



MEMORANDUM

Date: October 13, 2016

To: Planning Commission
Houghton Community Council

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

Subject: Deliberations Following Joint Public Hearing: Chapter 90 KZC Amendments (Critical Areas Ordinance/Wetlands, Streams, Fish and Wildlife Conservation Areas and Frequently Flooded Areas Regulations), and related Minor Code Amendments to the Kirkland Zoning Code and Municipal Code, File CAM15-01832, #2 and #3

I. RECOMMENDATION

- Continue deliberation of Chapter 90 KZC Amendments and related minor code Amendments to the Kirkland Zoning Code and Municipal Code.
- After deliberation, the following should occur:
 - Houghton Community by motion make a recommendation to the Planning Commission and City Council on the code amendments.
 - Planning Commission by motion make a recommendation to City Council on the code amendments.

II. BACKGROUND

On [September 29, 2016](#), the Planning Commission and Houghton Community Council held a joint public hearing on the update to the City's critical area regulations, closed the hearing except for written comments and began deliberations.

Both the Planning Commission and Houghton Community Council had comments about the draft Chapter 90 KZC. This memo summarizes the comments and provides staff responses to these comments. Changes have been made to the draft Chapter 90 KZC in response to the Planning Commission and the Houghton Community Council comments (see Attachment 1).

In addition, Brent Carson of Van Ness Feldman LLP provided a written comment letter dated September 29, 2016 and summarized the comments in oral testimony at the hearing (see Attachment 2). Mr. Carson submitted additional comments in an email dated September 30, 2016 (see Attachment 3) after the hearing. In the memo, staff outlines the comments and provides responses. Changes have been made to the draft Chapter 90 KZC in response to Mr. Carson's comments (see Attachment 1).

Greg Rairdon submitted a letter dated September 30, 2016 and Pat Moir submitted an email just before the hearing (see Section VI - Other Comment).

III. PLANNING COMMISSION AND HOUGHTON COMMUNITY COUNCIL'S COMMENTS AND STAFF RESPONSE

Below is a summary of the Planning Commission and Houghton Community Council's comments, staff responses and staff recommendations.

- A. Planning Commission and Houghton Community Council Comments: Consider extending the effective date of New Chapter 90.

Staff Response: Staff has suggested February 1, 2017 as the effective date with the assumption that the City Council would take action in mid-November 2016. Staff is already working with multiple applicants seeking to develop under the current regulations. The February date would give applicants two and half additional months to wrap up permit submittals. All property owners within 300 feet of a known critical area were notified by mail and the development community was notified by email of the pending code changes in early January 2016. Based on the number of inquiries about the new regulations, people participating on the listserv and applications that have been submitted relating to wetlands and streams, the development community and individuals who wanted to develop their properties are well aware of the pending changes and have had ample time to move forward with development permits.

The state deadline for adopting the new Chapter 90 KZC was June 30, 2016. The City will be five and a half months behind the deadline. The effective date should not be pushed out too far given that deadline.

Staff Recommendation: Move effective date to March 1, 2016 assuming that the City Council adopts the new Chapter 90 on December 13, 2016.

- B. Planning Commission Comment: Rephrase both the wetlands and stream table sections of KZC 90.55.1 and KZC 90.65.1, pages 16 and 20 of Attachment 1 about restoring degraded critical areas, and rephrase the section in KZC 90.130.4 about the size of improvements (between 50 and 1000 square feet) subject to the 1:1 buffer mitigation, but not the vegetative buffer standards.

Staff Recommendation: Both changes has been made to pages 16 and 20 of Attachment 1.

- C. Planning Commission Comment: One Planning Commissioner noted that staff raised the issue of the 5-year lapse of approval for the Reasonable Use Exception (RUE) in KZC 90.180, page 54 of Attachment 1.

Staff Comment: A 5-year lapse of approval for RUEs would match the lapse of approval for other zoning permits and the time period that a critical area report and critical area delineation is valid. Earlier this year, the Planning Commission discussed providing a two-year lapse of approval. This was based on concerns that the five years may be too long a time frame (since this type of permit may entail actual filling of wetlands) and to ensure that once an application is approved it would move forward in a timely manner.

Staff Recommendation: The one Planning Commission comment has been reflected in page 54 of Attachment 1, but the Planning Commission should discuss the lapse of approval for RUEs to give staff a final direction.

- D. Houghton Community Council Comment: One HCC member noted that the Purpose section should address private property rights (KZC 90.10, page 2 of Attachment 1).

Staff Recommendation: The change has been made to page 2 of Attachment 1.

- E. Houghton Community Council Comment: Exempt repair and maintenance and installation of private utilities (utilities installed by a service provider that are on private property – usually extended from the right-of-way or utility corridor).

Staff Response: Staff agrees.

Staff Recommendation: The change has been made to page 6 of Attachment 1.

- F. Houghton Community Council Comment: Define “degraded” in the requirement to restore critical areas in KZC 90.55.1 and KZC 90.65.1, pages 16 and 20 of Attachment 1.

Staff Response: According to The Watershed Company, most wetlands in Kirkland contain debris, sediment and invasive species reflecting the degraded nature of urban wetlands. Rather than define the term “degraded,” the critical area report should look at the critical area on a case by case basis to consider the status of the vegetation, habitat, water quality and hydrologic functions to determine what, if any, restoration is needed to improve the wetland or stream.

Staff Recommendation: The wording from The Watershed Company is reflected in pages 16 and 20 of Attachment 1.

- G. Houghton Community Council Comment: Foundations damaged by casualty or for other reasons that are to be fully replaced rather than repaired should be able to be located in the exact location pursuant to KZC 90.185, page 56 of Attachment 1.

Staff Response: Replacement of a foundation is a significant action in redeveloping a site. Replacement is the only opportunity to consider options that would reduce the degree of non-conformance for a building located in a buffer or wetland. The provision as written in KZC 90.185 states that the foundation must be moved away from the buffer as much as possible given existing improvements, required yard setbacks and configuration of the property. Lot shape and size, topography, front yard and side yard requirements and existing improvements may prevent the foundation from being relocated or only slightly relocated. In some cases the rebuilt foundation can be moved partially or fully out of the buffer while other times it can only be rebuilt in its current location.

This approach actually allows more leniency than the current code. Under the current Chapter 162 KZC for non-conformances, if the damage exceeds 50% of the value of the structures, the entire structure must be brought into conformance both for single family and other uses.

Staff Recommendation: No change. Require a proposed rebuilt foundation to be relocated out of the buffer as far as possible if existing conditions would allow it to be moved as stated in page 56 of Attachment 1.

- H. Houghton Community Council Comment: Clarify that an applicant can do all three building addition options in KZC 90.185.5, page 58 of Attachment 1 on a one time basis, including a footprint of 1,000 square feet on the side of a building opposite side of the buffer, 500 square feet on the sides of the existing building and 250 square feet between the existing building and the buffer.

Staff Response: Staff agrees.

Staff Recommendation: The change has been made to page 58 of Attachment 1.

- I. Houghton Community Council Comment: Require that a buffer waiver document be recorded on the title of adjacent properties stating that any new or increased buffer from a daylighted or meandered stream is waived for adjacent properties. The current KZC 90.80, page 24 of Attachment 1 says that if the adjacent property owners wants the waiver recorded, the City will do it.

Staff Response: The adjacent property may or may not want a document recorded on their title.

Staff Recommendation: The provision has been reworded to state that the applicant would be responsible to contact the property owners in writing for approval to do the recording, and then prepare the waiver document and do the recording on the adjacent property's title. The change has been made to page 24 of Attachment 1.

IV. BRENT CARSON'S COMMENT LETTER DATED SEPTEMBER 29, 2016 AND STAFF RESPONSE (Attachment 2)

A. Brent Carson Comment: Provide private citizens with the same flexibility as public agencies for the following:

1. Allow maintenance and repair of private streets under KZC 90.35.2, which addresses public streets (page 6 of Attachment 1).
2. Allow private trails to be maintained under KZC 90.35.5 similar to public trails (page 7 of Attachment 1).
3. Allow construction and expansion of public trails, streets and utilities under KZC 90.40.6.g should be extended to private trails, roads and utilities (page 12 of Attachment 1).
4. Have similar provision for private development as Public Agency and Public Utility Exception under KZC 90.45 (page 13 of Attachment 1).

Staff Response:

Regarding private exemptions, staff does have concerns about private repair and maintenance of roads and trails using the exemption provision because it eliminates any oversight of the work by the City to ensure that the property owner does not disturb the buffer or critical area any more than absolutely necessary. Grading and/or excavation could occur beyond the scope of maintenance and repair with no knowledge by the City. In contrast, there is always oversight for public repair and maintenance projects.

Regarding public agency and utility exceptions, public projects can be large facilities or corridor type projects that cover larger areas or a neighborhood or multi-neighborhood areas. They could include sewer, water line, gas, electric, fiber optic and street corridors. They typically have little to no options for location or scope and often must connect to existing lines and improvements. Private projects have more flexibility in terms of scope of the project and siting on the site.

Mr. Carson does raise some good points. Changes and clarifications have been made to Attachment 1 to respond to the comments from Brent Carson:

1. Changed to Chapter 90: private streets and private trails can be repaired and maintained as an exemption under KZC 90.35.1 (page 6 of Attachment 1) similar to public streets under KZC 90.35.2 and public trails under KZC 90.35.5.
2. Change to Chapter 90: private utilities can be maintained as an exemption under KZC 90.35.3 (page 6 of Attachment 1).
3. Private trails are already able to be constructed and improved under KZC 90.6.c (page 10 of Attachment 1) similar to public trails in this section. (The public and private trail permitted activity sections have now been combined and re-ordered.)
4. Public Agency and Public Utility Exception section under KZC 90.45 (page 13 of Attachment 1) is the comparable provision to Reasonable Use Exception for private development under KZC 90.180 (page 50 of Attachment 1). For both public and private projects, the applicant does an analysis of the wetland or stream modification section (pages 17 or 20 of Attachment 1) to see if the project can meet the criteria. If it cannot, then the public agency applies for the exception

under KZC 90.45 while the private applicant applies for an exception under KZC 90.180 for Reasonable Use Exception. Both go through the same review process – a Process I under the Planning Director.

Under a Reasonable Use Exception, a private project can modify the buffer and/or the critical area. Reductions in required yards are an option.

