listing submittal requirements and describing the exception process (separate from regulations).*
   - *Staff will propose submittal requirements for the exempt activities as part of the draft code amendments.*

   Does the Planning Commission concur with this approach?

D. Exceptions – Consider Defining Maintenance and Repair:

Issue: The regulations should include a definition or standards for "maintenance and repair".

1. Background: There is no definition of maintenance or repair in the Kirkland Zoning Code. The Building Code definition of repair is: "the reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage". Merriam Webster defines maintenance as "the act of keeping property or equipment in good condition by making repairs, correcting problems, etc."

   As indicated below, normal and routine maintenance is explicitly exempt in sensitive areas and their buffers in two situations - for roads and for structures. Structures are any building or constructed object. **Expansion of the facility or structure being maintained or repaired into the sensitive area or its buffer is prohibited**.

   The chart below describes the current Chapter 90 regulations regarding normal and routine maintenance and repair.

90.204. • **Normal and routine maintenance, operation and reconstruction of existing roads, streets, and associated r-o-w and structures;**	**Provided that:** **3. Such activities shall not increase the impervious area (excluding utility poles) or reduce flood storage capacity, and** **4. The construction drawings shall specify that all affected sensitive areas and buffers will be expeditiously restored to their pre-project condition or better.**
90.20.6. **Normal and routine maintenance or repair of structures *(Residential, Commercial, Industrial, Mixed Use, Institutional, etc.);* Increases in the structure footprint outside of such areas *(i.e. sensitive areas or buffers)* shall be allowed, even if all or a portion of the previously approved footprint is within such areas.**	**Provided that:** **Such activities do not increase the previously approved structure footprint within a sensitive area or its buffer.**

Italicized text added for clarity

1. Other local jurisdictions: Bellevue and Bothell have definitions for repair and maintenance. Bellevue's is more nuanced than Bothell's. Redmond and Woodinville do not define repair and maintenance, but instead like Kirkland, cite the specific situations when repair and maintenance is allowed.

   - **Bellevue's definition:**
     "For purposes of this section, repair and maintenance **includes replacement** of facilities and systems, **or expansion so long as the area of permanent disturbance of the critical area or critical area buffer is not expanded**. As applicable to public rights-of-way, private roads, access easements, parking areas and driveways, repair and maintenance also includes removing and replacing improvements within the area of permanent disturbance, and **expansion of paved areas so long as the area of permanent disturbance within the critical area or critical area buffer is not expanded**."

   - **Bothell's definition:**
     "Repair or maintenance means an activity that restores the character scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition."

2. *Staff recommendation: Provide definition terminology. Staff will bring back a proposed definition.*

   Does the Commission concur?

E. Exceptions – Clarify the Prohibition on Increases in Impervious Areas for Roads and Utilities:

Issue: The issue is to determine under what standards road and utility expansions or improvements should be allowed.

1. Background: Section 90.20.4 allows utility work (including new utilities) and roadway maintenance in existing rights-of-way, provided there is no increase in impervious areas. Staff recommends clarifying that as long as a road or utility work does not expand into areas not previously disturbed, it is allowed. An example is where a gravel shoulder is resurfaced with previous pavement, maintaining the existing level of perviousness. In this example the pavement has not been expanded beyond an area of existing permanent disturbance.

   Ecology agrees that this example would qualify as meeting the BAS threshold of no net loss, since it is limited to an area of permanent disturbance. Ecology stresses not increasing impact to the sensitive area or buffer and their guidance on BAS supports repair maintenance and reconstruction as long as impervious area is not increased. TWC considers expansion into areas not already permanently disturbed as constituting more impact than an exception is meant to allow.

2. Other local jurisdictions:
   - Redmond planner Kelsey Johnson explained that while Redmond doesn't exempt new utility or road projects, for exempt reconstruction of existing utilities or roads, already graded area (permanently disturbed) can be encroached upon with pervious material.

   - Bellevue planner Michael Payne described that an exempt repair and maintenance project is one that does not expand the area of **permanent disturbance**. He gave an example of a request to pave a gravel parking area, which is improved row area. It would be permitted as long as it didn't expand past the graveled portion on the site (and was constructed with pervious pavement).

Are road and utility expansions allowed into areas previously disturbed?	
Jurisdiction	
Kirkland	Prohibits **increase of the impervious area** (excluding utility poles)
Bellevue	**Prohibits** the footprint of exempt maintenance activities associated with roads to **expand beyond areas of permanent disturbance** within the sensitive area or buffer.
Redmond	**Prohibits** exempt maintenance associated with roads to **expand impervious area or further encroach** into the sensitive are or its buffer.
Bothell	**Prohibits encroachment** of the alteration associated with roads **further than the preexisting footprint** within the sensitive area and buffer.

Woodinville	Prohibits encroachment of exempt maintenance associated with roads into **previously unimproved areas**.

3. *Staff recommendation: Continue current practice. Clarify by adding an additional standard to 90.20.4 prohibiting new facilities or expansions of existing facilities into areas not previously disturbed as an exception. New facilities or expansions would need to be reviewed through a permit process.*

Does the Commission agree with the staff recommendation?

F. Exceptions - Consider Clarifying Expeditiously Restored:

Issue: The code should specify the timeframe when restoration should be completed.

1. Background: Section 90.20.4 requires that for utilities, roads and associated facilities, construction drawings shall specify that all affected sensitive areas and buffers will be **expeditiously restored to their pre-project condition or better**.

   Without a clear expectation of when restoration is to be completed, work may drag on, impacting the environment and requiring prolonged staff involvement and resources. Sensitive area reductions and averaging proposals require that the restoration be performed prior to occupancy or final inspection, as applicable. (Planners have noted that even that time frame can be problematic because if all other work except restoration is done, there is pressure to allow the sensitive area restoration to occur after final inspection.)

   Pursuant to KMC 29.12.010, exceptions require a land surface modification permit if filling, grading or vegetation removal are involved. Additionally, construction, maintenance and repair activities are subject to building permit, pursuant to IBC 21.06.215. Since most exemptions require an underlying development permit, restoration completion can be linked to the final inspection. Ecology supports this timeframe, and recommends no later than a year out.

2. Other jurisdictions: Redmond, Bothell and Woodinville are silent on time frames for restoration to pre-project condition. Bellevue CAO regulations state that completion of required restoration associated with exemptions is within the same timeframe as required for the underlying development permit. Although it isn't explicitly stated, Redmond Planner Kelsey Johnson confirmed that since Redmond administers exemptions along with the underlying permit it also ties the required restoration to same timeframe as required for the underlying development permit.

Time Limit for Restoration of affected sensitive areas and buffers?	
Jurisdiction	
Kirkland	silent
Bellevue	Yes, completed prior to final inspection or occupancy, as applicable with underlying permit
Redmond	silent
Bothell	silent
Woodinville	silent

3. *Staff recommendation: Codify that restoration/mitigation is required prior to final inspection of underlying permit, but in no case more than one year from completion. This timeframe should apply to all exemptions that require restoration.*

Does the Planning Commission concur?

G. Exceptions – Maintenance and Repair of Structures

Issue: Under what standards should maintenance/repair and replacement of private roads/driveways and structures be an exception or require a permit review.

1. Structures – Consider that Maintenance and Repair Applies To Private Roads/Driveways:

a. Background: Currently 90.20.6 **does not exempt private road maintenance and repair and replacement.** Since normal and routine maintenance and repair is allowed for all structures (which include public and private buildings) staff believes that private street and driveway maintenance and repair should also be exempt, as long as it does not encroach further into the sensitive area or buffer.

Too, since replacement of a gravel driveway with pavement may increase the level of impact unless pervious pavement is used, any conversion from gravel to hard surface should be conditioned to use pervious materials to meet BAS.

b. Other jurisdictions: Cities surveyed are split on exempting private road maintenance/repair.

Is private road/driveway repair and maintenance exempt?	
Jurisdiction	
Kirkland	No
Bellevue	Yes
Redmond	yes
Bothell	Yes, if construction permit not required

Woodinville	No

c. *Staff recommendation: Allow repair, and maintenance of existing private roads and driveways accessing structures located in sensitive areas or their buffers to be exempt. If converting from gravel to pavement, require pervious paving.*

Does the Commission agree?

2. Structures – Clarify Repair And Maintenance Exemption Does Not Apply To Complete Replacement

a. Background: Section 90.20.6 allows normal and routine maintenance or repair of **structures**, provided that such activities do not increase the footprint of a structure within a sensitive area or its buffer. TWC recommends that the City **clarify that the exemption does not apply to complete replacement**, which should be required to undergo sensitive area review for non-conformances (see Section IV, above).

Current practice prohibits the foundation of a structure (e.g. residential, commercial or other building, either private or public) to be replaced in keeping with the intent that the structure will not be located in a sensitive area forever.

Repair of structures has been interpreted to include structural members other than the foundation. This is consistent with Ecology guidance. Also see Non-conforming discussion in Section IV above.

b. Other jurisdictions: Except for Redmond, surveyed jurisdictions do not exempt replacement of building foundations. Instead they are subject to non-conformance regulations. Redmond allows structures to be reconstructed **if destroyed** by more than 50% of its assessed or appraised value, whichever is greater, if located in a buffer.

Is replacement of building foundations exempt?	
Jurisdiction	
Kirkland	No
Bellevue	No
Redmond	No, except if destroyed by acts of nature.
Bothell	No
Woodinville	No

c. *Staff recommendation: Clarify that complete replacement is considered under the non-conformance section, not as an exception to sensitive area permit.*

Does the Commission agree?

H. Exceptions – Clarify that Maintenance and Repair Applies to Utilities:

Issue: Should maintenance of utilities in public rights-of-way and utility corridors be an exception.

1. Background: Staff recommends that Section 90.20.4 be clarified so that it **explicitly exempts maintenance of utilities** in existing row or utility corridors. While the intent is to treat utility maintenance as an exception, the wording is confusing since it exempts "all utility work" and "minor replacement or modification of existing (utility) facilities" without also explicitly exempting maintenance activity. While it isn't explicitly stated, since more substantial utility work is exempt it is logical that maintenance and repair of utilities is exempt.

2. Other jurisdictions: Jurisdictions surveyed do allow maintenance and repair of utilities.

Is utility repair and maintenance work exempt?	
Jurisdiction	
Kirkland	Unclear.
Bellevue	yes
Redmond	yes
Bothell	Yes if construction permit not required
Woodinville	Yes

3. *Staff recommendation: Explicitly exempt maintenance of utilities located in public right-of-way or utility corridors.*

Does the Commission agree?

I. Require Retroactive Mitigation for Emergencies:

Issue: What is the approach to restoration and/or mitigation resulting from an emergency action?

1. Background: Section 90.20.9 exempts emergency activities "necessary to prevent an immediate threat to public health, safety, or welfare". WTC recommends and Ecology agrees, that to minimize long-term impacts to sensitive areas, the person or agency undertaking the action fully fund and conduct necessary restoration and/or mitigation for any impacts to sensitive areas or their buffers resulting from the emergency action. TWC also recommends requiring documentation of coordination or permits from state and federal regulatory agencies (e.g. Army Corps of Engineers, Ecology, Fish and Wildlife)

Restoration and mitigation would be based on a wetland report and delineation, subject to the requirements of Chapter 90.

2. Other jurisdictions: All jurisdictions surveyed do require restoration/mitigation.

Restoration and/or mitigation required for emergency activities?	
Jurisdiction	
Kirkland	No
Bellevue	Yes, once aware of emergency, restoration and/or mitigation in accordance with restoration/mitigation plan to be submitted within 60 days of the Director determination that the emergency action was within the scope of an allowed emergency action. Must be completed within timeframes established with underlying permit, or as established by Director
Redmond	Yes, once aware of emergency would permit it appropriately and then require restoration/mitigation plan.
Bothell	Yes, restoration in accordance with a delineation, critical area report and mitigation plan. Restoration Mitigation must be initiated within 1 year of emergency, completed in timely manner.
Woodinville	Yes, restoration in accordance with a critical areas report and mitigation plan.

3. *Staff recommendation: Require restoration and or mitigation in accordance with delineation, sensitive area report, within timeframe established with underlying permit.*

Does the Commission agree with this approach?

J. Consider New Exempt Uses or Activities:

Issue: Are there other uses or activities that would be authorized administratively as an exception if certain criteria are met.

1. Background: TWC recommends that the City consider expanding the list of allowed uses within sensitive areas or their buffers that might be authorized administratively by the planning official as an exception from permit, if specific criteria are met. It is a policy decision to decide what the mechanism would be to allow these activities (i.e. as an exemption or sensitive area permit).

a. Maintenance or Repair of Existing Non-motorized Park Trails –

1) Background: Staff has requested that repair and maintenance of existing trails be allowed in conjunction with Parks. It is staffs opinion that since this is similar to exempt maintenance, repair and replacement activities allowed for roads, utilities, and structures, existing park trails should be treated the same.

2) Other Jurisdictions:
   - **Bellevue** exempts repair and maintenance of existing publicly owned park trails.
   - **Woodinville** exempts repair, maintenance and replacement of existing publically owned park trails.
   - **Bothell** does not exempt public or private pedestrian trails.
   - **Redmond** exempts construction of permeable, maximum six feet wide pedestrian trails, irrespective of whether they are public or private.

3) Staff Recommendation: allow maintenance, repair and replacement of existing park trails.

Does the Commission agree?

b. New Non-motorized Park Trails –

1) Background: Staff has requested that the City clarify that development of new public access through wetlands/buffers in conjunction with a public park is an exempt activity, and include the same for streams and their buffers. Currently Section 90.70 allows access through a wetland and its buffer in conjunction with a public park, but it is not called out in the General Exception section of Chapter 90.