Staff Recommendation: See edits and clarifications to pages 6, 7, 9 and 10 of Attachment 1.

- B. Brent Carson Comment: Modification to buffers should be allowed outside of a wetland critical area modification process in KZC 90.60 and 90.65 (pages 17 and 20 of Attachment 1) and the City should implicitly allow “paper fill” of wetlands.

Staff Response: Buffer modifications are not permitted under KZC 90.60 and 90.65 unless done in conjunction with a wetland or stream modification for the following reasons:

1. Department of Ecology guidance and Best Available Science gives the City two choices: a wider buffer (33% greater than the standard buffer) that can be reduced down to the same width as the standard buffer with buffer enhancement and mitigation or a narrower buffer (what we call the standard buffer) with no reduction in the buffer and with a buffer that is fully enhanced. Early in the process, the Planning Commission discussed the options and gave direction for a narrow buffer that is completely vegetated as a well-functioning buffer. Department of Ecology does not support buffer reductions for the narrow buffer. The presumption is that a lesser buffer constitutes a wetland impact.
2. Staff met with the Department of Ecology last fall before starting on the Chapter 90 update project. They stated that they do not support the concept of paper fill of a wetland to modify a buffer (see Brent Carson’s letter for description of a paper fill). Staff understands that the Department of Ecology recognizes that jurisdictions have allowed this to happen. Historically, the City has allowed paper fill in limited circumstances and nothing in the new code would outright preclude this in the future. Paper fill is processed identical to actual fill as a wetland modification under the current and new Chapter 90.

However, there is one limited situation where staff agrees that a buffer modification should be permitted. This would be cases where vehicular access is necessary through a buffer to access a developable site when no other option is available. This modification would have much less of an impact to a wetland than let’s say a 30% reduction along the entire edge of the buffer because the modification would only be at point in the buffer. Mitigation would be required by enlarging the buffer elsewhere on the site so that the total buffer area is still provided.

Staff Recommendation: No change, except allow a limited buffer modification under KZC 90.40, Permitted Activities Subject to Development Standards, to gain vehicular access

through a buffer to a developable site if there is no other possible location and the access is the most direct and least impacting route. See pages 10-12 of Attachment 1.

- C. Brent Carson Comment: An applicant should be able to make a case that any type of structure meets the criteria for an Interrupted Buffer Waiver in KZC 90.120 (page 34 of Attachment 1).

An interrupted buffer is where an existing large structure significantly divides a buffer and prevents any hydrologic, wildlife, or water quality connection between the outer buffer and the buffer next to the critical area. If criteria are met, the outer buffer is no longer regulated as a buffer.

Staff Response: The draft Chapter 90 limits applicability of the provision to existing rights-of-way, private easements and habitable buildings that divide buffers - large structures that clearly can interrupt a buffer. The draft excluded retaining walls, detached garages, accessory dwelling units, sheds and fences. These are structures that are much less unlikely to interrupt a buffer unless they are particularly large in size.

Staff Recommendation: Staff has changed KZC 90.120 for Interrupted Buffer Waiver (page 34 of Attachment 1) to allow a variety of structures to be analyzed in a critical area report, except fences, sheds, patios, decks and other minor improvements. These exceptions avoid frivolous applications. A critical area report prepared by a qualified professional would need to demonstrate conclusively that the structure interrupts a buffer and that the outer buffer is not connected for hydrology, wildlife habitat or water quality to the buffer next to the critical area.

- D. Brent Carson Comment: Do not require removal of nonconforming structures located in a buffer with development of a site per KZC 90.130.3a for Vegetative Buffer Standard.

Staff Response: The requirement to remove nonconforming structure only applies if someone is constructing a footprint of greater than 1000 square feet and thus must install the vegetative buffer. The nonconformance section under KZC 90.185, including the options to construct small additions, does not require removal of nonconforming structures and the vegetative buffer standard.

Upon further consideration, staff agrees that removal of nonconforming structures should be limited to removal of accessory improvements. If a property owner is tearing down the primary structure or adding a footprint of greater than 1000 square feet, then sheds, decks, patios, hot tubs etc. in the buffer need to be removed. If not, the vegetative buffer standards would not be met for the narrow buffer standard. The property owner would continue to go into the buffer to use those nonconforming accessory structures. Thus, the area would never function as a buffer.

A similar provision to remove nonconforming accessory improvements is also in the shoreline regulations of Chapter 83 KZC for the shoreline setback requirement.

Staff Recommendation: KZC 90.130 for the Vegetative Buffer Standard has been changed to limit what must be removed in the buffer.

- E. Brent Carson Comment: There should be no height limit for retaining walls in the 10-foot structure setback from the buffer of KZC 90.140 (page 37 of Attachment 1). The proposed Chapter 90 limits the retaining wall height to 4 feet and a setback of five feet from the buffer.

Staff Response: The list of minor improvements permitted in the 10-foot structure setback from the buffer pursuant to KZC 90.140 are all low in height or scale. A 20-foot retaining wall is comparable to a side of a building. Buildings, sheds and other large structures are not permitted in the structure setback area.

The list of allowed minor improvements in the 10-foot structure setback in the draft Chapter 90 KZC is comparable to other jurisdictions.

Staff Recommendation: No change. The maximum height of a retaining walls allowed in the structure setback should remain at 4 feet in height.

- F. Brent Carson Comment: The 2008 Federal Mitigation Rule under the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers has a preference for off-site mitigation through wetland banking and fee in lieu programs. There are currently no programs established in the city. KZC 90.145.3.a Location of Mitigation section (page 38 of Attachment 1) that lists in order of preference:
- on-site in-kind,
 - off-site in the city and in-kind; and
 - off site in-kind and in the watershed

Mr. Carson suggests changing the preferences to correspond to the federal rule.

Staff response: KZC 90.145.3a - Location of Mitigation comes directly from the Department of Ecology's model ordinance. Ecology and the City would rather have wetlands that are replaced, rehabilitated and/or enhanced first be considered to be done in the City so we continue to have areas for flood storage, water quality filtration and wildlife habitat. Situations where on-site mitigation may not be feasible or not the best choice include not an appropriate location for a wetland, poor chance of success for creation of a new wetland or the existing wetland is of poor quality. The term used in the provision is "preference" and not "required."

KZC 90.145.3b directly following the preference list is called "On-site" versus "Off-site" mitigation with a list of reasons for off-site mitigation. This section provides ample reasons for doing off-site in the watershed.

It also should be noted that wetland banking and fee in lieu programs are expensive. Small developers and single family homeowners would likely find the programs too expensive and would prefer to do on-site mitigation if it is possible.

Staff Recommendation: No change. The mitigation section is consistent with Department of Ecology's guidance and provides reasons to do off-site watershed mitigation.

V. BRENT CARSON'S COMMENT EMAIL DATED SEPTEMBER 30, 2016 AND STAFF RESPONSE (Attachment 3)

- A. Brent Carson Comment: What is the point of the alternative buffer standard in KZC 90.160 and KZC 90.65 (pages 16 and 19) which is 33% wider than the standard buffer? Both the standard and alternative require that nonconforming structures be removed and mowing of lawn area is not allowed.

Staff response: The alternative buffer does not need to be revegetated and maintained. Invasive species may remain. A wider buffer that does not have a well-functioning buffer still provides area for critical area protection, water quality filtration, flood storage and some wildlife habitat depending on the existing vegetation. It is an option that Ecology offers as an alternative to the narrower well-functioning buffer. Other jurisdictions also offer this option. In most cases, applicants will choose the narrower buffer. Someone with a very large property might opt for the alternative option. The alternative would be to strike the option for alternative buffers from the draft code, but that would provide less choices for property owners.

Staff Recommendation: No change to the option for a wider alternative buffer

- B. Brent Carson Comment: Has questions on nonconformances. See questions and responses below:

Staff Response:

1. Questions: What can a homeowner do in the buffer? Can he mow? Can he keep structures?

Answers: If a homeowner has a lawn in the buffer, it can still be mowed. The lawn cannot be expanded into the buffer. Nonconformances may remain and be maintained until such time as the site is redeveloped that triggers KZC 90.130 Vegetative Buffer Standard.

2. Questions: What triggers the need to stop mowing the buffer and remove structures?

Answers: Nonconformances may remain and be maintained unless the site will be redeveloped that triggers KZC 90.130 Vegetative Buffer Standard. At that point, a buffer would then need to be vegetated which would require removal of the lawn and accessory structures in the buffer.

3. Questions: How do the exemptions in KZC 90.35.1 for repair and maintenance relate to requirement to removed nonconforming structures?

Answers: See answer to question 2 above.

4. Questions: What is a wetland modification under KZC 90.60? Does this include mowing and planting non-native? What about a swing set?

Answers: The wetland modification section of KZC 90.60 lists specific activities that can be proposed for a modification request, such as filling a wetland or removing vegetation. Mowing for a legally established lawn is permitted. New improvements, such as new non-native plants and a new swing set or similar structures and improvements cannot be installed in a buffer.

Staff Recommendation: Staff added a general provision section in the nonconformance section of KZC 90.185 that answers these questions and provide additional clarity.

- C. Brent Carson Comment: How does one prove that an on-site mitigation would succeed?

Staff Response: The mitigation plan would address likely success or failure rate of wetland mitigation done on site. An appropriate location is the key to the success.

- D. Brent Carson Comment: Single family homeowner should be able to rebuild a structure that is a total loss due to a casualty damage in KZC 90.185.3.

Staff response: Mr. Carson misunderstood the provision. A single family structure damaged by casualty can be replaced at 100%. If the foundation is to be replaced, it must be moved away from the critical area to the maximum extent possible.

VI. OTHER COMMENTS

- A. Comment: John Clarke from Holmes Point area spoke at the public hearing about having what he thinks is a drainage ditch on his property rather than a stream.

Staff response: A stream determination would need to be done by a qualified critical area professional to determine if the watercourse meets the characteristics of a ditch or a stream.

- B. Comment Letter from Greg Rairdon dated September 30, 2016: Mr. Rairdon is concerned about the increase in wetland buffers. He states that the buffers are going from 50 feet to 225 feet and that this would affect development of properties containing critical areas (see Attachment 4).