   Ecology guidance for new trails is that they be permeable, no wider than 5 feet and located only in the outer 25% of wetland buffer. They also note that net wetland buffer loss would require mitigation. Ecology notes that sensitive areas and their buffers need compensatory mitigation for any loss of function or values.

   TWC suggests that allowing new trails, (regardless of whether they are public or private), as an exemption to Chapter 90 could be permitted if they are located in the outer 25% of the buffer, they are permeable and no wider than 5 feet, and mitigation is required to address the buffer modification.

   Conversely, if the proposed trail location extends further into the buffer or into the sensitive area, it should not be considered exempt from permit. In order to allow for cases where trails may have to cross streams or wetlands or intrude further into the buffer, the City could specify elsewhere in Chapter 90 that they are allowed, subject to a more through documentation of need and mitigation sequencing.

2) Other jurisdictions: None of surveyed jurisdictions except Redmond exempt new trails.

   - **Bellevue** Does not exempt new trails.

- **Woodinville** Does not exempt new trails.
- **Bothell** Does not exempt new trails.
- **Redmond** exempts new trails (both public and private) if a maximum of six-feet wide, permeable, and located in outer 25% of the buffer.

3) *Staff Recommendation: clarify that new permeable park trails, no wider than five feet, and located in the outer 25% of the buffer, are exempt from permit, if they mitigate for new impacts to buffers.*

If the proposal encroaches more than 25% into the buffer or into the sensitive area the proposal would not be considered an exception, but may still be permitted under other sections of Chapter 90.

Does the Commission agree with this approach?

c. New Non-motorized Public trails, connecting to the Cross Kirkland Corridor –

1) Background: Staff has requested that the City allow development of new public access through wetlands and or streams and their buffers to connect with the CKC as an exempt activity. Currently General Exception Section 90.20.5 allows:

Construction of public nonmotorized trails within the Cross Kirkland Corridor and Eastside Rail Corridor	**Provided that:** **1. The trail is located in a manner that, to the extent feasible, avoids and minimizes impacts to sensitive areas and buffers such as placement on previously disturbed areas,** **2. The trail project includes on-site or off-site mitigation of new impacts to affected sensitive areas and buffers** **3. Pervious or other low-impact materials are used where practical.**

Staff considers the CKC to be similar to a park, providing recreation amenities along its length, and that similar to access through a wetland/buffer in conjunction with a park, access through sensitive areas to the CKC should be allowed as an exempt activity subject to BAS.

TWC suggests that allowing trails to the CKC as an exemption to Chapter 90 could be allowed in the outer 25% of the buffer provided

they are permeable and no wider than five feet and provide mitigation to address the buffer modification.

Conversely, if the proposed trail location extends further into the buffer or into the sensitive area, it should not be considered exempt from permit. In order to allow for cases where trails may have to cross streams or wetlands or intrude farther into the buffer, the City may want to specify that trails are an allowed use subject to a more through documentation of need and mitigation sequencing.

2) *Staff Recommendation: As with park trails, allow new permeable public trails less than 5 feet in width, located in the outer 25 % of a buffer connecting to the CKC as an exemption if they mitigate for buffer impacts.*

If the proposal encroaches further into the buffer or the sensitive area the proposal would not be considered as an exception, but may still be permitted under other sections of Chapter 90.

Does the Commission agree with this approach?

d. Electrical and other Utility Lines Connecting to Existing Lines and Poles:

1) Background: General Exception Section 90.20.4 exempts from permit construction of sewer and water lines connecting to existing lines or poles in a sensitive area or buffer, where no feasible alternative location exists based on an analysis of technology and system efficiency. Staff has requested to similarly allow construction of electrical and other utility lines connecting existing lines and poles in sensitive areas or buffers, subject to the same standards.

TWC supports this provision, noting that restoration should continue to be required and potential mitigation considered as well, to address sensitive area impacts.

• **Construction of sewer or water lines that connect to existing lines in a sensitive area or buffer where no feasible alternative location exists based on an analysis of technology and system efficiency;**	**Provided that:** **1. Such activities shall not increase the impervious area (excluding utility poles) or reduce flood storage capacity, and** **2. The construction drawings shall specify that all affected sensitive areas and buffers will be**

	expeditiously restored to their pre-project condition or better.

2) *Staff Recommendation: Allow Electrical and other Utility Lines Connecting to Existing Lines and Poles as Exemption subject to BMP's.*

Does the Commission concur?

VI. NUMBER OF PARCELS POTENTIALLY IMPACTED BY THE CODE AMENDMENTS

The Commission requested information on how many single family parcels contain streams and wetlands. Working with the City's GIS staff, a count was conducted as noted below. This only analyzed parcels that have a wetland or stream on the property. The City is not able to type or classify wetlands, streams and their associated buffers to determine how many properties would be affected. This would be very difficult due to Ecology's classification and rating system, extremely expensive and would require access to private property.

Private		
Single family parcels with wetlands and/or open streams		894
Single family parcels with piped streams		112
All other parcels with wetlands and/or open streams		210
All other parcels with piped streams		51
Public		
All public parcels with wetlands and/or open streams		98
Parks with wetlands and/or open streams	42	
Schools with wetlands and/or open streams	10	

VII. EFFECT OF CODE AMENDMENTS ON PRIOR APPROVAL AND PENDING PERMITS

Attachment 4 is a memo from Eric Shields, Director of Planning and Building Department, providing guidance on the effect of the upcoming code amendments on prior approvals and pending permits. The memo provides guidance relative to existing KZC provisions related to projects that have approved land use permits and references state statutes related to vesting of certain types of applications. Needless to say, vesting is a very complicated and contentious issue and the City is limited in terms of providing legal advice to applicants. The clearest path to vesting under state law is a complete building permit application and staff is advising applicants accordingly. As evidenced by the current KZC section 90.165 discussed in the memo, the City may adopt local provisions that vest specific applications. Staff will present options for Planning Commission consideration at a future meeting where we can review the

overall impact of the amendments related to creation of nonconformances and the impact on pending and approved applications.

VIII. PUBLIC COMMENTS

A local organization called Save Our Trails Organization submitted a letter dated February 16, 2016 (see Attachment 5) regarding environmental constraints on the Cross Kirkland Corridor (CKC).

Staff has the following response to some of the comments made in the letter:

- The CKC is a former rail corridor bisecting Kirkland at a fairly level grade. The nature of the facility significantly disrupted natural surface water flow throughout its alignment by bisecting and creating wetlands and installing culverts and grades that form fish barriers. In addition to the environmental disruption from the installation itself, the railroad conducted decades of both chemical and mechanical maintenance practices of adjoining environment. For the City as the new steward of these degraded natural systems, the CKC represents an opportunity to improve the ecological function of the wetlands, streams and buffers with plantings, removal of the fish barriers and other actions.

- The letter makes assumptions about the rating and buffer widths of the wetlands that have not been determined.

- The letter states that "modifications are allowed only if there is no feasible alternative." This statement appears to be referring to mitigation sequencing analysis which is, in the order of preference, to avoid, minimize, rectify or reduce an impact, compensate for an impact and/or monitor an impact. The step of avoiding does not mean that a project must be relocated to another site because of an impact, but rather that the design and/or siting needs to be considered to see if there are ways to avoid the impact while still meeting the objective of the project. One of the last steps in mitigation sequencing is compensatory mitigation which addresses the extent of the mitigation to offset unavoidable impacts.

Additional information on the CKC, its current environmental condition, and potential high capacity transit may be found the March 15, 2016 City Council packet.

IX. NEXT STEP

If the Commission is not able to review and provide direction on all of the issues for the March 24th meeting, staff would recommend continuing the discussion to the April 14th Planning Commission meeting. Otherwise, the next scheduled Planning Commission meeting on these amendments is April 28th. If staff is able to prepare the policy discussion and recommendation for the remaining issues for the April 28, 2016 meeting, then the policy discussion portion of the project would be done and staff would begin preparing the draft code amendments for the Planning Commission review and the joint public hearing this summer.

ATTACHMENTS:

1. Buffer Width Comparison by Jurisdiction
2. Expansion of Nonconforming SF Structures Comparison by Jurisdiction
3. Shoreline Exemption Form
4. Effect of Code Amendments on Prior Approval and Pending Permits Memo
5. Save Our Trail public comment
6. Chapter 90- Drainage Basins

Dept. of Ecology Recommendation for *poor quality buffers (Table 1 in staff memo)*		100	140	220	300	80	140	220	300	55		Buffer width may be reduced by up to 25% if the applicant chooses to vegetate the buffer with native plants.
Dept. of Ecology Recommendation for *well-vegetated buffers (Table 2 in staff memo)*		75	105	165	225	60	105	165	225	40		
Woodinville	21.24.310 (1) and (2) **Year: 2016 – Draft**	75	105	165	225	60	105	165	225	40	Buffer width ***must*** be increased by 33% if mitigation standards are not applied[1]. Additional buffer width increases may be required based on a professional report and BAS, and one or more critical areas: geologically sensitive areas, other critical areas and species habitat.	Buffer averaging – may be reduced by ***no more than 25% of the standard width*** in any one location. Existing roads or structures in buffers
Redmond	21.64.030 (**2015)**	100		150	300	80		150	300	50	Buffer width may be increased based on professional report and BAS to protect functions and values based on site-specific characteristics:	• Buffer averaging to ***no less than 75% of standard buffer***. • Based on BAS when smaller area is determined to be adequate to protect functions and values: ○ ***Reduction to approximately 75%*** of standard buffers[2]: • Existing roads or structures, stormwater management facilities.
Renton	4.30.050.G.2 **(after 2014)**	100		150	175	75		100	125	50	Buffer width may be increased based on professional report,	Based on professional report and BAS, wetland buffer widths shall be reduced by ***no more than 25% of the***

											where there are unique circumstances.	***standard buffer***. For criteria for reduction of wetland buffer width with enhancement, see: [3]
Kenmore[4]	18.55.320.F **Year: 2015**	100*				60'**					Buffer width may be required to be increased to protect wetland functions and values based on wetland report and BAS due to site-specific characteristics: ○ Larger width needed to protect critical areas ○ Steep slopes or erosion issues in buffer	• Buffer averaging[5] • Buffer reduction with enhancement for degraded buffers:[6] *Category II: ***Max reduction: 25%***; min. width: 75' **Category III: ***Max reduction: 25%;*** min. width: 45'

[1] Minimized impact standards include minimizing disturbances: lights, noise, toxic runoff, stormwater runoff, change in water regimen, pets and humans, dust, disruption of corridors or connections.
[2] ≥20 points: 100' undisturbed vegetative corridor is protected between wetlands and priority habitat; and measures to minimize impacts of different land uses on wetlands are applied, and for wetlands with ≤20 points: May be reduced if measures to minimize impacts of different land uses on wetlands are applied.
[3] Criteria for reduction of wetland buffer width with enhancement: must function at a higher level than the standard buffer; may never be less than 75% of the standard width at its narrowest point, must have less than 15% slopes, proposal shall rely upon a site-specific evaluation and documentation of buffer adequacy, proposal must be based on BAS.
[4] Buffer widths in Kenmore were established through a community-specific evaluation of all wetlands within the City.
[5] Averaged or reduced buffer widths: Averaging requires additional protection through enhancement, no reduction in function and values, evidence that wetland would benefit from averaging, assurance that total area in buffer would not be less than area that would be contained in standard buffer and for Class I and II, width may not be reduced more than 20% in any one place. For Class III, may not be reduced more than 50% in any one place.

[6] Reduction with enhancement in *degraded* buffers: may be reduced through combination of buffer enhancement and LID strategies. Must show that buffer will function at a higher level than the standard buffer. Buffer enhancement plan required.

EXEMPTION FROM SHORELINE MANAGEMENT ACT
SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT

CITY PERMIT NUMBER:

Applicant's Name:
Applicant's Mailing Address:
Project Address:
Parcel Number:
Description of proposal:

☐ Pier ☐ Shoreline Stabilization ☐ Maintenance/Repair ☐ Other

Applicable Exemption Section: WAC 173-27-040-

SHORELINE POLICIES AND REGULATIONS:
The City has reviewed the proposal for consistency with the City's Shoreline Master Program, including the shoreline regulations in Kirkland Zoning Code Chapter 83 and Chapter 141, which are consistent with the State Shoreline Management Act and Guidelines found in Chapter 90.58 RCW and Chapter 173-26 WAC. The City has found that the proposal is consistent with the City's Shoreline Master Program.

CONDITIONS:

This exemption shall expire four (4) years from the date approved below, if project is not completed.

SEPA REVIEW:
This project is ☐ Exempt under WAC 197-11-800(3).
This project is ☐ Not Exempt – A Determination of Non-significance was issued on .

_____

, Project Planner/Planning Official Date:
(425)587- , @kirklandwa.gov
Planning and Community Development

Distribution: Applicant
Shoreline Permit Review, DOE, 3190-160th Ave SE, Bellevue, WA 98008-5452
Karen Walter, Watersheds and Land Use Team Leader, Muckleshoot Indian Tribe Fisheries Divisions, 39015-172nd Ave SE, Auburn, WA 98092
Building Permit Number
SDP Exemptions File PLN14-00006( )

Expansion of Nonconforming Single Family Structures into Buffers

Jurisdiction	Single Family	Standards if any
Kirkland Chapter 162	No nonconformance may be enlarged, expanded, increased and intensified in any away made greater.	
Bellevue	Expansion maximum of **500 square foot footprint** (over the life of the structure) only if no other feasible location based on functional use of the expansion.	Permit and mitigation. Preference diagrammed & criteria established to assess alternatives and minimize impact
Bothell	Cannot further alter or increase the adverse impact	
Burien	Cannot enlarge footprint	
Federal Way	Cannot enlarge footprint	
Kenmore	Expansion of **500 square foot footprint** for structures that existed before 1990. No closer to the critical area than existing structure.	
Kent	Cannot enlarge footprint	Exceptions require a variance
King County	Expansion of **1,000 square foot footprint.** No closer to the critical area than existing structure. Location has least impact.	Mitigation required. Reasonable use and buffer average structure not eligible
Lake Forest Park	10% or **250** square feet, whichever is less. No closer to the critical area than existing structure.	
Newcastle	Expansion of **1,000 square foot footprint.** No closer to the critical area than existing structure	
Redmond	Cannot enlarge footprint	
Renton	Cannot enlarge footprint	
Sammamish	• Expansion of **1,000 square foot footprint** (one time only) • If intervening home or ADU between the wetland and the interviewing structures, may add, replace or modify but no closer than 50' of wetland or stream	Required critical area study showing net improvement through enhancement
Woodinville	Expansion of **1,000 square foot footprint**. No closer to the critical area than existing structure. Expansion cannot exceed 50% of the assessed valuation of the structure.	Mitigation required

CITY OF KIRKLAND
PLANNING AND BUILDING DEPARTMENT
123 FIFTH AVENUE, KIRKLAND, WA 98033
425.587.3225 - www.kirklandwa.gov

MEMORANDUM

DATE: **FEBRUARY 18, 2016**

TO: **INTERESTED PARTIES**

FROM: **ERIC SHIELDS, AICP**
DIRECTOR, PLANNING & BUILDING DEPARTMENT

SUBJECT: **DIRECTOR GUIDANCE – CRITICAL AREAS ORDINANCE AMENDMENTS AND PRIOR APPROVALS**

The City of Kirkland is currently working on updates to Kirkland Zoning Code (KZC) Chapter 90, which includes City regulations for streams and wetlands. The amendments are required by the Growth Management Act and must be based on "best available science" (BAS). Because Kirkland's regulations have not been substantially updated since 1999, we know that our current buffering standards for streams and wetlands generally are not consistent with BAS and will need to be increased. The City anticipates adoption of new regulations sometime after August 1, 2016.

Applicants have requested guidance on how the Planning and Building Department will process applications that are pending or approved prior to adoption of the new regulations. The guidance provided in this memo is primarily based on existing City regulations. Vesting ("grandfathering") provisions from State statutes are also noted.

Applicable City Regulations

KZC Chapter 90 currently contains the following provision:

> 90.165 Setbacks and Buffers Required by Prior Approvals
> If, subsequent to October 2, 1982, the City approved a variance, planned unit development, rezone, or zoning permit through Processes I, II, IIA, or IIB, as described in Chapters 120, 125, 130, 145, 150, and 152 KZC, respectively, and/or a subdivision or short subdivision for the subject property with established setbacks or buffers on the subject property from a stream or wetland, those setbacks or buffers shall apply to the original construction on the subject property. All of the provisions of this chapter which do not directly conflict with the previously imposed setback or buffer requirements shall fully apply to the subject property.

Guidance on Frequently Asked Questions

Based on KZC 90.165, the Department provides the following guidance to current and potential applicants:

1. What if I have an application that is currently approved or will be approved prior to adoption of the update?

For any of the application types noted in KZC 90.165 that are approved prior to adoption of the updates, the approved buffers (either those that meet the buffer standards in effect at the time of approval or have been approved at a width less than the standard buffer) apply to original construction. Note that all permit approval types noted in KZC 90.165 have specific lapse of approval dates and KZC 90.165 does not apply to lapsed (expired) approvals. Any permit that has lapsed would be reviewed pursuant to the regulations in effect at the time of a new application.

2. What does "original construction" mean?

"Original construction" refers to construction of the specific development/construction that was approved by the land use permit. It also means that the approved buffer only applies to that specific construction and not to future additions, modifications, expansions, etc. For approved subdivisions where specific homes were not part of the approval, "original construction" refers to construction of a home (or homes) on the lots that were approved subject to the buffers that were approved. After original construction has been completed, any future construction would be subject to regulations are in effect at the time of that future construction.

3. Will the City approve my land use application prior to the effective date of the new regulations?

If you intend to apply for one of the land use applications noted in 90.165, please be aware of the following timeframes.

- A presubmittal meeting is required prior to submittal of a land use application. Presubmittal meetings are scheduled at least two weeks out from the date of application.
- The KZC provides that the City has 28 days after submittal to determine whether an application is complete.
- After being determined to be complete, most land use applications take at least four months to receive an approval.
- While staff does not currently know specifically when the KZC update will be finished or what the effective date will be, we can say that the earliest effective date would be early August 2016.

If you have a pending application with the City, please discuss the project timing with your assigned planner. You may wish to submit a complete building permit application (see reference to State laws below) even if your land use permit is not approved.

4. What if I don't have an approved land use application prior to the effective date of the new regulations?

KZC 90.165 only pertains to approved applications. Additional rules related to vested rights may be found in State law. While City staff is not in a position to provide you with legal advice, we can direct you to the relevant Washington State statutes that specifically address vesting with respect to complete building permit applications and complete subdivision applications:

- RCW 19.27.095 provides that "A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application." Please reference the complete statute to understand the requirements contained therein.

- RCW 58.17.033 provides that "A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official." Please reference the complete statute to understand the requirements contained therein.

Beyond this direction, you may wish to discuss your situation with private legal counsel.

5. If my application is not approved prior to the effective date, can the City adopt updated regulations that contain similar provisions to the current KZC 90.165?

The City could adopt provisions similar to KZC 90.165 with the updates to KZC Chapter 90. If you are interested or concerned about an application, you are encouraged to participate in the process to let the Planning Commission and City Council understand your interests.

Conclusion

Existing City regulation KZC 90.165 provides some certainty around how approved applications will be treated. Additional guidance is found in State statutes that address complete building permit and complete subdivision applications. If your application does not fall into one of these areas prior to adoption of the updated regulations, the City's position is that the application would not be vested and would be subject to the updated regulations. If you need additional advice, we encourage applicants to consult with their legal counsel.

Please get involved in the process to update the regulations by visiting the project webpage and signing up for E-mail alerts at:

www.kirklandwa.gov/depart/planning/Code_Updates/Projects/Wetlands_and_Streams_Code_Amendments.htm

Date: February 16, 2016

SaveOurTrail.org

For Distribution to: City of Kirkland Council Members

With Copies to: City Manager, Kurt Triplett
Public Works Director, Kathy Brown
Planning & Building Director, Eric Shields
Parks & Community Service Director, Jennifer Schroder

We are presenting you with a letter this evening to document environmental issues associated with your proposed transit development on the Cross Kirkland Corridor Trail (the Trail).

In response to recent wetland notices and environmentally sensitive area signage along the Trail, we were prompted to look into these issues further.

What we found was eye opening and disturbing.

Based on the City GIS maps, a July 2013 study by Widener & Associates and a January 2016 report by the Watershed Company, both commissioned by the City, it was found that many wetlands, salmon-bearing streams and other wildlife habitats exist within, near, or under the Trail. The last report even identified fish species that are considered 'threatened' and 'species of concern' under the Federal Status.

On January 20, 2016, a letter was sent to the Planning Commission and Houghton Community Council from members of the City's Planning and Building Department saying that per Chapter 90 KZC Amendments, which are regulations for Critical Area Ordinance/Wetlands, Streams and Frequently Flooded Areas, the City must comply with new WA Department of Ecology guidance. The new guidance resulted in wider required critical area buffers and more restrictive buffer reduction allowances. The City now has until this June to update its wetland regulations and rating system to comply with DOE's current guidance.

The current KZC 90 clearly preserves environmentally sensitive areas like we have along the Trail and restricts incompatible land uses. It further states that construction of public, non-motorized trails is exempt from preservation of the trail whereas construction of a motorized trail is not exempt and CANNOT be built in a wetland or its buffer zone. Based on the updated guidance, large areas of the Trail could not even be touched.

Modifications are allowed ONLY if there is no feasible alternative. However, in this case a clear alternative does exist and that is E-02, BRT on I-405. This not only parallels the Trail, but also crosses it at 116th Street and includes a stop in Totem Lake. Based on the current and updated regulations, the building of motorized transit on the Trail would clearly be outside the spirit and intent of the law.

Save our Trail has always been about preserving the precious natural environment that exists along the Cross Kirkland Corridor Trail. It's now clear that the City's own existing and updated regulations enforce this preservation. We look forward to hearing the City's approach to the updated guidance rules later this evening.

In light of this information presented by the City's own staff, we urge you, the City Council, to reconsider your support for mass transit on the Trail.

Thank you, *Save Our Trail Organization*

(Note: This letter will be distributed to over forty jurisdictions, organizations and individuals that we believe should be made aware of our concerns.)

Documented Wetlands, Streams and Wildlife in the Cross Kirkland Corridor

February 16, 2016
Save our Trail, Kirkland WA

This letter was prepared by the Save Our Trail citizen group in Kirkland to ensure all parties are aware of environmental obstacles that may hinder the construction of the proposed E-03a (Light Rail) and E-06 (Bus Rapid Transit) Sound Transit 3 projects as designed on the Cross Kirkland Corridor (CKC) Trail. It is not intended to be a comprehensive examination of the full gamut of environmental challenges, but rather a compendium of concerns identified to date.

Summary

- 3rd party wetland, stream and wildlife inventory studies commissioned by the City of Kirkland, and published as recently as January 2016, have documented many wetlands, jurisdictional drainage, salmon-bearing streams and other wildlife habitats within the CKC.
- Current and planned updates (due by June 30, 2016) to Kirkland's wetland and stream protection regulations indicate that substantial portions of the CKC are incompatible with any type of motorized transit development. In fact, there are multiple locations where wetlands surround both sides of the trail, creating buffers that are in excess of the 100-foot wide corridor.
- Mandatory mitigation sequencing regulations specifically state that avoidance of modifications of wetlands and streams is the primary guiding principle, and not allowed if a "practicable or feasible alternative" is available, such as Sound Transit's E-02 Bus Rapid Transit on I-405 proposal.

Introduction

Along the CKC, many signs are posted that indicate Environmentally Sensitive Areas. As residents of Kirkland and regular users of the CKC, we wanted to understand the implication of these signs.

We observed bodies of water, including wetlands and streams, surrounding the trail and crossing under it. We also heard from people living near the trail, where many properties have recorded documents identifying wetlands and streams with property title restrictions to perpetually protect and preserve these sensitive areas. Those restrictive covenants were imposed on past, current, and future owners in perpetuity with no provisions for termination.

We then reviewed the City of Kirkland GIS maps (Attachment A). This map clearly shows that the stretch of the CKC slated for development as a bus or rail route is encumbered by several wetlands and streams. Some of the streams are identified in red, signifying their importance as fish bearing streams.

We were then made aware of a wetland and stream inventory developed in July 2013 for the City of Kirkland Public Works Department by Widener & Associates ("Wetland Investigation and Delineation Report Cross Kirkland Corridor Project" - Attachment B). The report was part of the trail building project when the BNSF rails were removed and a soft surface trail was constructed. It lists most of the wetlands and streams shown on the City GIS map (Attachment A), plus additional wetlands and streams not documented on the map. This report concluded that the majority of the wetlands and streams were determined to be "jurisdictional," and therefore subject to the Clean Water Act. It also documented multiple palustrine forested wetlands. While they were not rated, these would likely rate as Category II wetlands and would require a 50' or 75' buffer.

In 2015, as part of the City of Kirkland's process to adopt amendments to its Critical Areas Ordinance by the state deadline of June 30, 2016 (Wetlands, Streams and Frequently Flooded

Areas, known as KZC 90 - Kirkland Zoning Code Chapter 90), the City employed the services of the Watershed Company, a wetlands consulting company. The January 2016 report ("City of Kirkland Critical Areas Regulations Technical Report"), along with the City memorandum explaining the need to update the regulations, is included as Attachment C.

This report further identifies multiple wetlands and streams within, near, or under the CKC, as well as fish species in streams that cross the CKC that are considered "Threatened" and "Species of Concern" under Federal Status.

How Do the Current and Future Kirkland Zoning Codes Apply to the CKC?
Given all the 3rd party information, we looked into how the KZC 90 applied to the CKC.

The current KZC 90 clearly forbids development in wetlands, streams, lakes, and their buffers and in frequently flooded areas. These regulations were adopted by the City of Kirkland in compliance with the Clean Water Act, the Department Of Ecology, the Growth Management Act, and other local, state, and federal laws.

It is important to note that these regulations are 14 years old and must be updated by the City of Kirkland by June 30, 2016. As the Watershed Report states about the original regulations, "*Since then Ecology adopted a new wetland rating system in 2004 and then updated it again in 2014. Wetland buffers under the new Ecology guidance are greater than the City's current buffer widths and the rating system is more detailed and uses different criteria. The City must now bring its wetland regulations and rating system in line with Ecology's guidance to be consistent with GMA.*" It is important to note that, as the Watershed Company report states, "*Most if not all jurisdictions in King County have revised their regulations to comply with these requirements.*" The new regulations, as described on the City of Kirkland web page, will:

- Increase buffer widths required next to wetlands and streams where new development cannot occur;
- Use mitigation sequencing: first avoid, then minimize before buffer reduction can be proposed;
- Impose smaller percent of buffer reduction; and
- Require greater ratio of required mitigation to area disturbed.