Staff response: The City's current wetland buffer regulations range from 50 to 100 feet for a primary basin. As was explained at the [January 28, 2016](#) joint meeting on background information, the City's critical area ordinance dates back to critical area science of the mid-1990's. The current buffers are very inadequate to protect wetlands. Best Available Science now places considerable emphasis on the importance of wildlife habitat rather than on the type of wetland. Under the Growth Management Act, the City must replace its wetland buffer standards with buffers that meet Best Available Science. Those buffer standards are reflected in Attached 1 and provided below.

According to The Watershed Company, given Kirkland’s degraded urban wetlands, it is doubtful that Kirkland has any wetlands with habitat scores of 8-9 (225 foot buffers). The common habitat scores for Kirkland are in the 3-4 and 5 score range with some in the 6-7 score range. Kirkland also has some Category IV wetlands. Kirkland likely has no bogs or high conservation areas.

Wetland Buffer Widths

Wetland Category	Buffer width based on habitat points			
	3-4 habitat pts.	5 habitat pts.	6-7 habitat pts.	8-9 habitat pts.
Category I: Bogs and High Conservation Areas	190 feet	190 feet	190 feet	225 feet
Category I: Others	75 feet	105 feet	165 feet	225 feet
Category II	75 feet	105 feet	165 feet	225 feet
Category III	60 feet	105 feet	165 feet	225 feet
Category IV	40 feet			

C. Comment Email from Pat Moir and Bruce Burke: (see Attachment 5)

VII. NEXT STEPS

- November 15, 2016 City Council study session.
- December 13, 2016 City Council adoption (if Council is ready to adopt)
- January 23, 2017 Houghton Community Council final approval
- March 1, 2017 effective date (depending on adoption date)

ATTACHMENTS:

1. Draft Chapter 90 KZC with edits reflecting comments
2. Comment letter from Brent Carson dated September 29, 2016
3. Comment email from Brent Carson dated September 30, 2016
4. Comment letter from Greg Rairdon dated September 30, 2016
5. Comment letter from Pat Moir dated September 27, 2016

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Chapter 90 – CRITICAL AREAS: WETLANDS, STREAMS, MINOR LAKES, FISH AND WILDLIFE HABITAT CONSERVATION AREAS, AND FREQUENTLY FLOODED AREAS

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- 90.170 Subdivisions and Maximum Development Potential
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- 90.195 Pesticide and Herbicide Use
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- 90.205 Code Enforcement
- 90.210 Dedication and Maintenance of Critical Area and Buffer
- 90.215 Liability
- 90.220 Appeals
- 90.225 Lapse of Approval

90.05 User Guide

The regulations in this chapter apply to activities, uses, alterations, work, and conditions in or near any wetland, stream, minor lake, fish and wildlife habitat conservation areas, or frequently flooded area. These regulations add to and in many cases supersede other City regulations. Anyone interested in conducting any development activity on or near one of these critical areas; wanting 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 of these areas on their property, should read these regulations.

For properties within jurisdiction of the Shoreline Management Act, the regulations in Chapter 83 KZC shall be met. 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 performance security, dedication and liability.

90.10 Purpose

These regulations were prepared to comply with the Growth Management Act and implement the goals and policies of the City's Comprehensive Plan. 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, minor lakes, fish and wildlife habitat conservation areas, and frequently flooded areas using best available science. The designation, classification, and regulation of critical areas are intended to protect property rights and to assure preservation and protection of critical areas from loss or degradation, ensure no net loss of ecological functions and to restrict incompatible land uses.

These critical areas perform a variety of valuable biological, chemical, and physical functions that benefit the City and its residents. The functions of these critical areas include, but are not limited to, the following:

1. Wetlands – Wetlands help store and convey flood and storm water, support base stream flow and recharge groundwater, provide erosion control and shoreline protection, maintain and improve water quality, provide fish and wildlife habitat, and provide cultural and socioeconomic values. Wetland functions for flood and stormwater control, erosion protection, and water quality improvement are particularly valuable to protect infrastructure and to limit the effects of development on water quality in Kirkland's streams and lakes.

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Wetland buffers protect wetlands from or reduce the impacts of adjacent land uses. Buffers serve to moderate runoff volume and flow rates and stormwater inputs (hydrology maintenance), remove sediment, excess nutrients, synthetic organic chemicals (e.g., pesticides, oils, and greases) and other toxic substances (water quality improvement), provide shade for surface water temperature (moderate temperature), and deter harmful intrusion into wetlands by humans and pets (disturbance barrier). Buffers provide terrestrial habitat for wetland-dependent species that need both aquatic and terrestrial habitats for their life cycle maintain habitat connectivity (wildlife habitat).

The primary purpose of wetland regulations is to achieve a goal of no net loss of wetland function, value, and acreage, 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.

Stream buffers serve an important role in maintaining stream functions that are important for supporting diverse and productive fish population. These include water quality (i.e. protection from sediment, nutrients, metals, pathogens, herbicides, and pharmaceuticals), water temperature and microclimate, bank stability, invertebrate communities, inputs of organic detritus, instream habitat complexity, including large woody debris, and habitat travel corridors.

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

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

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

4. Fish and Wildlife Habitat Conservation Areas – Fish and wildlife habitat conservation areas provide important nesting territory as well as spawning and protection areas for state and federally listed endangered, threatened, and sensitive species that have a primary association with that habitat area and state priority habitat that include species of local importance. These habitat areas help maintain long-term viability of these species and contribute to the state's biodiversity. Preservation of the vegetation, faunal, and hydrologic characteristics of these habitat areas is critical to maintaining these species.

The primary purpose of fish and wildlife habitat conservation area regulations is to protect habitats from impacts of adjacent urban uses by minimizing fragmentation of native habitat, controlling invasive species, maintaining or providing habitat connectivity with vegetated corridors between habitat patches, preserving habitat features including native vegetative, snags and downed wood, and providing buffers of adequate width adjacent to the habitat areas.

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5. Frequently Flooded Areas – Frequently flooded areas are areas of special flood hazard that help to store and convey storm and flood water; recharge ground water; provide important riparian habitat for fish and wildlife; protect the functions and values of floodplains 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 result in significant costs to the public as well as to private individuals.

The primary purpose of frequently flooded areas regulations is to manage potential risks to public safety and damage to public and private property due to flooding, and to protect instream habitat areas. The City of Kirkland uses the Federal Emergency Management Agency (FEMA) maps as a basis for a determination of the location of frequently flooded areas.

90.15 Applicability

1. General – These regulations apply to land within the City of Kirkland that contains any of the following:
 - a. Wetlands;
 - b. Streams;
 - c. Minor Lakes;
 - d. Fish and Wildlife Habitat Conservation Areas;
 - e. Frequently Flooded Areas; and
 - f. Vegetative buffers required for the above.
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 regulation applies to the subject property, then the regulation that provides the greatest protection to critical areas shall apply.
3. Modifications to Provisions in this Chapter – The regulations in this chapter may not be modified using other provisions in this code, such as but not limited to historic overlay (Chapter KZC 75), variances (Chapter KZC 120), or planned unit developments (Chapter KZC 125), unless as specified in Reasonable Use Exception Section 90.170 of this Chapter.
4. Other Jurisdictions – Nothing in these regulations eliminates or otherwise affects the responsibility of an applicant or property owner to comply with all other applicable local, state, and federal regulations and permits that may be required.
5. 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.

90.20 Critical Areas Maps and Other Resources

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The City maintains general mapping of known critical areas. These maps and other available resources (such as topographic maps, soils maps, and aerial photos) are intended only as guides. They depict the approximate location and extent of known critical areas. Some critical areas depicted in these resources may no longer exist and critical areas not shown in these resources may occur. The provisions of this Chapter and the findings of a critical areas report and review of the report by the City take precedence over the City's mapping. It is strongly advised that property owners and project applicants to retain qualified critical area professionals to conduct site-specific studies for the presence of critical areas and related buffers.

The City's map relating to Chapter 90 KZC is entitled "Wetlands, Streams and Minor Lakes" map.

90.25 Regulated Activities

Regulated activities have the potential to adversely impact a critical area or its established buffer. This chapter shall regulate the following activities:

- a. Removal, excavation, grading or dredging of material of any kind;
- b. Dumping of, discharging of, or filling with any material;
- c. Draining, flooding, or disturbing the water level or water table;
- d. Driving pilings or placing obstructions;
- e. Construction or reconstruction, or expansion of any structure;
- f. Destruction or alteration of vegetation through clearing, pruning, topping, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated critical area;
- g. Activities that result in significant changes of water temperature and physical or chemical characteristics of water sources to the critical area, including quantity and pollutants;
- h. Any other development activity; and
- i. Application of herbicides and pesticides.

90.30 City Review Process

1. Activities regulated by this chapter shall be considered using the following decision processes:

Table 90.30.1 City Review Process

Type of Action	City Review Process	Section
Exemptions	Activities permitted outright with no review process (or reviewed with underlying development or land surface modification permit - no review fee)	KZC 90.35
Permitted Activities, Improvements and Uses Subject to Development Standards	Planning Official Decision	KZC 90.40
Exception - Public Agency and Public Utility	Planning Director - Process I, Chapter 145 KZC	KZC 90.45
Programmatic Permits - Public Agency and Public Utility	Planning Official Decision or Planning Director - Process I, Chapter 145 KZC depending on	KZC 90.50

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	scope of project	
Wetland Modification	Planning Director - Process I, Chapter 145 KZC	KZC 90.60
Category IV Wetland Exceptions	Planning Official Decision	KZC 90.60
Stream Modification	Planning Director - Process I, Chapter 145 KZC	KZC 90.70
Daylighting of Streams	Planning Official Decision	KZC 90.75
Stream Channel Stabilization	Planning Director - Process I, Chapter 145 KZC –	KZC 90.85
Moorage Facilities and Other Improvements on Minor Lakes	Planning Director - Process I, Chapter 145 KZC	KZC 90.90
Critical Area Determination	Planning Official Decision	KZC 90.105
Buffer Averaging	Planning Official Decision	KZC 90.115
Interrupted Buffer	Planning Official Decision	KZC 90.120
Reasonable Use Exception	Planning Director - Process I, Chapter 145 KZC	KZC 90.180
Nonconformances	Planning Official Decision	KZC 90.185

2. If a development, use or activity requires approval through Process I pursuant to this Chapter is part of a proposal that requires additional approval through Process IIA or Process IIB, the entire proposal shall be decided upon using that other process.

90.35 Exemptions

The following activities, improvements and uses have little or no environmental impact, are temporary in nature, or are an emergency and are therefore exempt from the provisions of KZC 90.40 through KZC 90.225 of this chapter, unless otherwise determined by the Planning Official.