Even the current regulations clearly state the need for protecting wetlands, streams, lakes and frequently flooded areas:

90.10 PURPOSE

THESE REGULATIONS WERE PREPARED TO COMPLY WITH THE GROWTH MANAGEMENT ACT, CHAPTER 36.70A RCW. THE PURPOSE OF THESE REGULATIONS IS TO PROTECT THE ENVIRONMENT, HUMAN LIFE, AND PROPERTY. THIS PURPOSE WILL BE ACHIEVED BY PRESERVING THE IMPORTANT ECOLOGICAL FUNCTIONS OF WETLANDS, STREAMS, LAKES, AND FREQUENTLY FLOODED AREAS. THE DESIGNATION AND CLASSIFICATION OF THESE SENSITIVE AREAS IS INTENDED TO ASSURE THEIR PRESERVATION AND PROTECTION FROM LOSS OR DEGRADATION, AND TO RESTRICT INCOMPATIBLE LAND USES.

SENSITIVE AREAS PERFORM A VARIETY OF VALUABLE BIOLOGICAL, CHEMICAL, AND PHYSICAL FUNCTIONS THAT BENEFIT THE CITY AND ITS RESIDENTS.

There are certain activities that are exempt from this chapter. However, a motorized trail is not one of those activities:

90.20 GENERAL EXCEPTIONS

THE FOLLOWING ACTIVITIES OR CONDITIONS SHALL BE EXEMPT FROM THIS CHAPTER:

5. CONSTRUCTION OF PUBLIC NON-MOTORIZED TRAILS WITHIN THE CROSS KIRKLAND CORRIDOR AND EASTSIDE RAIL CORRIDOR; PROVIDED, THAT (1) THE TRAIL IS LOCATED IN A MANNER THAT, TO THE EXTENT FEASIBLE, AVOIDS AND MINIMIZES IMPACTS TO SENSITIVE AREAS AND BUFFERS SUCH AS PLACEMENT ON PREVIOUSLY DISTURBED AREAS, (2) THE TRAIL PROJECT INCLUDES ON-SITE OR OFF-SITE MITIGATION OF NEW IMPACTS TO AFFECTED SENSITIVE AREAS AND BUFFERS, AND (3) PERVIOUS OR OTHER LOW-IMPACT MATERIALS ARE USED WHERE PRACTICAL.

The zoning regulation clearly states that wetlands and streams are to be preserved and protected with significant buffers. It is fair to assume that these buffers will increase based on the updated regulations from surrounding King County cities.

90.45 WETLAND BUFFERS AND SETBACKS

1. NO LAND SURFACE MODIFICATION OR TREE REMOVAL SHALL OCCUR AND NO IMPROVEMENT MAY BE LOCATED IN A WETLAND OR ITS BUFFER, EXCEPT AS PROVIDED IN THIS SECTION THROUGH KZC 90.70. SEE ALSO KZC 95.23(5)(D)(2), TREES IN CRITICAL AREAS OR CRITICAL AREA BUFFERS; AND KZC 95.50(11), INSTALLATION STANDARDS FOR REQUIRED PLANTINGS – MITIGATION AND RESTORATION PLANTINGS IN CRITICAL AREAS AND CRITICAL AREA BUFFERS. REQUIRED, OR STANDARD, BUFFERS FOR WETLANDS ARE AS FOLLOWS:

WETLAND TYPE	PRIMARY BASIN	SECONDARY BASIN
1	100 FEET	75 FEET
2	75 FEET	50 FEET
3	50 FEET	25 FEET

The current regulations state that modification of a wetland (stream) is allowed only if no feasible alternative is available (Similar language is used for stream protection, buffer size, modification of streams and modification of stream buffers. Please see KZC 90.90, 90.95, 90.100):

90.55 WETLAND MODIFICATION

J. THERE IS NO PRACTICABLE OR FEASIBLE ALTERNATIVE DEVELOPMENT PROPOSAL THAT RESULTS IN LESS IMPACT TO THE TYPE 1 WETLAND AND ITS BUFFER.

90.60 WETLAND BUFFER MODIFICATION

9) THERE IS NO PRACTICABLE OR FEASIBLE ALTERNATIVE DEVELOPMENT PROPOSAL THAT RESULTS IN LESS IMPACT TO THE BUFFER.

In this case, there is a documented Sound Transit alternative with E-02 (Bus Rapid Transit on I-405), which not only parallels the CKC, but also crosses it at 116th Street and includes a stop in the same location (Totem Lake). This alternative was identified by the City of Kirkland in the letter of January 20, 2016 to Sound Transit.

In Attachment D ("Wetland and Stream Buffers on the CKC Map") we tested the application of the following parameters on the trail:

1) The CKC right of way is at its optimal width of 100 feet;

2) There is only one stream on one side of the trail;

3) The stream is assumed to have the lowest classification, and thus the lowest buffer width of 25 feet.

Using these parameters, Attachment D clearly demonstrates that the CKC's useable width would be reduced from 100 feet to less than 25 feet. By applying the same parameters to other segments of the CKC where wetlands and streams exist on both sides, and where the classifications of both bodies of water are higher, it becomes clear that, in many cases *the entire width of the CKC is encumbered by buffers*.

Furthermore, If one applies the new regulations' increased buffer width requirements, then even more of the CKC becomes incompatible with the ST3 E-03a and E-06 proposals.

Conclusion:

Save Our Trail believes that, based on 3rd party evaluations (City GIS, City codes, and studies commissioned by the City of Kirkland) of the wetlands, streams, and wildlife habitats on the CKC, it would clearly be outside the spirit and intent of the law to build motorized transit on the CKC as described in E-03a and E-06. Furthermore, given the clearly documented alternative of E-02 (BRT on 405), mitigation is not an alternative.

SIGNED BY SAVE OUR TRAIL COMMITTEE on February 16, 2016

Signature	Printed Name
Santos Contreras	Santos Contreras
	Shawn Etchevers
	Leah R. Tousett
	DAVID GRESCHLER
Jan Young	Jan Young
Rose M. Dennis	Rose M. DeNNIS
Frank Dennis	F.L. DeNNIS
Rich Jones	Rich JoNes
Sue Contreras	Sue Contreras
Neil Ichiki	Neil Ichiki
Sharon Riddle	Sharon Riddle

Chapter 90 – DRAINAGE BASINS

Sections:

INTRODUCTION

90.05 User Guide

The regulations in this chapter apply to activities, work, and conditions in or near any stream, wetland, frequently flooded area, or lake in the City. For properties within jurisdiction of the Shoreline Management Act, the regulations in Chapter 83 KZC must be met. These regulations add to and in some cases supersede other City regulations. Anyone interested in conducting any development activity on or near a wetland, stream, lake, or frequently flooded area; wishing to participate in the City's decision on a proposed development on or near any of these areas; or wishing to have a determination made as to the presence of one (1) of these areas on their property, should read these regulations. See also KZC 95.23(5)(d)(2), Trees in Critical Areas or Critical Area Buffers; and KZC 95.50(11), Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers.

Chapter 83 KZC contains wetland, stream and flood hazard reduction regulations for properties located within its jurisdiction. However, regulations contained in this chapter that are not addressed in Chapter 83 KZC continue to apply, such as bond or performance security, dedication and liability.

(Ord. 4252 § 1, 2010; Ord. 4238 § 2, 2010; Ord. 4010 § 3, 2005; Ord. 3834 § 1, 2002)

90.10 Purpose

These regulations were prepared to comply with the Growth Management Act, Chapter 36.70A RCW. The purpose of these regulations is to protect the environment, human life, and property. This purpose will be achieved by preserving the important ecological functions of wetlands, streams, lakes, and frequently flooded areas. The designation and classification of these sensitive areas is intended to assure their preservation and protection from loss or degradation, and to restrict incompatible land uses.

Sensitive areas perform a variety of valuable biological, chemical, and physical functions that benefit

the City and its residents. The functions of sensitive areas include, but are not limited to, the following:

1. Wetlands – Wetlands 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. The City's goal is to achieve no net loss of wetlands through retention of wetland functions, values, and acreage within each drainage basin. Wetlands are protected in part by buffers, which are upland areas adjacent to wetlands.

Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment loads; remove waterborne contaminants such as excess nutrients, synthetic organic chemicals (e.g., pesticides, oils, and greases), and metals; provide shade for surface water temperature moderation; provide wildlife habitat; and deter harmful intrusion into wetlands.

The primary purpose of wetland regulations is to achieve a goal of no net loss of wetland function, value, and acreage within each drainage basin, which, where possible, includes enhancing and restoring wetlands.

2. Streams – Streams and their associated buffers provide important fish and wildlife habitat and travel corridors; help maintain water quality; store and convey storm and flood water; recharge groundwater; and serve as areas for recreation, education, scientific study, and aesthetic appreciation. Streams are protected in part by buffers, which are adjacent upland areas that interact with streams.

Stream buffers – sometimes known as riparian buffers – serve to moderate runoff volume and flow rates; reduce sediment loads; remove waterborne contaminants such as excess nutrients, synthetic organic chemicals (e.g., pesticides, oils, and greases), and metals; provide shade for surface water temperature moderation; provide wildlife habitat; and deter harmful intrusion into streams.

The primary purpose of stream regulations is to avoid reducing stream and riparian corridor functions, and where possible, to enhance and restore streams and riparian areas.

3. Lakes – Lakes provide important fish and wildlife habitat; store and convey storm and flood water; recharge ground water; store ground water discharge; and serve as areas for recreation, education, scientific study, and aesthetic appreciation. Many uses and activities in and around lakes are regulated under the wetland regulations, because the shallow perimeter of most lakes (the littoral zone) often meets the definition of a wetland.

Lake Washington is a Shoreline of the State, and is subject to the Shoreline Management Act. Uses and activities near, on or in Lake Washington are regulated by the applicable use zone

regulations in Chapters 15 through 56 KZC and by the shoreline regulations in Chapters 83 and 141 KZC. Uses and activities in wetlands contiguous to Lake Washington are subject primarily to the wetland regulations in Chapter 83 KZC, but also some applicable regulations in this chapter. Wetland buffers not located within 200 feet of the ordinary high water mark of Lake Washington are subject to the wetland buffer regulations in this chapter.

The primary purpose of the lake regulations is to avoid impacts to lakes and contiguous riparian areas, and where possible, to enhance and restore lakes.

4. Frequently Flooded Areas – Frequently flooded areas help to store and convey storm and flood water; recharge ground water; provide important riparian habitat for fish and wildlife; and serve as areas for recreation, education, and scientific study. Development within these areas can be hazardous to those inhabiting such development, and to those living upstream and downstream. Flooding also can cause substantial damage to public and private property that results in significant costs to the public as well as to private individuals.

The primary purpose of frequently flooded areas regulations is to regulate development in the 100-year floodplain to avoid substantial risk and damage to public and private property and loss of life.

(Ord. 4476 § 3, 2015; Ord. 4252 § 1, 2010; Ord. 3834 § 1, 2002)

90.15 Applicability

1. General – These regulations apply to any property that contains any of the following:

a. Streams;

b. Type 1 or 2 wetlands;

c. Type 3 wetlands greater than 1,000 square feet in a primary basin;

d. Type 3 wetlands greater than 2,500 square feet in a secondary basin;

e. Totem Lake and Forbes Lake;

f. Frequently flooded areas; and

g. Buffers required for the preceding six (6) features.

2. Conflicting Provisions – The regulations in this chapter supersede any conflicting regulations in the Kirkland Zoning Code. For properties within jurisdiction of the Shoreline Management Act, the regulations in Chapter 83 KZC supersede any conflicting regulation in this chapter. If more than one (1) regulation applies to the subject property, then the regulation that provides the greatest protection

to sensitive areas shall apply.

3. Other Jurisdictions – Nothing in these regulations eliminates or otherwise affects the responsibility of the applicant or property owner to comply with all other applicable local, state, and federal laws regulating development activities in sensitive areas, as herein defined.

4. SEPA Compliance – Nothing in these regulations or the decisions made pursuant to these regulations affects the authority of the City to review, condition, and deny projects under the State Environmental Policy Act, Chapter 43.21C RCW.

(Ord. 4252 § 1, 2010; Ord. 3834 § 1, 2002)

90.20 General Exceptions

The following activities or conditions shall be exempt from this chapter:

1. Activities involving artificially created wetlands or streams intentionally created from non-wetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, retention and/or detention facilities, farm ponds, and landscape features, except activities involving wetlands or streams that are created as mitigation for impacts to regulated sensitive areas, or that support state or federally listed threatened or endangered species.

2. Legally filled wetlands, or wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.

3. Activities affecting Type 3 wetlands that are 1,000 square feet or less in any of the primary basins, or affecting Type 3 wetlands that are 2,500 square feet or less in any of the secondary basins.

4. All utility work in improved City rights-of-way; all normal and routine maintenance, operation and reconstruction of existing roads, streets, and associated rights-of-way and structures; construction of sewer or water lines that connect to existing lines in a sensitive area or buffer where no feasible alternative location exists based on an analysis of technology and system efficiency; and minor replacement or modification of existing facilities by a public utility in an improved utility corridor. In each case (1) such activities shall not increase the impervious area (excluding utility poles) or reduce flood storage capacity, and (2) the construction drawings shall specify that all affected sensitive areas and buffers will be expeditiously restored to their pre-project condition or better. For purposes of this subsection only, “improved City rights-of-way” shall include the Cross Kirkland Corridor, Eastside Rail Corridor, and those rights-of-way that have improvements only underground, as well as those with surface improvements.

5. Construction of public nonmotorized trails within the Cross Kirkland Corridor and Eastside Rail Corridor; provided, that (1) the trail is located in a manner that, to the extent feasible, avoids and minimizes impacts to sensitive areas and buffers such as placement on previously disturbed areas,

(2) the trail project includes on-site or off-site mitigation of new impacts to affected sensitive areas and buffers, and (3) pervious or other low-impact materials are used where practical.