An exemption does not give permission to degrade a critical area or ignore risk from natural hazards. All exempted activities shall use reasonable methods to avoid impacts to critical areas or their buffers. Any temporary damage to, or alteration of a critical area or buffer, shall be restored, rehabilitated, or replaced to prior condition or better at the responsible party's expense. Revegetation shall occur during the wet season, but no later than 180 days after the damage or alteration of the critical area or buffer occurred. All other restoration or rehabilitation shall be completed within 60 days of the damage or alteration, unless otherwise approved by the Planning Official.

The following activities, improvements and uses are exempt:

1. Repair and Maintenance of Structures. Repair and maintenance of existing legally established, functioning structures. This provision excludes ~~private utility service lines and conveyance systems that are located within critical areas and~~ public streets and ~~public~~ utilities. ¹
2. Public Streets. Repair, maintenance, reconstruction and minor expansion of existing public streets, including associated appurtenances, bike lanes, and sidewalks. ^{2, 5, 6}
3. Public Utilities. Repair and maintenance, or replacement ~~of public~~, installation or construction of utility ~~systems structures and conveyance systems~~ and their associated facilities including service lines,

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pipes, mains, poles, equipment and appurtenances - both above and below ground - within existing improved rights-of-way, existing legally improved private roadways, the Cross Kirkland Corridor and Eastside Rail Corridor or existing improved utility corridors. This provision does not include upgrading electric facilities that exceed 115 KV or replacement of hazardous liquid pipelines that increase existing pipeline circumference, or installation of additional hazardous liquid pipelines.^{3, 5, 6}

4. Demolition. Removal of structures in critical area buffers, provided that all disturbed soils are stabilized and revegetated with appropriate native vegetation and at spacing intervals listed in the City's Critical Area Plant List using the Vegetative Buffer Standards in KZC 90.130 as a guideline for plant diversity and type.
5. Existing Non-Motorized Public Trails. Repair and maintenance of existing, legally established improved non-motorized public trails, including the Cross Kirkland Corridor and Eastside Rail Corridor.^{1, 5}
6. Existing Landscaping. Landscape maintenance of legally established lawns and gardens; including mowing, pruning, weeding, and planting; provided that such activities do not expand any further into critical areas or buffers, excludes removal of significant trees, and the use and application of chemical fertilizers, herbicides and insecticides comply with provisions in KZC 90.195.
7. HVAC Equipment. Addition of HVAC equipment with a footprint of less than nine (9) square feet, provided that:
 - a) There is no feasible alternative location available;
 - b) It does not expand the area of beyond legally established landscaping or improvements;
 - c) It is not located in the critical area and is as far as possible from the critical area;
 - d) Noise minimization techniques are provided. HVAC equipment shall be baffled, shielded, and enclosed to ensure compliance with the noise provisions of KZC 115.95, except that the receiving property shall also include the upland edge of the critical area buffer; and
 - e) It must meet the setback requirements in KZC 115.115.
8. Site Investigative Work and Studies. Site investigative work and studies necessary for development permits, including geotechnical tests, water quality studies, wildlife studies, and critical area investigations; provided, that any disturbance of the critical area or its buffer shall be the minimum necessary to carry out the work or studies and the area must be restored with native vegetation after testing is done. Use of any mechanized equipment requires prior approval of the Planning Official.
9. Public Restoration.⁶ Restoration of a critical area and its buffer through the removal of non-native plant species provided all of the following apply:
 - a. The entire area cleared of plants must be revegetated with appropriate native vegetation and at spacing intervals listed in the City's Critical Area Plant List using the Vegetative Buffer Standards in KZC 90.130 as a guideline for plant diversity and type;
 - b. The subject property is not located in a high landslide hazard area;
 - c. No grading or filling is required to remove non-native invasive plants or revegetate with native species;
 - d. Restoration work shall be restricted to hand removal. Hand removal equipment includes shovels, tillers, clippers, loppers, weed wrenches, and brush cutters and any hand held gas or electric equipment; except that machinery can be used if machinery can access the buffer from an abutting paved roadway without encroaching into the buffer;
 - e. Replanting with native vegetative must take place immediately following removal of invasive species;

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- f. Goats may be used to remove invasive species only, provided their use does not adversely affect stream or wetland functions and they are restricted from access to the wetland or stream. Use of goats may be limited or prohibited by the Planning Official in areas where native vegetation is present and could be damaged;
- g. In all cases, non-native, invasive species removal shall avoid impacts to native species; and
- h. Citizen volunteers doing restoration must be under the direct supervision of City staff.

10. Private Restoration.⁶

Restoration of a critical area and its buffer through the removal of non-native invasive plant species listed in the King County Noxious Weed List provided all of the following apply:

- a. The entire area cleared of invasive plants shall be revegetated with appropriate native vegetation and at spacing interval and plant size listed in the City's Critical Area Plant List using the Vegetative Buffer Standards in KZC 90.130 as a guideline for plant diversity and type
- b. The subject property is not located in a high landslide hazard area;
- c. No grading or filling is required to remove non-native invasive vegetation or revegetate with native species;
- d. A planting restoration plan must be submitted to the Planning Official for review and approval prior to any disturbance to the buffer. The plan must include the area to be restored, method of removal, a detailed native planting plan with a plant list and schedule for commencement and completion of the project;
- e. Restoration work shall be restricted to hand held equipment. Hand held equipment includes shovels, tillers, clippers, loppers, weed wrenches, and brush cutters and any hand held gas or electric equipment; machinery such as excavators and bulldozers is not allowed;
- f. Replanting with native vegetative must take place immediately following removal of invasive species;
- g. All removed plant material shall be taken away from the site; and plants that appear on the King County Noxious Weed List must be handled and disposed of according to a noxious weed control plan appropriate to that species; and
- h. In all cases, non-native, invasive species removal shall avoid impacts to native species.

11. Storm Water Dispersion Flow Path. Creation of a vegetated flow path from a dispersion device that is located outside the critical area buffer that flows into the critical area buffer provided the buffer meets the Vegetative Buffer Standards in KZC 90.130, and the design is part of an approved development permit.

12. Other. Educational activities, scientific research, and passive outdoor recreational activities such as bird watching, fishing, and hiking, not including trail building or clearing.

13. Emergency Activities. Emergency activities necessary to prevent an immediate threat to public health, safety, or welfare. Alterations shall be reported to the City within seven (7) days and include evidence of threat or imminent danger. The City may require a permit to be obtained after-the-fact and require the critical area and its buffer to be fully restored in accordance with a critical area report and mitigation/maintenance plan.⁴

Notes:

¹ Repair and maintenance shall not increase the previously approved structure footprint or impervious area, including paving and previously approved gravel-private roadways and driveways and parking areas within a critical area or its buffer, and shall not include foundation replacement. Foundation and complete structure replacement is regulated under KZC 90.185 of this chapter.

~~²⁻The repair and maintenance of private utility service lines and conveyance systems in critical areas are regulated under KZC 90.40 of this chapter.~~

² Public street activities shall not increase the impervious area in the right-of-way, or reduce flood storage capacity in the critical area or critical area buffer. Public street activities in this provision also include expansion of pavement into existing impervious street shoulders.

³ ~~Public~~ Utility activities shall not increase the impervious area in the right-of-way or private roadway or utility corridor or the Cross Kirkland and Eastside Rail Corridors, (except utility poles), or reduce flood storage capacity in the critical area or critical area buffer. Replaced overhead electric utilities and their associated facilities shall not be exempt if the work results in additional vegetation disturbance of the critical area or its buffer because of ongoing required vegetation maintenance due to wider vegetation clearance requirements. Utility activities in this provision also include expansion of existing structures such as substations into existing impervious areas.

⁴ All restoration and mitigation shall occur within the timeframe established with the underlying permit, but in no case more than one year from the date of the emergency.

⁵ The construction drawings shall show the edge of the right-of-way, private roadway or utility corridor, and the existing impervious shoulder area. The drawings shall also specify that all affected critical areas and buffers shall be restored to their pre-project condition or better, including soil stabilization and revegetation.

⁶ All activities shall be undertaken using best management practices as determined by the Planning Official and adhere to the fish and wildlife seasonal restrictions on construction activities as determined by the Washington State Department of Fish and Wildlife.

90.40 Permitted Activities, Improvements or Uses Subject to Development Standards

1. Permitted Activities, Improvements and Uses. Activities, improvements and uses identified in this section are permitted subject to the following approval and development standards. Those activities and uses not identified or not meeting the standards in this section may be proposed under other sections of this chapter.
2. Process. The Planning Official shall review and decide on an application for a permitted activity or use. The general and specific standards in subsections 5 and 6 below along with the mitigation plan shall be conditions of approval.
3. Decisional Criteria. the Planning Official may approve a permitted activity or use if it is determined that:
 - a. There is no practical alternative location with less adverse impact on the critical area or its buffer based on a critical area report and mitigation sequencing pursuant to KZC 90.145.
 - b. The mitigation plan pursuant to KZC 90.145 sufficiently mitigates impacts; and
 - c. The project plans meet the general and specific standards in subsections 5 and 6 below.
4. Critical Area Determination and Report. The applicant shall submit a critical area determination pursuant to KZC 90.105 and a critical area report pursuant to KZC 90.110.
5. Standards.
 - a. Application for permitted activities, improvements or uses identified in this section shall

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demonstrate that they meet the following standards except as noted in subsection 6 below.

- 1) General mitigation requirements including mitigation sequencing pursuant to KZC 90.145;
 - 2) If located in a wetland or wetland buffer, requirements for compensatory wetland mitigation, pursuant to KZC 90.150;
 - 3) Implement a mitigation plan pursuant to KZC 90.145 or KZC 90.150;
 - 4) If located in a fish or wildlife habitat conservation area, requirements of KZC 90.95;
 - 5) Monitoring and maintenance requirements pursuant to KZC 90.160;
 - 6) Financial security requirements pursuant to KZC 90.165;
 - 7) Critical area markers, fencing and signage requirements pursuant to KZC 90.190.
 - 8) Dedication of critical area and buffers requirements pursuant to KZC 90.210;
 - 9) No adverse impact on water quality or conveyance or degradation of critical area functions and values;
 - 10) Structures and improvements located to minimize removal of significant trees;
 - 11) Restoration of temporary disturbance areas associated with the work to pre-project conditions or better shown on construction drawings and expeditiously done; and
- b. Except as provided in subsection 5a above, the list of permitted activities, improvements or uses are not subject to General Standards pursuant to KZC 90.105 through KZC 90.225.