6. Normal and routine maintenance or repair of structures; provided, that such activities do not increase the previously approved structure footprint within a sensitive area or its buffer. Increases in structure footprint outside of such areas shall be allowed, even if all or a portion of the previously approved footprint is within such areas.

7. Site investigative work and studies necessary for preparing and processing land use applications, including but not limited to hand-dug holes for soils tests, water quality sampling, wildlife studies, and wetland and stream investigations; provided, that any disturbance of the sensitive area or its buffer shall be the minimum necessary to carry out the work or studies. Use of any mechanized equipment requires prior approval of the Planning Official. Areas disturbed by these activities shall be expeditiously stabilized and replanted, as approved by the Planning Official, to restore them to their previous condition.

8. Educational activities, scientific research, and passive outdoor recreational activities such as bird watching.

9. Emergency activities necessary to prevent an immediate threat to public health, safety, or welfare.

(Ord. 4442 § 1, 2014; Ord. 3834 § 1, 2002)

90.25 Sensitive Areas Maps and Other Resources

As part of the City's SEPA Ordinance, the City Council adopted, and may amend, a map folio entitled "Kirkland Sensitive Areas." Some of the maps in this folio depict wetlands, streams, and 100-year floodplains. The most recent amendment to this map folio reflects a 1998 study of wetlands and streams throughout the City's drainage basins and other sensitive areas discovered since 1992. The map folio, subsequent amendments, and other available resources (such as topographic maps, soils maps, and air photos) are intended only as guides. They depict the *approximate* location and extent of known sensitive areas. Some sensitive areas depicted in these resources may no longer exist; further, sensitive areas not shown in these resources may occur. Property owners and project applicants are strongly advised to retain qualified professionals to conduct site-specific studies for the presence of sensitive areas.

(Ord. 3834 § 1, 2002)

90.30 Definitions

1. Basin – A specific area of land drained by a particular watercourse and its tributaries.

2. Buffer – The area immediately adjacent to wetlands and streams that protects these sensitive areas and provides essential habitat elements for fish and/or wildlife.

3. Buffer Setback – 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.

4. Class A Streams – Streams that are used by salmonids. Class A streams generally correlate with Type 3 streams as defined in the Washington State Hydraulic Code.

5. Class B Streams – Perennial streams (during years of normal precipitation) that are not used by salmonids. Class B streams generally correlate with Type 4 streams as defined in the Washington State Hydraulic Code.

6. Class C Streams – Seasonal or ephemeral streams (during years of normal precipitation) not used by salmonids. Class C streams generally correlate with Type 5 streams as defined in the Washington State Hydraulic Code.

7. Critical Areas – Critical areas include the following areas and ecosystems: (a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

8. Frequently Flooded Areas – All areas shown on the Kirkland sensitive areas maps as being within a 100-year floodplain, as well as all areas regulated by Chapter 21.56 KMC.

9. Minor Improvements – Walkways, pedestrian bridges, benches, and similar features, as determined by the Planning Official, pursuant to KZC 90.45(5) and 90.90(5).

10. Primary Basins – The following basins, as shown on the Sensitive Areas Map: Juanita Creek, Forbes Creek, South Juanita Slope, Yarrow Creek, Carillon Creek, Denny Creek, and Champagne Creek.

11. Qualified Professional – An individual with relevant education and training, as determined by the Planning Official, and with at least three (3) years' experience in biological fields such as botany, fisheries, wildlife, soils, ecology, and similar areas of specialization, and including a professional wetland scientist.

12. Salmonid – A member of the fish family salmonidae, which include chinook, coho, chum, sockeye, and pink salmon; rainbow, steelhead, and cutthroat trout; brown trout; brook and dolly varden char, kokenee, and white fish.

13. Secondary Basins – Moss Bay, Houghton Slope A, Houghton Slope B, Kirkland Slope, Holmes Point and Kingsgate Slope, which are depicted on the Sensitive Areas Map.

14. Sensitive Areas – Wetlands, streams, lakes, and frequently flooded areas.

15. Significant Habitat Area – An area that provides food, protective cover, nesting, breeding, or movement for threatened, endangered, sensitive, monitor, or priority species of plants, fish, or wildlife. The terms threatened, endangered, sensitive, monitor, and priority pertain to lists, categories, and definitions of species promulgated by the Washington Department of Wildlife (Non-Game Data Systems Special Animal Species), as identified in WAC 232-12-011 or 232-12-014, or in the Priority Habitat and Species (PHS) program of the Washington State Department of Wildlife, or in rules and regulations adopted from time to time by the U.S. Fish and Wildlife Service.

16. Streams – Areas where surface waters produce a defined channel or bed that demonstrates clear evidence of the passage of water, including but not limited to bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. Streams do not include irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or convey a naturally occurring stream that has been diverted into the artificial channel.

17. Type 1 Wetlands – Wetlands that meet any of the following conditions:

a. Wetlands contiguous to Lake Washington;

b. Wetlands containing at least one-quarter (1/4) acre of organic soils, such as peat bogs or mucky soils;

c. Wetlands equal to or greater than 10 acres in size and having three (3) or more wetland classes, as defined by the U.S. Fish & Wildlife Service (Cowardin et al., 1979), one (1) of which is open water;

d. Wetlands that have significant habitat value to state or federally listed threatened or endangered wildlife species; or

e. Wetlands that contain state or federally listed threatened or endangered plant species.

18. Type 2 Wetlands – Wetlands that do not meet any of the criteria for Type 1 Wetlands, yet provide significant habitat function and value, and that merit at least 22 points as determined by using the City's Wetland Field Data Form, which is Plate 26 of Chapter 180 KZC.

19. Type 3 Wetlands – Wetlands that do not meet the criteria for either Type 1 or Type 2 wetlands and that merit fewer than 22 points as determined by using the City's Wetland Field Data Form, which

is Plate 26 of Chapter 180 KZC.

20. Watershed – A region or area bounded on the periphery by a parting of water and draining to a particular watercourse or body of water.

21. Wetlands – Those areas that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, retention and/or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands do include those artificial wetlands intentionally created from non-wetland sites as mitigation for the conversion of wetlands.

(Ord. 4196 § 1, 2009; Ord. 3977 § 3, 2004; Ord. 3834 § 1, 2002)

WETLANDs

90.35 Wetland Determinations, Delineations, Regulations, Criteria, and Procedures

All delineations of wetlands shall be made using the criteria and procedures described in WAC 173-22-035, now or as hereafter amended. All determinations, delineations, and regulations of wetlands shall be based on the entire extent of the wetland, irrespective of property lines, ownership patterns, and the like.

(Ord. 4320 § 1, 2011; Ord. 3834 § 1, 2002)

90.40 Wetland Determinations

Either prior to or during review of a development application, the Planning Official shall determine whether a wetland or its buffer is present on the subject property using the following provisions:

1. During or immediately following a site inspection, the Planning Official shall make an initial assessment as to whether any portion of the subject property or surrounding area (which shall be the area within 100 feet of the subject property) meets the definition of a wetland. If this initial site inspection does not indicate the presence of a wetland on the subject property or surrounding area, no additional wetland studies will be required. However, if the initial site inspection or information subsequently obtained indicates the presence of a wetland on the subject property or surrounding area, then the applicant shall follow the procedure in subsection (2) of this section.

2. If the initial site inspection or information subsequently obtained indicates that a wetland may

exist on or near the subject property or surrounding area, the applicant shall either (a) fund a study and report prepared by the City's wetland consultant; or (b) submit a report prepared by a qualified professional approved by the City, and fund a review of this report by the City's wetland consultant.

3. If a wetlands study and report are required, at a minimum the report shall include the following:

a. A summary of the methodology used to conduct the study;

b. A professional survey which is based on the KCAS or plat-bearing system and tied to a known monument, depicting the wetland boundary on a map of the surrounding area which shows the wetland and its buffer;

c. A description of the wetland habitat(s) found throughout the entire wetland (not just on the subject property) using the U.S. Fish & Wildlife Service classification system (*Classification of Wetlands and Deepwater Habitats in the U.S.,* Cowardin et al., 1979);

d. A description of nesting, denning, and breeding areas found in the wetland or its surrounding area;

e. A description of the surrounding area, including any drainage systems entering and leaving the wetland, and a list of observed or documented plant and wildlife species;

f. A description of historical, hydrologic, vegetative, topographic, and soil modifications, if any;

g. A proposed classification of the wetland as a Type 1, 2, or 3 wetland, including the rationale for the proposed classification; and

h. A completed Wetland Field Data Form, which is Plate 26 of Chapter 180 KZC.

4. Formal determination of whether a wetland exists on the subject property, as well as its boundaries, habitat classes, and rating, shall be made by the Planning Official after preparation and review of the report, if applicable, by the City's wetland consultant. A decision of the Planning Official may be appealed pursuant to KZC 90.160. The Planning Official's decision under this section shall be used for review of any development activity proposed on the subject property for which an application is received within two (2) years of the decision; provided, that the Planning Official may modify any decision whenever physical circumstances have markedly and demonstrably changed on the subject property or the surrounding area as a result of natural processes or human activity.

(Ord. 3834 § 1, 2002)

90.45 Wetland Buffers and Setbacks

1. No land surface modification or tree removal shall occur and no improvement may be located in a wetland or its buffer, except as provided in this section through KZC 90.70. See also KZC

95.23(5)(d)(2), Trees in Critical Areas or Critical Area Buffers; and KZC 95.50(11), Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Required, or standard, buffers for wetlands are as follows:

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

2. Buffer Setback – Structures shall be set back at least 10 feet from the designated or modified wetland buffer. The Planning Official may allow within this setback minor improvements 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. The Planning Official's decision may be appealed in accordance with KZC 90.160.

3. Storm Water Outfalls – Surface discharge of storm water through wetland buffers and buffer setbacks is required unless a piped system is approved pursuant to this section. Storm water outfalls (piped systems) may be located within the buffer setback specified in subsection (2) of this section and within the buffers specified in subsection (1) of this section only when the Public Works and Planning Officials both determine, based on a report prepared by a qualified professional under contract to the City and paid for by the applicant, that surface discharge of storm water through the buffer would clearly pose a threat to slope stability, and if the storm water outfall will not:

a. Adversely affect water quality;

b. Adversely affect fish, wildlife, or their habitat;

c. Adversely affect drainage or storm water detention capabilities;

d. Lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

e. Be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas.

The decision of the Public Works and Planning Officials may be appealed in accordance with KZC 90.160.

If a piped system is used, catch basins may be located within the buffer setback specified in subsection (2) of this section, but must be installed as far as feasible from the buffer boundary (see Plate 25 of Chapter 180 KZC). Under this subsection, pipe conveying storm water may be located within the buffer, but catch basins may not. Detention and water quality treatment

devices shall not be located within the wetland buffers or buffer setbacks of this section except as provided below.

4. Water Quality Facilities – Water quality facilities, as determined by the Planning Official, may be located within the wetland buffers of subsection (1) of this section. The Planning Official shall approve a proposal to install a water quality facility within the outer one-half (1/2) of a wetland buffer if:

a. It will not adversely affect water quality;

b. It will not adversely affect fish, wildlife, or their habitat;

c. It will not adversely affect drainage or storm water detention capabilities;

d. It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions;

e. It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas;

f. The existing buffer is already degraded as determined by a qualified professional;

g. Its installation would be followed immediately by enhancement of an area equal in size and immediately adjacent to the affected portion of the buffer; and

h. Once installed, it would not require any further disturbance or intrusion into the buffer.

The Planning Official shall approve a proposal by a public agency to install a water quality facility elsewhere in a wetland buffer if criteria i – l (below) are met in addition to a – h (above):

i. The project includes enhancement of the entire buffer;

j. The project would provide an exceptional ecological benefit off-site;

k. The water quality facility, once installed, would not require any further disturbance or intrusion into the buffer; and

l. There is no practicable or feasible alternative proposal that results in less impact to the buffer.

The Planning Official's decision may be appealed in accordance with KZC 90.160.

5. Minor Improvements – Minor improvements may be located within the sensitive area buffers specified in subsection (1) of this section. These minor improvements shall be located within the outer one-half (1/2) of the sensitive area buffer, except where approved stream crossings are made. The

Planning Official shall approve a proposal to construct a minor improvement within an environmentally sensitive area buffer if:

a. It will not adversely affect water quality;

b. It will not adversely affect fish, wildlife, or their habitat;

c. It will not adversely affect drainage or storm water detention capabilities;

d. It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

e. It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas.

The Planning Official may require the applicant to submit a report prepared by a qualified professional which describes how the proposal will or will not comply with the criteria for approving a minor improvement. The Planning Official's decision may be appealed in accordance with KZC 90.160.

(Ord. 4320 § 1, 2011; Ord. 4238 § 2, 2010; Ord. 4010 § 3, 2005; Ord. 3834 § 1, 2002)

90.50 Wetland Buffer Fence or Barrier

Prior to beginning development activities, the applicant shall install a 6-foot-high construction-phase chain link fence or equivalent fence, as approved by the Planning Official along the upland boundary of the entire wetland buffer with silt screen fabric installed per City standard, in a manner approved by the Planning Official. The construction-phase fence shall remain upright in the approved location for the duration of development activities.

Upon project completion, the applicant shall install between the upland boundary of all wetland buffers and the developed portion of the site, either (1) a permanent 3- to 4-foot-tall split rail fence; or (2) permanent planting of equal barrier value; or (3) equivalent barrier, as approved by the Planning Official. Installation of the permanent fence or planted barrier must be done by hand where necessary to prevent machinery from entering the wetland or its buffer.

(Ord. 3834 § 1, 2002)

90.55 Wetland Modification

1. Modification of Type 1 Wetlands – No land surface modification shall occur and no improvement shall be located in a Type 1 wetland, except as provided in this subsection. Furthermore, all modifications of a Type 1 wetland shall be consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory*

Recommendations Report (Adolfson Associates, Inc., 1998).

An applicant may request a modification of the requirements of this subsection. The City Council shall consider the modification request pursuant to Process IIB, described in Chapter 152 KZC. As part of the modification request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's wetland consultant. The report shall contain all information specified in KZC 90.40(3) as well as an assessment of the habitat, water quality, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the wetland and its buffer. The report shall also assess the effects of the proposed modification on those functions. In addition to criteria of Process IIB, the City Council shall approve an improvement or land surface modification in a wetland only if:

a. It will not adversely affect water quality;

b. It will not adversely affect fish, wildlife, or their habitat;

c. It will not have an adverse effect on drainage and/or storm water detention capabilities;

d. It will not lead to unstable earth conditions or create an erosion hazard or contribute to scouring actions;

e. It will not be materially detrimental to any other property or the City as a whole;

f. It will result in land surface modification of no more than five (5) percent of the wetland on the subject property;

g. Compensatory mitigation is provided in accordance with the table in subsection (4) of this section;

h. Fill material does not contain organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat;

i. All exposed areas are stabilized with vegetation normally associated with native wetlands and/or buffers, as appropriate; and

j. There is no practicable or feasible alternative development proposal that results in less impact to the Type 1 wetland and its buffer.

2. Modification of Type 2 Wetlands – No land surface modification shall occur and no improvement shall be located in a Type 2 wetland, except as provided in this subsection.

An applicant may request a modification of the requirements of this subsection. The Hearing Examiner shall consider the modification request pursuant to Process IIA, described in Chapter

150 KZC. The requirements for requesting such a modification are identical to those listed above for a Type 1 wetland with the following exceptions:

a. In primary basins, the modification shall not affect more than 10 percent of the wetland on the subject property; and

b. In secondary basins, the modification shall not affect more than 25 percent of the wetland on the subject property.

3. Modification of Type 3 Wetlands – No land surface modification shall occur and no improvement may be located in a Type 3 wetland, except as provided in this subsection.

An applicant may request a modification of the requirements of this subsection. The Planning Official shall consider the modification request in conjunction with approval of the applicable development permit. The requirements for requesting such a modification are identical to those listed above for a Type 1 wetland with the following exceptions:

a. In primary basins, the modification shall not affect more than 50 percent of the wetland on the subject property; and

b. In secondary basins, the modification may affect all of the wetland on the subject property.

Decisions on requests to modify Type 3 wetlands may be appealed in accordance with KZC 90.160.

4. Compensatory Mitigation – All approved impacts to regulated wetlands require compensatory mitigation so that the goal of no net loss of wetland function, value, and acreage may be achieved. Mitigation shall be implemented through the creation of wetlands (from non-wetland areas) or through the restoration of wetlands (from uplands that were formerly wetlands). The following mitigation ratios (the ratio of the mitigated area to the impacted area) shall apply:

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

Compensatory mitigation as wetland enhancement (that is, the improvement of existing wetlands) shall also be allowed. In primary basins, no more than one-third (1/3) of the mitigation may consist of enhancement; in secondary basins, no more than one-half (1/2) of the mitigation may consist of enhancement.

On-site mitigation is presumed to be preferable to off-site mitigation. The decision maker may

approve a plan to implement all or a portion of the required mitigation off-site, if the off-site mitigation is within the same drainage basin as the property that will be impacted by the project. The applicant shall demonstrate that the off-site mitigation will result in higher wetland functions, values, and/or acreage than on-site mitigation. Required compensatory mitigation ratios shall be the same for on-site or off-site mitigation, or a combination of both.

If the proposed on-site or off-site mitigation plan will result in the creation or expansion of a wetland or its buffer on any property other than the subject property, the plan shall not be approved until the applicant submits to the Planning Official a copy of a statement signed by the owners of all affected properties, in a form approved by the City Attorney and recorded in the King County Recorder's Office, consenting to the wetland and/or buffer creation or increase on such property.

Applicants proposing to alter wetlands or their buffers shall submit a mitigation plan prepared by a qualified professional. The mitigation plan shall consist of a description of the existing functions and values of the wetlands and buffers affected by the proposed project, the nature and extent of impacts to those areas, and the mitigation measures to offset those impacts. The mitigation plan shall also contain a drawing that illustrates the compensatory mitigation elements. The plan and/or drawing shall list plant materials and other habitat features to be installed.

To ensure success of the mitigation plan, the applicant shall submit a monitoring and maintenance program prepared by a qualified professional. At a minimum, the monitoring and maintenance plan shall include the following:

a. The goals and objectives for the mitigation plan;

b. Success criteria by which the mitigation will be assessed;

c. Plans for a 5-year monitoring and maintenance program;

d. A contingency plan in case of failure; and

e. Proof of a written contract with a qualified professional who will perform the monitoring program.

The monitoring program shall consist of at least two (2) site visits per year by a qualified professional, with annual progress reports submitted to the Planning Official and all other agencies with jurisdiction.

The cost of producing and implementing the mitigation plan, the monitoring and maintenance program, reports, and drawing, as well as the review of each component by the City's wetland

consultant, shall be borne by the applicant.

(Ord. 4491 § 11, 2015; Ord. 3834 § 1, 2002)

90.60 Wetland Buffer Modification

1. Modification of Wetland Buffers when Wetland Is Also To Be Modified – Wetland buffer impact is assumed to occur when wetland fill or modification is proposed. Any proposal for wetland fill/modification shall include provisions for establishing a new wetland buffer zone to be located around the compensatory mitigation sites and to be equal in width to its standard buffer specified in KZC 90.45(1) or a buffer reduced in accordance with this section by no more than one-third (1/3) of the standard buffer width in all cases (regardless of wetland type or basin type).

2. Modification of Wetland Buffers when Wetland Is Not To Be Modified – No land surface modification may occur and no improvement may be located in a wetland buffer, except as provided for in this subsection. Buffer widths may be decreased if an applicant receives a modification request approval.

a. Types of Buffer Modifications – Buffers may be reduced through one (1) of two (2) means, either (1) buffer averaging, or (2) buffer reduction with enhancement. A combination of these two (2) buffer reduction approaches shall not be used:

1) Buffer averaging requires that the area of the buffer resulting from the buffer averaging is equal in size and quality to the buffer area calculated by the standards specified in KZC 90.45(1). Buffers may not be reduced at any point by more than one-third (1/3) of the standards specified in KZC 90.45(1). Buffer averaging calculations shall only consider the subject property.

2) Buffers may be decreased through buffer enhancement. The applicant shall demonstrate that through enhancing the buffer (by removing invasive plants, planting native vegetation, installing habitat features such as downed logs or snags, or other means), the reduced buffer will function at a higher level than the existing standard buffer. At a minimum, a buffer enhancement plan shall provide the following: (a) a map locating the specific area of enhancement; (b) a planting plan that uses native species, including groundcover, shrubs, and trees; and (c) a monitoring and maintenance program prepared by a qualified professional consistent with the standards specified in KZC 90.55(4). Buffers may not be reduced at any point by more than one-third (1/3) of the standards in KZC 90.45(1).

b. Review Process and Decisional Criteria – Modification requests for averaging or reduction/enhancement of Types 1 and 2 wetland buffers shall be considered by the Hearing Examiner pursuant to Process IIA, described in Chapter 150 KZC. Modification requests for averaging or reduction/enhancement of Type 3 wetland buffers shall be considered by the

Planning Official.

An improvement or land surface modification shall be approved in a wetland buffer only if:

1) It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998);

2) It will not adversely affect water quality;

3) It will not adversely affect fish, wildlife, or their habitat;

4) It will not have an adverse effect on drainage and/or storm water detention capabilities;

5) It will not lead to unstable earth conditions or create an erosion hazard;

6) It will not be materially detrimental to any other property or the City as a whole;

7) Fill material does not contain organic or inorganic material that would be detrimental to water quality or to fish, wildlife, or their habitat;

8) All exposed areas are stabilized with vegetation normally associated with native wetland buffers, as appropriate; and

9) There is no practicable or feasible alternative development proposal that results in less impact to the buffer.

As part of the modification request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's wetland consultant. The report shall assess the habitat, water quality, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the nine (9) criteria listed in this subsection (2)(b) of this section.

(Ord. 4072 § 1, 2007; Ord. 3834 § 1, 2002)

90.65 Wetland Restoration

Planning Official approval is required prior to wetland restoration. The Planning Official may permit or require the applicant or property owner to restore and maintain a wetland and/or its buffer by removing material detrimental to the area, such as debris, sediment, or vegetation. The Planning Official may also permit or require the applicant to restore a wetland or its buffer through the addition of native plants and other habitat features. See also KZC 95.23(5)(d)(2), Trees in Critical Areas or Critical Area Buffers; and KZC 95.50(11), Installation Standards for Required Plantings – Mitigation and Restoration

Plantings in Critical Areas and Critical Area Buffers. Restoration may be required whenever a condition detrimental to water quality or habitat exists. When wetland restoration is required by the City, the requirements of KZC 90.55(4), Compensatory Mitigation, shall apply.

(Ord. 4238 § 2, 2010; Ord. 4010 § 3, 2005; Ord. 3834 § 1, 2002)

90.70 Wetland Access

The City may develop access through a wetland and its buffer in conjunction with a public park.

(Ord. 3834 § 1, 2002)

MINOR LAKEs

90.75 Totem Lake and Forbes Lake

The majority, if not the entirety, of the perimeters of Totem Lake and Forbes Lake meet the definition of wetlands. All activities in the shallow (less than or equal to 6.6 feet) portions of these lakes as well as in their contiguous wetlands (located above the high waterline) are regulated pursuant to KZC 90.35 through 90.70. Activities in deep water portions (water depths greater than 6.6 feet) of these lakes, that is, waterward of the lakes' perimeter wetlands, shall be regulated as follows:

1. The Planning Official may permit or require the applicant or property owner to rehabilitate and maintain a lake by removing material detrimental to the lake, such as debris, sediment, or non-native vegetation. Rehabilitation may be required when a condition detrimental to water quality or habitat exists. Decisions made under this paragraph may be appealed in accordance with KZC 90.160.

2. Moorage structures are permitted in Totem Lake and Forbes Lake. The Planning Official shall consider requests to construct, replace, or repair structures concurrently with the Washington Department of Fish and Wildlife's review of a Hydraulic Project Approval (HPA), or upon notification by that agency that an HPA is not required.

3. The Planning Official shall review applications for moorage structures using Process I, described in Chapter 145 KZC. The Planning Director shall authorize a moorage structure to be constructed only if (a) it is accessory to a dwelling unit or public park on the subject property, and (b) no significant habitat area will be destroyed.

4. A moorage structure shall extend no farther than is necessary to function properly, but in no event may extend more than 125 feet waterward of the high waterline.

5. A moorage structure shall not be treated with creosote or oil base or toxic substances.

6. Docks and pier decks and the tops of other moorage structures shall not be more than two (2) feet above the high waterline.

7. Bulkheads are prohibited unless (a) necessary to prevent significant erosion and (b) the use of vegetation or other "bioengineering" materials and techniques would not sufficiently stabilize the shoreline.

(Ord. 3834 § 1, 2002)

STREAMs

90.80 Activities in or Near Streams

No land surface modification or tree removal may occur and no improvements may be located in a stream or its buffer except as provided in this chapter.

(Ord. 4320 § 1, 2011; Ord. 3834 § 1, 2002)

90.85 Stream Determinations

The Planning Official shall determine whether a stream or stream buffer is present on the subject property using the following provisions. During or immediately following a site inspection, the Planning Official shall make an initial assessment as to whether a stream exists on any portion of the subject property or surrounding area (which shall be the area within approximately 100 feet of the subject property).

If the initial site inspection indicates the presence of a stream, the Planning Official shall determine, based on the definitions contained in this chapter and after a review of all information available to the City, the classification of the stream.

If this initial site inspection does not indicate the presence of a stream on or near the subject property, no additional stream study will be required.

If an applicant disagrees with the Planning Official's determination that a stream exists on or near the subject property or the Planning Official's classification of a stream, the applicant shall submit a report prepared by a qualified professional approved by the Planning Official that independently evaluates the presence of a stream or the classification of the stream, based on the definitions contained in this chapter.

The Planning Official shall make final determinations regarding the existence of a stream and the proper classification of that stream. This determination may be appealed pursuant to the provisions of KZC 90.160. The Planning Official's decision under this section shall be used for review of any development activity proposed on the subject property for which an application is received within two (2) years of the decision; provided, that the Planning Official may modify any decision whenever physical circumstances have markedly and demonstrably changed on the subject property or the surrounding area as a result of natural processes or human activity.

(Ord. 3834 § 1, 2002)

90.90 Stream Buffers and Setbacks

1. Stream Buffers – No land surface modification or tree removal shall occur and no improvement may be located in a stream or its buffer, except as provided in this section through KZC 90.120. See also KZC 95.23(5)(d)(2), Trees in Critical Areas or Critical Area Buffers; and KZC 95.50(11), Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Required, or standard, buffers for streams are as follows:

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

Stream buffers shall be measured from each side of the top of the slope of the channel of the stream except that where streams enter or exit pipes, the buffer shall be measured in all directions from the pipe opening (see Plates 16 and 16A of Chapter 180 KZC). Essential improvements to accommodate required vehicular, pedestrian, or utility access to the subject property may be located within those portions of stream buffers which are measured toward culverts from culvert openings.

2. Buffer Setback – Structures shall be set back at least 10 feet from the designated or modified stream buffer. The Planning Official may allow within this setback minor improvements which would have no potential adverse effect during their construction, installation, use, or maintenance to fish, wildlife, or their habitat or to any vegetation in the buffer or adjacent stream. The Planning Official's decision may be appealed in accordance with KZC 90.160.