6. List of Permitted Activities, Improvements and Uses. The following activities and uses may be permitted, provided that the specific standards applicable to each activity or use and the general standards in subsection 5 above are met.

a. Private Repair and Maintenance of Culverts.

- 1) Work limited to removing impediments to improve flow conveyance,
- 2) Work must be done by hand; and
- 3) Shall comply with Washington State Fish and Wildlife's seasonal restrictions on in stream work.

b. Private Roadways – New private roadway through a buffer when necessary to access a legal building site, provided:

- 1) Buffer area and function is equal or better than pre-project condition; and
- 2) The buffer vegetation is at a minimum, equal to the width of the roadway and disturbed areas, using KZC 90.130 as a guideline for plant diversity and type.

c. Private and Public Non-motorized Trails, Stream Crossings, and Benches and Public Wildlife Viewing Structures.

- 1) The improvement shall be located only in the outer 25% of the buffer area. Exceptions are stream crossings, and trail access to Forbes Lake and Totem Lake which may require access through a buffer or wetland to get to the lake, and public wildlife viewing structures,
- 2) Stream crossings are not permitted in Type F streams under this section. See KZC 90.70 for proposing stream crossing of Type F streams,
- 3) Trails shall be limited to the least impactful pervious surfaces. Raised boardwalks utilizing approved non-treated pilings are acceptable if found to be the least impacting alternative,
- 4) Private trails shall be no more than three (3) feet in width. Public trails shall be no more than five (5) feet in width,
- 5) Stream crossings shall meet the standards for crossings in KZC 90.70 and Washington State Department of Fish and Wildlife's Water Crossing Guidelines, and other state and federal permits; and

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- 6) Vegetative buffers shall be provided where possible equal to the width of the trail corridor and disturbed areas using KZC 90.130 as a guideline for plant diversity and type.
- 7) For public improvements, financial security standards of KZC 90.165 and dedication of critical area and buffer requirements of KZC 90.210 are waived.

d. Private and Public Utilities.

- 1) New sewer and stormwater lines in critical area buffers where necessary to allow for gravity flow, provided they shall be located as far as possible from the critical area edge.
- 2) New utilities in critical area buffers, other than addressed in 1. above, provided that:
 - (a) The facility shall be only located in the outer 25% of the buffer area;
 - (b) The facility is not a hazardous liquid or gas pipeline; and
 - (c) The facility is not a substation.
- 3) New stormwater outfalls and associated dissipation devices, such as flow spreaders and rock pads, within critical area buffers, provided:
 - (a) Discharge of stormwater outside of the buffer is not feasible as determined by the City, or;
 - (b) If property adjoining the buffer is greater than 15% slope, a specific study by a geotechnical engineer or engineering geologist must show that discharge outside of the buffer will cause slope instability or excessive erosion, and therefore the discharge needs to be in the buffer, and
 - (c) The outfall is located as far as possible from the critical area.
- 4) Boring for utilities/utility corridor under a critical area, provided:
 - (a) Not permitted in a Category I Wetland,
 - (b) Entrance/exit portals must be located in the outer 25% of the critical area buffer,
 - (c) Boring does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column; and
 - (d) A specific study by a hydrologist is required to determine whether the ground water connection to the critical area or percolation of surface water down through the soil column will be disturbed.
- 5) For City utility projects, financial security standards of KZC 90.165 are waived.
- 6) For public utility projects, dedication of critical area and buffers requirements pursuant to KZC 90.210 may be waived if the planning official determines that they are not warranted; and
- 7) For private and public utility projects, critical area markers, permanent fencing and signage requirements pursuant to KZC 90.190 may be waived if the planning official determines that they are not warranted.

e. Private and Public In-Stream Maintenance.

- 1) Work limited to removing inorganic debris, sediment, invasive vegetation and replanting of streambank with native vegetation to improve in-stream fish habitat, fish passage and flow conveyance;
- 2) Work must be done by hand. Hand removal equipment may include shovels, tillers, clippers, loppers, weed wrenches, and brush cutters and any hand held gas or electric equipment;
- 3) Public work may include machinery if it can access the buffer from an abutting paved roadway without encroaching into the buffer; and
- 4) Maintenance shall comply with Washington State Fish and Wildlife's seasonal restrictions on stream work, including state permit approvals.
- 5) For public in-stream maintenance, financial security standards of KZC 90.165 are waived; and
- 6) For public in-stream maintenance, dedication of critical area and buffers requirements

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pursuant to KZC 90.210 may be waived if the planning official determines that they are not warranted; and

- 7) For private and public in-stream maintenance, critical area markers, permanent fencing and signage requirements pursuant to KZC 90.190 may be waived if the planning official determines that they are not warranted.

f. Private and Public Restoration.

Restoration of a critical area and its buffer in high landslide hazard areas and/or where grading is necessary for the removal of non-native plants, provided:

- 1) The entire area cleared of invasive plants shall be revegetated with appropriate native vegetation and at spacing intervals listed in the City's Critical Area Plant list, using the Vegetative Buffer Standards in KZC 90.130 as a guideline for plant diversity and type;
- 2) The City shall require a geotechnical investigation in high landslide hazard areas pursuant to Chapter 85 KZC, and if determined to be necessary based on the investigation, a geotechnical report with recommendations on special mitigation techniques or measures, along with an erosion control plan;
- 3) Removal of invasive plant species and other restoration work shall be restricted to work by hand, including use of shovels, tillers, clippers, loppers, weed wrenches, and brush cutters and any hand held gas or electric equipment;
- 4) Replanting with native vegetative must take place immediately following removal of invasive species;
- 5) For public restoration, machinery may be used if the use of such equipment is determined acceptable by the geotechnical investigation and/or report;
- 6) For public restoration, citizen volunteers doing restoration must be under the direct supervision of City staff;
- 7) For private restoration, removed invasive plant material shall be taken off the site; and plants that appear on the King County Noxious Weed List must be handled and disposed of according to a noxious weed control plan appropriate to that species; and
- 8) For public restoration, financial security standards of KZC 90.165 are waived.

g. Private and Public Demolition. Removal of structures in critical areas provided that:

- 1) All disturbed soils are stabilized and revegetated with appropriate native vegetation and at spacing intervals listed in the City's Critical Area Plant List using the Vegetative Buffer Standards in KZC 90.130 as a guideline for plant diversity and type;
- 2) Replanting with native vegetative must take place immediately following the clearing activity;
- 3) For public demolition, financial security standards of KZC 90.165 are waived; and
- 4) For public demolition, dedication of critical area and buffers requirements pursuant to KZC 90.210 and critical area markers; and
- 5) For private and public demolition, permanent fencing and signage requirements pursuant to KZC 90.190 may be waived if the planning official determines they are not warranted.

h. Public Streets - Widening of existing public streets in critical area buffers, provided:

- 1) The street shall only be located in the outer 25% of the buffer area,
- 2) Any necessary culvert modification or extension is designed to meet the Washington Department of Fish and Wildlife's Water Crossing Guidelines,
- 3) Financial security standards of KZC 90.165 and dedication of critical area and buffers requirements pursuant to KZC 90.210 are waived; and

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- 4) Critical area markers, permanent fencing and signage requirements pursuant to KZC 90.190 may be waived if the planning official determines that they are not warranted.

- i. Improvements Associated with the Cross Kirkland Corridor and Eastside Rail Corridor.

New, modified or relocated public non-motorized trails within the Cross Kirkland Corridor and Eastside Rail Corridor and connecting to either corridor approved under the City's Cross Kirkland Corridor Master Plan or as amended. Financial security standards of KZC 90.165 and dedication of critical area and buffers requirements pursuant to KZC 90.210 are waived.

- j. Improvements Associated with City Park, Transportation, and Utility Master Plans.

Any new or modified City projects, other than those associated with the Cross Kirkland Corridor or Eastside Rail Corridor, approved under a master plan approved by the City Council, for which a critical area determination and delineation pursuant to KZC 90.105 and location of critical areas have been considered as part of the master plan process. Financial security standards of KZC 90.165 and dedication of critical area and buffers requirements pursuant to KZC 90.210 are waived.

90.45 Exceptions - Public Agency and Public Utility

If strict application of this chapter would prohibit a development proposal by a public agency or public utility, the agency may apply for an exception pursuant to this section.

Prior to seeking approval through this section, the Planning Official in conjunction with a public agency or public utility shall first determine that the project scope cannot be approved under KZC 90.60 for Wetland Modifications; KZC 90.70 for Stream Modifications; KZC 90.75 for Daylighting of Streams, KZC 90.85 for Stream Channel Stabilization, and KZC 90.95 for Wildlife Habitat Conservation Areas.

1. Process. A critical area exception for public agencies and public utilities shall be reviewed and decided upon using Process I, pursuant to KZC Chapter 145.
2. Decisional Criteria. The Planning Director shall make a decision based on the following criteria:
 - a. There is no other practical alternative to the proposed project with less impact on the critical areas or buffer;
 - b. Strict application of this chapter would unreasonably restrict or prohibit the ability to provide public utilities or public agency services to the public;
 - c. The proposal minimizes impacts to the critical area or buffer through mitigation sequencing, and through type and location of mitigation, pursuant to KZC 90.145 and KZC 90.150 if applicable, including such installation measures as locating facilities in previously disturbed areas, boring rather than trenching, and using pervious or other low impact materials; and
 - d. The proposal protects and/or enhances critical area and buffer functions and values, consistent with the best available science and with the objective of no net loss of critical area functions and values.
3. Submittal Requirements: The application shall include the City's critical area determination pursuant to KZC 90.105 and a critical area report pursuant to KZC 90.110, a mitigation plan pursuant to KZC 90.145, and KZC 90.150 if a wetland is to be modified, a response to the decisional criteria in subsection 2 above, and the following documents based upon the type of exception proposed:

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- a. Wetland Modifications.
 - 1) The public agency or public utility shall submit a wetland modification assessment pursuant to KZC 90.60.7; and
 - 2) The public agency or public utility shall meet the requirements in KZC 90.60.8 through 10.
- b. Stream Modifications.
 - 1) The public agency or public utility shall submit a stream modification assessment pursuant to KZC 90.70.6; and
 - 2) The public agency or public utility shall meet the requirements in KZC 90.70.7 and 8.
- c. Daylighting of Streams. The public agency or public utility shall submit a stream daylighting plan pursuant to KZC 90.75.3.
- d. Stream Channel Stabilization. The public agency or public utility shall submit a streambank assessment and stream channel stabilization plan pursuant to KZC 90.85.5 and 6.
- e. Wildlife Habitat Conservation Area Modifications.
 - 1) The public agency or public utility shall submit an assessment of a habitat conservation area pursuant to KZC 90.95.3, a habitat management plan pursuant to KZC 90.95.6 ; and
 - 2) The public agency or public utility shall meet the requirements in KZC 90.95.7.
- f. Waiver. Planning Official may waive a submittal requirement if it is determined not to be applicable or necessary.

90.50 Programmatic Permit– Public Agency and Public Utility

1. General. A public programmatic permit may be issued for either a permitted activity subject to the submittal requirements and development standards of Permitted Activities, Improvements and Uses with Standards in KZC.90.40 or Public Agency or Public Utility Exception in KZC 90.45, if it meets the requirements of this section, as determined by the Planning Official. Exempted activities pursuant to KZC 90.35 do not require a programmatic permit.
2. Criteria for a Programmatic Permit. The activity shall:
 - a. Be repetitive and part of a maintenance program or other similar program;
 - b. Have the same or similar identifiable impacts, as determined by the City, each time the activity is repeated at all sites covered by the programmatic permit; and
 - c. Be suitable to having standard conditions that will apply to any and all sites.
3. Process.
 - a. For an activity that would otherwise be approved as a permitted activity subject to development standards, the Planning Official shall make the decision on the programmatic permit.
 - b. For an activity that would otherwise be approved as a public agency or public utility exception, the programmatic permit shall be reviewed and decided upon pursuant to a Process I described in Chapter 145 KZC.
4. Required Conditions. The City shall uniformly apply conditions to each activity authorized under the programmatic permit at all locations covered by the permit. The City may require that the applicant develop and have uniformly applicable conditions as part of the programmatic permit application, subject to City approval. The City shall not issue a programmatic permit until applicable conditions are

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developed and approved by the City.

5. Inspections. Activities authorized under a programmatic permit shall be subject to inspection by the Planning Official and pre-arranged in advance. The Planning Official may require that the applicant submit periodic status reports. The frequency, method and contents of the inspection notifications and reports shall be specified as conditions in the programmatic permit.
6. Revisions and Modifications to Permit. The Planning Official may subsequently require revisions, impose new conditions or otherwise modify the programmatic permit or withdraw the permit and require that the applicant undergo review for a new permitted activity approval or new exception for a public agency and public utility, if the Planning Official determines that:
 - a. The programmatic permit or activities authorized under the permit no longer comply with this chapter;
 - b. The programmatic permit does not provide adequate regulation of the activity;
 - c. The programmatic permit conditions or the manner in which the conditions are implemented are not adequate to protect against the impacts resulting from the activity; or
 - d. A site requires site-specific regulation.
7. Other Agency Requirements. If an activity covered by a programmatic permit also requires other county, state and/or federal approvals, to the extent feasible, the City shall reference those conditions of other approvals in the programmatic permit.

WETLANDS

90.55 Wetlands and Associated Buffer Standards

Wetlands and associated buffer standards are provided in this section. The table below is a summary of the wetland regulations. More details are provided for some of the regulations elsewhere in this chapter.

Table 90.55.1 Wetlands and Associated Buffer Standards

Wetland Classification and Rating	In accordance with the 2014 Department of Ecology Washington State Wetland Rating System for Western Washington, as revised. Wetland category and rating shall be determined through a survey and field investigation by a qualified critical area professional approved by the City as part of a critical area report in KZC 90.110. Wetland rating categories shall not change due to illegal modification.																																		
Wetland Delineation	In accordance with the approved federal delineation manual and applicable regional supplements described in WAC 173-22-035 and based on field investigation and a survey. See KZC 90.110.																																		
Wetland Determination	Planning Official makes determination if a wetland and/or a buffer exist on the subject property, and if so, its category, rating, boundaries and buffer width based on a required critical area report pursuant to KZC 90.110. In addition, the Planning Official makes determination if the standard buffer meets the buffer vegetative standards in KZC 90.130.																																		
Wetland Buffer Width – Standard	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="6" style="text-align: center;">Wetland Buffer Widths</th> </tr> <tr> <th style="text-align: center;">Wetland Category</th> <th colspan="5" style="text-align: center;">Buffer width based on habitat points</th> </tr> <tr> <th></th> <th style="text-align: center;">3-4 habitat pts.</th> <th style="text-align: center;">5 habitat pts.</th> <th style="text-align: center;">6-7 habitat pts.</th> <th colspan="2" style="text-align: center;">8-9 habitat pts.</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Category I: Bogs and High Conservation Areas</td> <td style="text-align: center;">190 feet</td> <td style="text-align: center;">190 feet</td> <td style="text-align: center;">190 feet</td> <td colspan="2" style="text-align: center;">225 feet</td> </tr> <tr> <td style="text-align: center;">Category I: Others</td> <td style="text-align: center;">75 feet</td> <td style="text-align: center;">105 feet</td> <td style="text-align: center;">165 feet</td> <td colspan="2" style="text-align: center;">225 feet</td> </tr> </tbody> </table>					Wetland Buffer Widths						Wetland Category	Buffer width based on habitat points						3-4 habitat pts.	5 habitat pts.	6-7 habitat pts.	8-9 habitat pts.		Category I: Bogs and High Conservation Areas	190 feet	190 feet	190 feet	225 feet		Category I: Others	75 feet	105 feet	165 feet	225 feet	
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Category I: Bogs and High Conservation Areas	190 feet	190 feet	190 feet	225 feet																															
Category I: Others	75 feet	105 feet	165 feet	225 feet																															

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	Category II	75 feet	105 feet	165 feet	225 feet
	Category III	60 feet	105 feet	165 feet	225 feet
	Category IV	40 feet			
	See KZC 90.130 for buffer vegetation requirements				
Wetland Buffer Width – Alternative	Applicant can choose not to comply with the Vegetative Buffer Standards in KZC 90.130 by complying with the following requirements: 1.) Increase buffer width listed above in Wetland Buffer Widths by 33% within entire buffer. 2.) Remove all structures and improvements within the buffer 3) Discontinue any maintenance of lawn and non-native vegetation within the buffer. In no case shall a standard and an alternate buffer standard be combined for a development proposal.				
Other Standards	<ul style="list-style-type: none"> • Buffer averaging is permitted for both the standard buffer and the alternative buffer if criteria are met. See KZC 90.115. The Planning Official makes decision. • Increased buffer width may be required if wetland or its buffer contains or is adjacent to severe erosion area, habitat of certain species or frequently flooded area based on critical area report. See KZC 90.125. • <u>Wetlands that have been degraded must be restored if the project is subject to KZC 90.130.4.a for the vegetative buffer standard and/or a wetland modification is proposed. A critical area report shall address any needed restoration due to degraded vegetation, habitat, water quality and hydrologic functions.</u> • Standard buffers must meet the vegetative buffer standards. See KZC 90.130.. • Measures to minimize impact to wetlands must be implemented for standard buffers. See KZC 90.155. • Fencing and signage are required along the entire upland edge of buffer both during construction and upon completion of the project. See KZC 90.190. • For voluntary restoration, see KZC 90.35 and 90.40. • For code enforcement to correct an illegal modification to a wetland or buffer, see KZC 90.205. • Wetlands and buffers shall be placed in recorded critical area easements or tracts for perpetual protection and maintenance. See KZC 90.210. 				
Structure Setback from Buffer	10-foot wide structure setback is required from upland edge of the entire buffer. Improvements listed in KZC 90.140 are permitted in the setback.				
Activities, Improvements and Uses in Wetlands	Activities, improvements and uses are prohibited within wetlands and associated buffers, except those exempted or permitted subject to development standards in KZC 90.35 and KZC 90.40, or those approved under a City review process in this chapter.				
Modification to Wetlands related Impacts to associated Buffers	<ul style="list-style-type: none"> • Modification to a wetland and related impacts to buffers require approval pursuant to a Process I, Chapter 145 KZC along with a critical area report, mitigation sequencing, and compensatory mitigation plan. See KZC 90.110, 90.145 and 90.150. • Buffer standard may be modified <u>for vehicular access to a legal building if no other option is possible pursuant to KZC 90.40</u> and for an interrupted buffer pursuant to See KZC 90.120. Planning Official makes decision. Also, see Nonconformances pursuant to KZC 90.185. • Isolated Category IV wetlands less than 4,000 square feet and wetlands less than 1,000 square feet pursuant to KZC 90.60 are not required to meet mitigation sequencing, but compensatory mitigation is required pursuant to KZC 90.150. 				

90.60 Wetland Modification

1. Modifications to Wetlands. Modifications to wetlands and related impacts to associated buffers shall be prohibited, except as permitted as part of a wetland modification approved under this section. Wetland modifications and the associated buffers may also be approved in certain circumstances under a Reasonable Use Exception pursuant to KZC 90.180, Permitted Activities, Improvements and Uses Subject to Development pursuant to KZC 90.40, Exception - Public Agency and Public Utility pursuant to KZC 90.45 or Programmatic Permit – Public Agency and Public Utility pursuant to KZC 90.50.

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The following modifications may be proposed:

- a. Fill of a wetland;
- b. Structures and improvements in a wetland and
- c. Removal and/or alteration of vegetation in wetland; and
- d. Impacts to associated buffer as part of wetland modification

2. Exception. The following limited types of wetlands are not required to meet mitigation sequencing pursuant KZC 90.145 and may be filled if the impacts are fully mitigated. The applicant shall submit a critical area report pursuant to KZC 90.105 and KZC 90.110 verifying that the following criteria are met.

- a. Category IV isolated wetlands less than 4,000 square feet that:
 - 1) Are not associated with streams or their buffers;
 - 2) Are not part of a wetland mosaic;
 - 3) Do not score 5 or more points for habitat function; and
 - 4) Do not contain designated state or federal designated endangered, threatened or sensitive species or their habitats or state priority habitats, including species of local importance identified in KZC 90.95.