3. Storm Water Outfalls – Surface discharge of storm water through stream buffers and buffer setbacks is required unless a piped system is approved pursuant to this section. Storm water outfalls (piped systems) may be located within the buffer setback specified in subsection (2) of this section and within the buffers specified in subsection (1) of this section only when the Public Works and Planning Officials both determine, based on a report prepared by a qualified professional under contract to the City and paid for by the applicant, that surface discharge of storm water through the buffer would clearly pose a threat to slope stability; and if the storm water outfall will not:

a. Adversely affect water quality;

b. Adversely affect fish, wildlife, or their habitat;

c. Adversely affect drainage or storm water detention capabilities;

d. Lead to unstable earth conditions or create erosion hazards or contribute to scouring actions;

e. Be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas.

The decision of the Planning and Public Works Officials may be appealed in accordance with KZC 90.160.

If a pipe system is used, catch basins may be located within the buffer setback of subsection (2) of this section, but must be installed as far as feasible from the buffer boundary (see Plate 25 of Chapter 180 KZC). Under this subsection, pipe conveying storm water may be located within the buffer, but catch basins may not. Detention and water quality treatment devices shall not be located within the stream buffers or buffer setbacks of this section except as provided below.

4. Water Quality Facilities – Water quality facilities, as determined by the Planning Official, may be located within the stream buffers of subsection (1) of this section. The Planning Official shall approve a proposal to install a water quality facility within the outer one-half (1/2) of a stream buffer if:

a. It will not adversely affect water quality;

b. It will not adversely affect fish, wildlife, or their habitat;

c. It will not adversely affect drainage or storm water detention capabilities;

d. It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions;

e. It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas;

f. The existing buffer is already degraded as determined by a qualified professional;

g. Its installation of the water quality facility would be followed immediately by enhancement of an area equal in size and immediately adjacent to the affected portion of the buffer; and

h. Once installed, it would not require any further disturbance or intrusion into the buffer.

The Planning Official shall approve a proposal by a public agency to install a water quality facility elsewhere in a stream buffer if Criteria i – l (below) are met in addition to a – h (above):

i. The project includes enhancement of the entire buffer;

j. The project would provide an exceptional ecological benefit off-site;

k. The water quality facility, once installed, would not require any further disturbance or intrusion into the buffer; and

l. There is no practicable or feasible alternative proposal that results in less impact to the buffer.

The Planning Official's decision may be appealed in accordance with KZC 90.160.

5. Minor Improvements – Minor improvements may be located within the sensitive area buffers specified in subsection (1) of this section. These minor improvements shall be located within the outer one-half (1/2) of the sensitive area buffer, except where approved stream crossings are made. The Planning Official shall approve a proposal to construct a minor improvement within a sensitive area buffer if:

a. It will not adversely affect water quality;

b. It will not adversely affect fish, wildlife, or their habitat;

c. It will not adversely affect drainage or storm water detention capabilities;

d. It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

e. It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas.

The Planning Official may require the applicant to submit a report prepared by a qualified professional which describes how the proposal will or will not comply with the criteria for approving a minor improvement. The Planning Official's decision may be appealed in accordance with KZC 90.160.

(Ord. 4320 § 1, 2011; Ord. 4238 § 2, 2010; Ord. 4010 § 3, 2005; Ord. 3834 § 1, 2002)

90.95 Stream Buffer Fence or Barrier

Prior to beginning development activities, the applicant shall install a 6-foot-high construction-phase chain link fence or equivalent fence, as approved by the Planning Official, along the upland boundary of the entire stream buffer with silt screen fabric installed per City standard, in a manner approved by the Planning Official. The construction-phase fence shall remain upright in the approved location for the duration of development activities.

Upon project completion, the applicant shall install between the upland boundary of all stream buffers and the developed portion of the site, either (1) a permanent 3- to 4-foot-tall split rail fence; or (2)

permanent planting of equal barrier value; or (3) equivalent barrier, as approved by the Planning Official. Installation of the permanent fence or planted barrier must be done by hand where necessary to prevent machinery from entering the stream or its buffer. (Ord. 3834 § 1, 2002)

90.100 Stream Buffer Modification

1. Types of Buffer Modification – Buffers may be reduced through one (1) of two (2) means, either (a) buffer averaging; or (b) buffer reduction with enhancement. A combination of these two (2) buffer reduction approaches shall not be used.

a. Buffer averaging requires that the area of the buffer resulting from the buffer averaging be equal in size and quality to the buffer area calculated by the standards specified in KZC 90.90(1). Buffers may not be reduced at any point by more than one-third (1/3) of the standards in KZC 90.90(1). Buffer averaging calculations shall only consider the subject property.

b. Buffers may be decreased through buffer enhancement. The applicant shall demonstrate that through enhancing the buffer (by removing invasive plants, planting native vegetation, installing habitat features such as downed logs or snags, or other means) the reduced buffer will function at a higher level than the standard existing buffer. A buffer enhancement plan shall at a minimum provide the following: (1) a map locating the specific area of enhancement; (2) a planting plan that uses native species, including groundcover, shrubs, and trees; and (3) a monitoring and maintenance program prepared by a qualified professional consistent with the standards specified in KZC 90.55(4). Buffers may not be reduced at any point by more than one-third (1/3) of the standards in KZC 90.90(1).

2. Review Process and Decisional Criteria – Modification requests for averaging or reduction/enhancement of Class A stream buffers shall be considered by the Hearing Examiner pursuant to Process IIA, described in Chapter 150 KZC. Modification requests for averaging or reduction/enhancement of Class B stream buffers shall be considered by the Planning Official pursuant to Process I, described in Chapter 145 KZC. Modification requests for averaging or reduction/enhancement of Class C stream buffers shall be considered by the Planning Official.

An improvement or land surface modification shall be approved in a stream buffer only if:

a. It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998);

b. It will not adversely affect water quality;

c. It will not adversely affect fish, wildlife, or their habitat;

d. It will not have an adverse effect on drainage and/or storm water detention capabilities;

e. It will not lead to unstable earth conditions or create an erosion hazard or contribute to scouring actions;

f. It will not be materially detrimental to any other property or the City as a whole;

g. Fill material does not contain organic or inorganic material that would be detrimental to water quality or to fish, wildlife, or their habitat;

h. All exposed areas are stabilized with vegetation normally associated with native stream buffers, as appropriate; and

i. There is no practicable or feasible alternative development proposal that results in less impact to the buffer.

As part of the modification request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's wetland consultant. The report shall assess the habitat, water quality, storm water detention, ground water recharge, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the nine (9) criteria listed in this subsection.

(Ord. 4072 § 1, 2007; Ord. 3834 § 1, 2002)

90.105 Stream Relocation or Modification

A proposal to relocate or modify a Class C stream shall be considered by the Planning Official. A proposal to relocate or modify a Class A or B stream shall be considered by the Planning Official pursuant to Process I. The Planning Official shall permit a stream to be relocated or modified only if water quality, conveyance, fish and wildlife habitat, wetland recharge (if hydrologically connected to a wetland), and storm water detention capabilities of the stream, will be significantly improved by the relocation or modification. Convenience to the applicant in order to facilitate general site design may not be considered.

A proposal to relocate or modify a Class A stream shall be approved only if the Washington Department of Fish and Wildlife issues a Hydraulic Project Approval for the project. Furthermore, all modifications shall be consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998).

If the proposed stream activity will result in the creation or expansion of a stream or its buffer on any property other than the subject property, the Planning Official shall not approve the plan until the applicant submits to the Planning Official a copy of a statement signed by the owners of all affected properties, in a form approved by the City Attorney and recorded in the King County Recorder's

Office, consenting to the sensitive area and/or buffer creation or increase on such property.

Prior to the Planning Official's approval of a stream relocation or modification, the applicant shall submit a stream relocation/modification plan prepared by a qualified professional approved by the Planning Official. The cost of producing and implementing the stream relocation/modification plan, and the cost of review of that plan by the City's stream consultant shall be borne by the applicant. This plan shall contain or demonstrate the following:

1. A topographic survey showing existing and proposed topography and improvements;

2. The filling and revegetation of the existing stream channel;

3. A proposed phasing plan specifying time of year for all project phases;

4. The ability of the new stream channel to accommodate flow and velocity of 100-year storm events; and

5. The design and implementation features and techniques listed below, unless clearly and demonstrably inappropriate for the proposed relocation or modification:

a. The creation of natural meander patterns;

b. The formation of gentle and stable side slopes, no steeper than two (2) feet horizontal to one (1) foot vertical, and the installation of both temporary and permanent erosion-control features (the use of native vegetation on stream banks shall be emphasized);

c. The creation of a narrow sub-channel (thalweg) against the south or west stream bank;

d. The utilization of native materials;

e. The installation of vegetation normally associated with streams, emphasizing native plants with high food and cover value for fish and wildlife;

f. The creation of spawning areas, as appropriate;

g. The re-establishment of fish population, as appropriate;

h. The restoration of water flow characteristics compatible with fish habitat areas;

i. Demonstration that the flow and velocity of the stream after relocation or modification shall not be increased or decreased at the points where the stream enters and leaves the subject property, unless the change has been approved by the Planning Official to improve fish and wildlife habitat or to improve storm water management; and

j. A written description of how the proposed relocation or modification of the stream will significantly improve water quality, conveyance, fish and wildlife habitat, wetland recharge (if hydrologically connected to a wetland), and storm water detention capabilities of the stream.

Prior to diverting water into a new stream channel, a qualified professional approved by the Planning Official shall inspect the completed new channel and issue a written report to the Planning Official stating that the new stream channel complies with the requirements of this section. The cost for this inspection and report shall be borne by the applicant.

(Ord. 4491 § 11, 2015; Ord. 3834 § 1, 2002)

90.110 Bulkheads in Streams

Bulkheads are not permitted along a stream except as provided in this section. A proposal for a bulkhead shall be reviewed and decided upon by the Planning Official. Decisions made under this subsection may be appealed in accordance with KZC 90.160. The Planning Official shall allow a bulkhead to be constructed only if:

1. It is not located within a wetland or between a wetland and a stream;

2. It is needed to prevent significant erosion;

3. The use of vegetation and/or other biological materials would not sufficiently stabilize the stream bank to prevent significant erosion;

4. The applicant submits a plan prepared by a qualified professional approved by the Planning Official that shows a bulkhead and implementation techniques that meet the following criteria:

a. There will be no adverse impact to water quality;

b. There will be no adverse impact to fish, wildlife, and their habitat;

c. There will be no increase in the velocity of stream flow, unless approved by the Planning Official to improve fish habitat;

d. There will be no decrease in flood storage volumes;

e. Neither the installation, existence, nor operation of the bulkhead will lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

f. Neither the installation, existence, nor operation of the bulkhead will be detrimental to any other property or the City as a whole.

The bulkhead shall be designed and constructed to minimize the transmittal of water current and

energy to other properties. Changes in the horizontal or vertical configuration of the land shall be kept to a minimum. Fill material used in construction of a bulkhead shall be non-dissolving and non-decomposing. The applicant shall also stabilize all exposed soils by planting native riparian vegetation with high food and cover value for fish and wildlife.

(Ord. 3834 § 1, 2002)

90.115 Culverts in Streams

Culverts are not permitted in streams except as specified in this section. The Planning Official shall review and decide upon an application to place a stream in a culvert under an access drive, driveway, or street. Decisions made under this subsection may be appealed in accordance with KZC 90.160. The Planning Director will review and decide upon proposals to place streams in culverts, other than as specified above, using Process I, described in Chapter 145 KZC. A stream shall be allowed to be put in a culvert only if:

1. Placing the stream in a culvert is necessary to provide required vehicular, pedestrian, or utility access to the subject property. Convenience to the applicant in order to facilitate general site design shall not be considered; and

2. The applicant submits a plan prepared by a qualified professional approved by the Planning Official that shows the culvert and implementation techniques that meet the following criteria:

a. There will be no adverse impact to water quality;

b. There will be no adverse impact to fish, wildlife, and their habitat;

c. There will be no increase in the velocity of stream flow, unless approved by the Planning Official to improve fish habitat;

d. There will be no decrease in flood storage volumes;

e. Neither the installation, existence, nor operation of the culvert will lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

f. Neither the installation, existence, nor operation of the culvert will be detrimental to any other property or to the City as a whole.

The culvert shall be designed and constructed to allow passage of fish inhabiting the stream or which may inhabit the stream in the future. The culvert shall be large enough to accommodate a 100-year storm event. The applicant shall at all times keep the culvert free of debris and sediment so as to allow free passage of water and fish. The Planning Official shall require a security or perpetual culvert maintenance agreement under KZC 90.145 for continued maintenance of the culvert.

If a proposal for a culvert is denied, a bridge may be approved if the bridge complies with the above criteria.

If a proposed project requires approval through Process IIB, the City Council may require that any stream in a culvert on the subject property be opened, relocated, and restored, consistent with the provisions of this subsection.

(Ord. 3834 § 1, 2002)

90.120 Stream Rehabilitation

Planning Official approval is required prior to stream rehabilitation. The Planning Official may permit or require the applicant or property owner to restore and maintain a stream and/or its buffer by removing material detrimental to the stream and its surrounding area such as debris, sediment, or vegetation. The Planning Official may also permit or require the applicant to restore a stream or its buffer through the addition of native plants and other habitat features. See also KZC 95.23(5)(d)(2), Trees in Critical Areas or Critical Area Buffers; and KZC 95.50(11), Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Restoration may be required at any time that a condition detrimental to water quality or habitat exists. When stream rehabilitation is required by the City, the mitigation plan and monitoring requirements of KZC 90.55(4), shall apply.