The Planning Official may approve an application under this exception only if the applicant provides compensatory mitigation for both wetland and buffer loss pursuant to KZC 90.150. Impacts shall be mitigated through an in-lieu fee or mitigation bank program if a program is available otherwise, preference for mitigation location shall be pursuant to KZC 90.145.

It is the applicant's responsibility to arrange a jurisdictional determination by the U.S. Army Corps of Engineers on whether a wetland is isolated but regulated by the Department of Ecology for filling a Category IV isolated wetland.

- b. Category IV isolated wetlands less than 1,000 square feet that meet subsection 2a above are exempt from buffer requirements. The Planning Official may approve an application under this exception only if the applicant provides compensatory mitigation pursuant to KZC 90.150 for the wetland loss. No compensatory mitigation is required for the buffer loss.
3. Limited Buffer Modification. A wetland buffer may not be modified or otherwise reduced, except if part of an approved wetland modification in this section. Wetland buffer modifications may also be approved in limited circumstances under a Reasonable Use Exception pursuant to KZC 90.35, under Permitted Activities Improvements and Uses Subject to Development Standards pursuant to KZC 90.40, under Exception - Public Agency and Public Utility pursuant to KZC 90.45, or under Programmatic Permits - Public Agencies pursuant to KZC 90.50.

The following wetland buffer modifications may be proposed:

- a. Vehicular access to a legal developable site if no other option is possible pursuant to KZC 90.40.
- b. Buffer averaging permitted pursuant to KZC 90.115; or
- c. Interrupted buffer waiver permitted pursuant to KZC 90.120.

4. Process. Unless otherwise specified in KZC 90.115 or KZC 90.120, any proposal to modify a wetland and its buffer shall be reviewed and approved pursuant to Process I, described in Chapter 145 KZC.

5. Decisional Criteria. In addition to the criteria of a Process I, the Planning Director shall only approve a modification to a wetland and buffer if:

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- a. Mitigation sequencing requirements have been met. See KZC 90.145;
- b. Compensatory mitigation and mitigation plan requirements are approved. See KZC 90.150;
- c. It will not adversely affect fish, wildlife, or their habitat, including habitat for endangered, threatened or sensitive species, or species of local significance. See KZC 90.95;
- d. It will not adversely affect water quality;
- e. It will not have an adverse effect on drainage and/or storm water detention capabilities either on-site or to the adjacent area;
- f. It will not result in unstable geologic and soil conditions or create an erosion hazard;
- g. It will not have fill material that contains organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat; and
- h. All exposed areas will be stabilized with native vegetation normally associated with wetlands and/or buffers, as appropriate.

The wetland compensatory mitigation plan, additional requirements in subsection 9 below and any conditions of approval for the modification shall be conditions for all related land surface modification and/or building permit approvals.

6. Wetland Modification Assessment. As part of the application for a wetland modification, the applicant shall submit a wetland modification assessment prepared by a qualified critical area professional approved by the City, and also fund the City's peer review of the assessment. The assessment shall contain:
 - a. The City's final critical area determination and critical area report along with the survey of the wetland and/or buffer on the subject property pursuant to KZC 90.105;
 - b. Description of the proposed modification to the wetland and associated impact to the buffer if applicable;
 - c. Analysis of mitigation sequencing for the proposal and mitigation as required in KZC 90.145. If the vegetative buffer standards are required under KZC 90.130, the required enhanced buffer may not be used towards mitigating a modified buffer;
 - d. Evaluation of the effects of the proposed modification on the functions and values of the wetland and the buffer. The assessment shall look at impacts to water quality, storm water detention, erosion protection, functions of the wetland and wildlife habitat and frequently flooded areas and any other potential impact determined by the Planning Official; and
 - e. Any other information or studies determined necessary by the Planning Official.
7. Compensatory Wetland Mitigation Plan. As part of the application for a wetland modification, the applicant shall submit a compensatory mitigation plan pursuant to KZC 90.150 that is prepared by a qualified critical area professional approved by the City. The applicant shall also fund City peer review of the plan. The plan shall include mitigation for lost or affected functions; type, location, and approach of compensation; timing of the mitigation; a monitoring and maintenance plan and financial security estimate as required in KZC 90.160 and KZC 90.165.
8. Buffers for Mitigation Sites. A wetland that is created, restored, or enhanced as on-site or off-site compensation within Kirkland for an approved wetland modification shall have a buffer width that is applicable to the wetland category for the created, restored, or enhanced wetland.
9. Additional Requirements for Approved Wetland Modification.

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- a. All work shall be carried out under the direct supervision of a qualified critical area professional approved by the City and paid for by the applicant during all phases of the project;
- b. The requirements for wildlife habitat conservation areas in KZC 90.95 and frequently flooded areas in KZC 90.100 shall be met if applicable;
- c. If a proposed wetland modification will result in the creation or expansion of a wetland or its buffer on any property other than the subject property, a statement signed by the owners of all affected properties, in a form approved by the City Attorney, shall be submitted with the modification application and recorded in the King County Recorder's Office. The statement shall consent to the critical area and/or buffer creation or increase on their property; and
- d. Any required state and federal permits and authorizations shall be obtained prior to conducting site work.

STREAMS

90. 65 Streams and Associated Buffer Standards

Stream and associated buffers standards are provided in the section. The table below is a summary of the stream regulations. More details are provided for some of the regulations elsewhere in this chapter.

Table 90.65.1 Streams and Associated Buffer Standards

Stream Classification	In accordance with WAC 222-16-030, as amended. The Planning Official makes final determination. Stream classification shall not change due to illegal modifications.													
Stream Determination	Planning Official makes determination if a stream and/or a buffer exist on the subject property, and if so, a stream's classification and boundary, and width of buffer based on required critical area report pursuant to KZC 90.110. In addition, the Planning Official makes determination if the standard buffer meets the vegetative buffer standards in KZC 90.130.													
Stream Width Standard	Buffer -	<table border="1"> <thead> <tr> <th colspan="2">Stream Buffer Widths</th> </tr> <tr> <th>Stream Type</th> <th>Buffer Width</th> </tr> </thead> <tbody> <tr> <td>F (Fish bearing)</td> <td>100 feet</td> </tr> <tr> <td>Np (Perennial non-fish bearing)</td> <td>50 feet</td> </tr> <tr> <td>Ns (Seasonal non-fish bearing)</td> <td>50 feet</td> </tr> <tr> <td></td> <td>See KZC 90.130 for buffer vegetation requirements</td> </tr> </tbody> </table>	Stream Buffer Widths		Stream Type	Buffer Width	F (Fish bearing)	100 feet	Np (Perennial non-fish bearing)	50 feet	Ns (Seasonal non-fish bearing)	50 feet		See KZC 90.130 for buffer vegetation requirements
Stream Buffer Widths														
Stream Type	Buffer Width													
F (Fish bearing)	100 feet													
Np (Perennial non-fish bearing)	50 feet													
Ns (Seasonal non-fish bearing)	50 feet													
	See KZC 90.130 for buffer vegetation requirements													
Stream Width Alternative	Buffer -	Applicant may choose not to comply with the Vegetative Buffer Standards in KZC 90.130 by complying with the following requirements: 1.) Increase buffer width listed above in Stream Buffer Widths by 33% within entire buffer. 2.) Remove all structures and improvements within the buffer 3) Discontinue any maintenance of lawn and non-native vegetation within the buffer. In no case shall a standard and an alternate buffer standard be combined for a development proposal.												
Other Standards		<ul style="list-style-type: none"> • Buffer averaging is permitted for both the standard buffer and the alternative buffer if criteria are met. See KZC 90.115. The Planning Official makes decision. • Increased buffer width may be required if the stream or its buffer contains or is adjacent to a severe erosion area, habitat of certain species or frequently flooded area based on critical area report. See KZC 90.125. • <u>Streams that have been degraded must be restored if the project is subject to KZC 90.130.4.a for a vegetative buffer and/or a stream modification is proposed. A critical area report shall address any needed restoration due to degraded vegetation, habitat, water quality and hydrologic functions.</u> • Standard buffers must meet vegetative buffer requirements pursuant to KZC 90.130. • Buffers shall be provided where a stream abuts an inlet and outlet of culverted streams as shown in Chapter 180 KZC, Plate 16A. • Fencing and signage are required along the entire upland edge of buffer both during construction and upon completion of a project. See KZC 90.190. 												

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	<ul style="list-style-type: none"> Voluntary restoration of streams and buffers or in-stream maintenance, see KZC 90.35 and KZC 90.40. For code enforcement to correct an illegal modification to a stream or buffer, see KZC 90.205. Streams and buffers shall be placed in recorded critical area easements or tracts for perpetual protection and maintenance. See KZC 90.210.
Structure Setback from Buffer	10-foot wide structure setback is required from upland edge of the entire buffer. Improvements listed in KZC 90.140 are permitted within the setback.
Activities, Improvements and Uses in Streams	Activities, improvements and uses shall be prohibited within streams and associated buffers, except those exempted or as permitted with development standards as found in KZC 90.35 and KZC 90.40, or those approved under another City review process in this chapter.
Modifications to Stream and Impacts to associated Buffer	<ul style="list-style-type: none"> Modifications to stream and related impacts to buffers require approval pursuant to Process I, Chapter 145 along with a critical area report, mitigation sequencing and mitigation plan. See KZC 90.70, KZC 90.110 and KZC 90.145. Buffer standards may be modified for vehicular access to a legal building site if no other option is possible pursuant to KZC 90.40, for daylighting a stream pursuant to KZC 90.75, and for an interrupted buffer pursuant to KZC 90.80. Planning Official approves the modifications. Also, see KZC 90.185 Nonconformances. Daylighting of a stream is encouraged. The Planning Official makes decision unless it is part of approval pursuant to Process I, Chapter 145 KZC. See KZC 90.75.

90.70 Stream Modification

1. **Stream Modification.** Modifications to streams and associated impacts to buffers are prohibited, except as approved as part of a stream modification in this section. Stream modifications may also be approved in certain circumstances under a Reasonable Use Exception pursuant to KZC 90.180, Permitted Activities; under Improvements and Uses Subject to Development Standards pursuant to KZC 90.40; under Exception - Public Agency and Public Utility pursuant to KZC 90.45; or under Programmatic Permit - Public Agency and Public Utility pursuant to KZC 90.50.