(Ord. 4238 § 2, 2010; Ord. 4010 § 3, 2005; Ord. 3834 § 1, 2002)

GENERAL

90.125 Frequently Flooded Areas

No land surface modification may take place and no improvements may be located in a frequently flooded area except as specifically provided for in Chapter 21.56 KMC.

(Ord. 3834 § 1, 2002)

90.130 Site Requirements and Sensitive Areas Protection Techniques

In addition to any other requirements of this chapter, the applicant shall locate all improvements on the subject property to minimize adverse impacts to sensitive areas. In order to minimize adverse impacts to sensitive areas or to other areas not subject to development activity, the decision maker may require construction techniques, conditions, and restrictions, including:

1. The decision maker may limit development activity in or near sensitive areas to specific months and to a maximum number of continuous days or hours in order to minimize adverse impacts.

2. The decision maker may require that equipment be operated from only one (1) side of a stream in order to minimize bank disruption.

3. The applicant shall install a berm, curb, or other physical barrier during construction and following completion of the project when necessary to prevent direct runoff and erosion from any modified land surface into any sensitive area.

(Ord. 3834 § 1, 2002)

90.135 Maximum Development Potential

1. Dwelling Units – The maximum potential number of dwelling units for a site which contains a wetland, stream, minor lake, or their buffers shall be the buildable area in square feet divided by the minimum lot area per unit or the maximum units per acre as specified by Chapters 15 through 56 KZC, plus the area of the required sensitive area buffer in square feet divided by the minimum lot area per unit, the maximum units per acre or as specified by Chapters 15 through 56 KZC, multiplied by the development factor derived from subsection (2) of this section:

MAXIMUM DWELLING UNIT POTENTIAL = (BUILDABLE AREA/THE PRESCRIBED MINIMUM LOT AREA PER UNIT OR MAXIMUM UNITS PER ACRE) + [(BUFFER AREA/THE PRESCRIBED MINIMUM LOT AREA PER UNIT OR MAXIMUM UNITS PER ACRE) X (DEVELOPMENT FACTOR)]

For purposes of this subsection only, “buildable area” means the total area of the subject property minus sensitive areas and their buffers.

For developments providing affordable housing units pursuant to Chapter 112 KZC, or cottage, carriage or two/three-unit homes pursuant to Chapter 113 KZC, the density bonus and resulting maximum density shall be calculated using the maximum dwelling unit potential of this section as the base to which the bonus units will be added.

For multifamily development, if application of the maximum development potential formula results in a fraction, the number of permitted dwelling units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50. For single-family development, if application of the maximum development potential formula results in a fraction, the number of permitted dwelling units (lots) shall not be rounded up, regardless of the fraction. This provision shall not be construed to preclude application of Chapter 22.28 KMC.

Lot size and/or density may be limited by or through other provisions of this code or other applicable law, and the application of the provisions of this chapter may result in the necessity for larger lot sizes or lower density due to inadequate buildable area.

2. Development Factor – The development factor, consisting of a “percent credit,” to be used in computing the maximum potential number of dwelling units for a site which contains a sensitive area

buffer is derived from the following table:

Percentage of Site in Sensitive Area Buffer			Counted at
< 1	to	10%	100%
> 10	to	20%	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%

(Ord. 4476 § 3, 2015; Ord. 4252 § 1, 2010; Ord. 4196 § 1, 2009; Ord. 4120 § 1, 2007; Ord. 3938 § 1, 2004; Ord. 3834 § 1, 2002)

90.140 Reasonable Use Exception

1. Purpose of the Reasonable Use Exception – The purpose of the reasonable use exception is to:

   a. Provide the City with a mechanism to approve limited use and disturbance of a sensitive area and sensitive area buffer when strict application of this chapter would deny all economically viable use of the property;

   b. Establish guidelines and standards for the exercise of this authority adjusted to the specific conditions of each site; and

   c. Protect public health, welfare and safety of the citizens of Kirkland.

2. "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 include the seriousness of the harm to be prevented, 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.

3. Reasonable Use Process – If the strict application of this chapter would preclude all reasonable

use of a site, an owner of real property may apply for a reasonable use exception to this chapter. The application shall be considered under Process IIA of Chapter 150 KZC; provided, that for a single-family development proposal which does not exceed a total of 3,000 square feet of site disturbance, and does not encroach into the sensitive area, but only the associated buffer, the application shall be considered pursuant to subsection (7) of this section, Reasonable Use Process: Administrative Alternative.

4. Submittal Requirements – As part of the reasonable use request, in addition to submitting an application, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's qualified professional. The report shall include the following:

a. A determination and delineation of the sensitive area and sensitive area buffer containing all the information specified in KZC 90.40(3) for a wetland or based on the definitions contained in this chapter for a stream;

b. An analysis of whether any other reasonable use with less impact on the sensitive area and sensitive area buffer is possible;

c. Sensitive site design and construction staging of the proposal so that the development will have the least practicable impact on the sensitive area and sensitive area buffer;

d. A description of the area of the site which is within the sensitive area or within the setbacks or buffers required by this chapter;

e. A description of protective measures that will be undertaken such as siltation curtains, hay bales and other siltation prevention measures, and scheduling the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;

f. An analysis of the impact that the amount of development proposed would have on the sensitive area and the sensitive area buffer;

g. How the proposal minimizes to the greatest extent possible net loss of sensitive area functions;

h. Whether the improvement is located away from the sensitive area and the sensitive area buffer to the greatest extent possible; and

i. Such other information or studies as the Planning Official may reasonably require.

5. Decisional Criteria – The City shall grant applications for reasonable use exceptions only if all of the following criteria are met:

a. That no permitted type of land use for the property with less impact on the sensitive area

and associated buffer is feasible and reasonable, which in a residential zone shall be one (1) single-family dwelling and in a commercial or industrial zone shall be an office use;

b. That there is no feasible on-site alternative to the proposed activities, including reduction in size, density or intensity, 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 the sensitive area and buffer;

c. Unless the applicant can demonstrate unique circumstances related to the subject property, the amount of site area that will be disturbed by structure placement or other land alteration, including but not limited to grading, utility installation, decks, driveways, paving, and landscaping, shall not exceed the following limits:

i. If the subject property contains 6,000 square feet of area or less, no more than 50 percent of the site may be disturbed.

ii. If the subject property contains more than 6,000 square feet but less than 30,000 square feet, no more than 3,000 square feet may be disturbed.

iii. For properties containing 30,000 square feet or more, the maximum allowable site disturbance shall be between 3,000 square feet and 10 percent of the lot area, to be determined by the City on a case-by-case basis.

iv. The amount of allowable disturbance shall be that which will have the least practicable impact on the sensitive area and the sensitive area buffer given the characteristics and context of the subject property, sensitive area, and buffer.

The applicant shall pay for a qualified professional to help with the City's determination of the appropriate limit for disturbance;

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

e. The proposal utilizes to the maximum extent possible innovative construction, design, and development techniques, including pervious surfaces, which minimize to the greatest extent possible net loss of sensitive area functions and values;

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

g. The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter;

h. The inability to derive reasonable use is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter or its predecessor; and

i. The granting of the exception will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances.

6. Modifications and Conditions – The City may approve reduction in required yards or buffer setbacks and may allow the maximum height of structures to be increased up to five (5) feet to reduce the impact on the sensitive area and sensitive area buffer. The City shall include in the written decision any conditions and restrictions that the City determines are necessary to eliminate or minimize any undesirable effects of approving the exception.

7. Reasonable Use Process: Administrative Alternative – If, in order to provide reasonable use of a site, the standards of this chapter need to be modified and the proposed improvement does not exceed a total of 3,000 square feet of site impact, including but not limited to structures, paved areas, landscaping, decks, driveways, utility installation, and grading, the Planning Director is authorized to approve a reasonable use exception subject to subsections (4) and (5) of this section and considered under Process I of Chapter 145 KZC. Administrative approval shall also be subject to the following limitations:

a. The required front yard may be reduced by up to 50 percent where the applicant demonstrates that the development cannot meet the City's code requirements without encroaching into the sensitive area buffer.

b. The encroachment of the proposed development shall only be into the sensitive area buffer, not the sensitive area.

8. Lapse of Approval

a. The reasonable use exception approval expires and is void if the applicant fails to file a complete building permit application within one (1) year of the final decision granting or approving the exception, unless the applicant has received an extension for the exception from the decision-maker 30 days prior to expiration. "Final decision" means the final decision of the Planning Director or City Council.

b. The applicant may apply for a one-time extension of up to one (1) year. The application must be submitted by letter to the Planning Official and, along with any other supplemental documentation, must demonstrate that the applicant is making substantial progress toward developing the subject property consistent with the approval and that circumstances beyond his/her control prevent compliance with the time limit under this section.

c. The lapse of approval period provided in this section is shorter than the lapse of approval period in KZC 150.135 generally applicable to Process IIA approvals and this shorter period shall control for reasonable use exception approvals.

(Ord. 4072 § 1, 2007)

90.145 Bond or Performance Security

The Planning Official shall require a performance or maintenance bond, a performance or maintenance security, a perpetual culvert maintenance agreement, and/or a perpetual landscape maintenance agreement, as determined to be appropriate by the Planning Official, to ensure compliance with any aspect of this chapter or any decision or determination made pursuant to this chapter.

1. Performance or Maintenance Bond or Security Requirement – The performance or maintenance security required by the Planning Official shall be provided in such forms and amounts as the Planning Official deems necessary to assure that all work or actions are satisfactorily completed or maintained in accordance with the approved plans, specifications, permit or approval requirements, and applicable regulations, and to assure that all work or actions not satisfactorily completed or maintained will be corrected to comply with approved plans, specifications, requirements, and regulations to restore environmental damage or degradation, protect fish and wildlife habitat and protect the health, safety, and general welfare of the public.

2. Form of Performance Security – The performance security shall be a surety bond obtained from companies registered as surety in the state or certified as acceptable sureties on federal bonds. In lieu of a surety bond, the Planning Official may allow alternative performance security in the form of an assignment of funds or account, an escrow agreement, an irrevocable letter of credit, or other financial security device in an amount equal to that required for a surety bond. The surety bond or other performance security shall be conditioned on the work being completed or maintained in accordance with requirements, approvals, or permits; on the site being left or maintained in a safe condition; and on the site and adjacent or surrounding areas being restored in the event of damages or other environmental degradation from development or maintenance activities conducted pursuant to the permit or approval.

3. Amount of Performance Security – The amount of the performance or maintenance security shall be 125 percent of the estimated cost, as approved by the Planning Official, of conformance to plans, specifications, and permit or approval requirements under this chapter, including corrective work and compensation, enhancement, mitigation, maintenance, and restoration of sensitive areas. In addition, an administrative deposit shall be paid as required in KZC 175.25. All bond or performance security shall be submitted in their original form with original signatures of authorization.

4. Administration of Performance Security – If during the term of the performance or maintenance

security, the Planning Official determines that conditions exist which do not conform with plans, specifications, approval or permit requirements, the Planning Official may issue a stop work order prohibiting any additional work or maintenance until the condition is corrected. The Planning Official may revoke the performance or maintenance security, or a portion thereof, in order to correct conditions that are not in conformance with plans, specifications, approval or permit requirements. The performance or maintenance security may be released upon written notification by the Planning Official, following final site inspection or completion, as appropriate, or when the Planning Official is satisfied that the work or activity complies with permits or approved requirements.

5. Exemptions for Public Agencies – State agencies and local government bodies, including school districts, shall not be required to secure the performance or maintenance of permit or approval conditions with a surety bond or other financial security device. These public agencies are required to comply with all requirements, terms, and conditions of the permit or approval, and the Planning Official may enforce compliance by withholding certificates of occupancy or occupancy approval, by administrative enforcement action, or by any other legal means.

(Ord. 3834 § 1, 2002)

90.150 Dedication

Consistent with law, the applicant shall dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers. Land survey information shall be provided by the applicant for this purpose in a format approved by the Planning Official.

(Ord. 3834 § 1, 2002)

90.155 Liability

Prior to issuance of a land surface modification permit or a building permit, whichever is issued first, the applicant shall enter into an agreement with the City that runs with the property, in a form acceptable to the City Attorney, indemnifying the City from any claims, actions, liability and damages to sensitive areas arising out of development activity on the subject property. The applicant shall record this agreement with the King County Recorder's Office.

(Ord. 4491 § 11, 2015; Ord. 3834 § 1, 2002)

90.160 Appeals

All classifications, decisions, and determinations made pursuant to this chapter may be appealed using, except as stated below, the applicable appeal provisions of Chapter 145 KZC. If a proposed development activity requires approval through Process IIA or IIB (as described in Chapters 150 and 152 KZC, respectively), any appeal of a classification, determination, or decision will be heard as part

of that other process.

(Ord. 3834 § 1, 2002)

90.165 Setbacks and Buffers Required by Prior Approvals

If, subsequent to October 2, 1982, the City approved a variance, planned unit development, rezone, or zoning permit through Processes I, II, IIA, or IIB, as described in Chapters 120, 125, 130, 145, 150, and 152 KZC, respectively, and/or a subdivision or short subdivision for the subject property with established setbacks or buffers on the subject property from a stream or wetland, those setbacks or buffers shall apply to the original construction on the subject property. All of the provisions of this chapter which do not directly conflict with the previously imposed setback or buffer requirements shall fully apply to the subject property.

(Ord. 3834 § 1, 2002)

90.170 Planning/Public Works Official Decisions – Lapse of Approval

Planning or Public Works Official decisions authorized by this chapter shall be subject to the lapse of approval provisions of KZC 145.115.

(Ord. 4072 § 1, 2007)