The following stream modifications may be considered:

- a. Stream crossings for Type F streams; (see KZC 90.140 for Type NP and NS)
 - b. Culverts and bridges;
 - c. Change in meandering course of a stream;
 - d. Relocation of a Type NS or NP stream. Relocation of a Type F stream is not permitted; and
 - e. Impacts to buffers associated with a stream modification.
2. **Limited Buffer Modification.** A stream buffer may not be modified or otherwise reduced, except if part of an approved stream modification in this section. Stream buffer modifications may also be approved in limited circumstances under a Reasonable Use Exception pursuant to KZC 90.180; under Permitted Activities, Improvements and Uses Subject to Development Standards pursuant to KZC 90.40; under Exception - Public Agency and Public Utility pursuant to KZC 90.45; or under Programmatic Permits - Public Agencies pursuant to KZC 90.50.

The following stream buffer modifications may also be proposed in conjunction with the following sections:

- a. Change to meandering course of a stream pursuant to KZC 90.70;
- b. Daylighting of a stream pursuant to KZC 90.75;
- c. Buffer averaging permitted pursuant to KZC 90.115; or
- d. Interrupted buffer waiver permitted pursuant to KZC 90.120.

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3. Process. Any proposal to modify a stream and buffer shall be reviewed and decided upon pursuant to Process I, described in Chapter 145 KZC.
4. Decisional Criteria. In addition to criteria of Process I, the Planning Director shall only approve a modification to a stream and impact to the buffer if:
 - a. Mitigation sequencing requirements have been met. See KZC 90.145; and
 - b. The applicant has demonstrated where applicable, based on information provided by a civil engineer and a qualified critical area professional approved by the City, that:
 - 1) It will not be detrimental to fish habitat, including fill material that contains organic or inorganic material;
 - 2) It will not have an adverse effect on drainage, storm water detention capabilities and base flood storage volume and function;
 - 3) It will not have an adverse effect on water quality or frequently flooded areas;
 - 4) It will not increase velocity upstream or downstream;
 - 5) It will not increase sediment load upstream or downstream;
 - 6) It will not result in unstable geologic and soil conditions and slope conditions or create an erosion hazard or contribute to scouring actions;
 - 7) All exposed areas are stabilized with vegetation normally associated with native stream buffers, as appropriate;
 - 8) Existing native trees and other native vegetation is retained to the maximum extent feasible given site conditions and the proposal;
 - 9) The stream modification plan is sufficient to mitigate identified impacts;
 - 10) For streams placed in culverts, fish passage will not be impaired and the Washington State Department of Fish and Wildlife's design criteria for road culverts for fish passage are met;
 - 11) For change in meandering course for the stream, demonstrate that the change is the only feasible option to stop excessive erosion to protect legally established buildings that cannot be achieved through streambank stabilization and will improve the overall functions and value of the stream;
 - 12) For stream crossings, demonstrate that crossings shall have no adverse impact on in-stream habitat and flow conveyance;
 - 13) For relocation of a Type Ns or Np stream, demonstrate that relocation would improve stream functions; and
 - 14) A statement signed by each owner of all properties consenting to the modification if it results in creation or expansion of a stream or stream buffer on their properties.

The stream and/or associated buffer modification plan, the additional requirements in subsection 8 below and any conditions of approval shall be conditions for all related land surface modification and/or building permit approvals.

5. Stream Modification Assessment. As part of the application for a modification, the applicant shall submit a stream modification assessment prepared by a qualified critical area professional approved by the City. The applicant shall also fund the City's peer review of the assessment. The assessment shall contain:
 - a. The City's final stream determination decision pursuant to KZC 90.105 and critical area report pursuant KZC 90.110 including the vegetative buffer assessment, and a survey of the stream and

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- its buffer;
 - b. Description of the proposed modification to the stream and impact to the associated buffer if applicable;
 - c. Analysis of mitigation sequencing and proposed mitigation as required in KZC 90.145. If the vegetative buffer standards are required under KZC 90.130, the enhanced buffer may not be used towards mitigating a proposed impacted buffer;
 - d. Modeling of impacts to stream;
 - e. Evaluation of the effects of the proposed modification on the functions and values of the stream and the buffer, including on water quality and fish and wildlife habitat pursuant to KZC 90.95; and
 - f. Any other information or studies determined necessary by the Planning Official.
6. Stream Modification Plan. As part of the application for a modification, the applicant shall submit a stream modification plan prepared by a qualified critical area professional approved by the City. Also, the applicant shall fund the City's peer review of the plan. The plan shall contain:
- a. A topographic survey showing existing and proposed topography and improvements;
 - b. Schedule of the project for all work;
 - c. Written description of how the proposed modification plan will mitigate any adverse impacts identified in the stream modification assessment and any associated impact to the buffer if applicable in subsection 5 above.
 - d. Written description of how the proposed modification plan will improve water quality, conveyance, fish and wildlife habitat, wetland recharge (if hydrologically connected to a wetland), and storm water detention capabilities of the stream;
 - e. Detailed vegetation plan for stream channel if applicable and stream buffer vegetation meeting the vegetative buffer standard in KZC 90.130.
 - f. For an impacted stream buffer, propose mitigation at a minimum of 1:1 ratio depending on the location and functions of impacts and proposed mitigation, including consideration of vegetation structure, slope and flow paths;
 - g. Demonstrate that flow and velocity of the stream after 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 City to improve fish and wildlife habitat or to improve storm water management;
 - h. Protective measures needed, such as siltation prevention measures and scheduling the construction activity to avoid interference with fisheries rearing and spawning activities;
 - i. Description of performance standards for post-installation, a monitoring and maintenance schedule along with a financial security estimate for the entire mitigation plan that meet the standards in KZC 90.160 and KZC 90.165;
 - j. For stream channel relocation, a new or replacement stream crossing or culvert, demonstrate that the stream channel, or crossing or culvert can accommodate flow and velocity of 100-year storm events;
 - k. For stream channel relocation or daylighted stream, prior to diverting water into a new stream channel, a qualified critical area professional approved by the City shall inspect the completed new channel and issue a written report to the City stating that the new stream channel complies with the requirements of this section prior to diverting the stream. Cost of the inspection and report shall be funded by the applicant;
 - l. For stream crossings and culverts:
 - 1) Demonstrate that there is no other feasible alternative route for the crossing with less impact on the environment;

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- 2) Designed shall meet Department of Fish and Wildlife design standards for fish passage projects;
 - 3) For crossings over Type F streams, only bridge structures, bottomless culverts or other appropriate methods shall be used that provide fisheries protection and fish passage;
 - 4) For crossings for all other streams, bridge or bottomless culvert is preferred over traditional pipe-style culvert. Where culverts are applicable, single barrels shall be used;
 - 5) Roads and associated crossings shall be perpendicular to the stream to the maximum extent feasible;
- m. For daylighting, changing the meandering course of the stream or relocating a stream, show that the design achieves:
- 1) Creation of natural meander patterns;
 - 2) 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 that includes native vegetation on stream banks. The steepness of the slope of the stream may be modified given existing conditions;
 - 3) Native vegetation normally associated with streams, emphasizing native plants with high food and cover value for fish and wildlife and approved by the City;
 - 4) Restoration of water flow characteristics compatible with fish habitat areas; and
- n. For changing the meandering of a stream course, see buffer reduction option in KZC 90.80.

7. Additional Requirements for Stream Modification.

- a. All work shall be carried out under the direct supervision of a qualified critical area professional approved by the City and paid for by the applicant during all phases of the project;
- b. Work must be done during the summer low flow and timed to avoid stream disturbance during periods when use of the stream is critical to fish consistent with the Department of Fish and Wildlife construction window; if applicable;
- c. For stream crossings and culverts, record a perpetual maintenance agreement on a form approved by the City for continued maintenance of the stream crossing and culvert;
- d. If a proposed stream modification will result in the creation or expansion of a stream or its buffer on any property other than the subject property a statement signed by the owners of all affected properties, in a form approved by the City Attorney shall be submitted with the modification application and recorded in the King County Recorder's Office. The statement shall consent to the critical area and/or buffer creation or increase on the other property; and
- e. Any required state and federal permits and authorizations shall be obtained prior to conducting site work.

90.75 Daylighting of Streams

1. Daylighting. The City encourages opening up a stream that is located in a culvert to restore the stream to a more natural and open condition. The purpose is to improve the values and functions of the stream, including maintaining water quality, reducing storm and flooding water flow, and providing wildlife habitat.
2. Process. The Planning Official may approve removal of a stream from a culvert based on a critical area report pursuant to KZC 90.110 and an approved stream daylighting plan prepared by a qualified critical area professional approved by the City.
3. Stream Daylighting Plan. The plan shall include the following:
 - a. Detailed site plan of existing improvements and utilities in relationship to the daylighting,

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topography, daylighted stream course, hydrologic flow before and after daylighting and where the daylighted stream will connect once the culvert is removed;

- b. The requirements of the stream modification plan and the additional stream modification requirements pursuant to KZC 90.70 where applicable as determined by the Planning Official;
 - c. Stream channel planting plan using appropriate native stream vegetation;
 - d. Vegetative buffer plan meeting KZC 90.130, except as permitted to be reduced pursuant to KZC 90.80; and
 - e. Any other information deemed necessary by the Planning Official.
4. Requirement to Daylight a Stream. The City may require a stream to be daylighted as part of a Process IIA pursuant to Chapter 150 KZC or IIB permit pursuant to Chapter 152 KZC if the required daylighting is proportionate to the scope and nature of the Process IIA or IIB permit. Where stream daylighting is required, the applicant shall submit a plan as outlined in subsection 3.

90.80 Buffer Reduction for Meandering or Daylighting of Stream

1. On-Site Stream Buffer Reduction.

- a. A reduction to the required stream buffer standard may only be approved as part of approval for:
 - 1) Changing the course to create a meandering stream if the modification improves in-stream habitat and flow conveyance; or
 - 2) Daylighting a stream.
- b. The buffer width reduction shall be the minimum necessary to accommodate existing and proposed improvements and/or site conditions; and
- c. For any reduction in the buffer, the required vegetative standards in KZC 90.130 shall be increased proportionally to the extent feasible based on an appropriate planting density within the reduced buffer to mitigate the impact to the critical area.

2. Off-Site Stream Buffer Waiver.

- a. The buffer standard requirements for adjacent properties shall not increase due to the deliberate change in the meandering course of the stream or daylighting of a stream;
- b. The applicant shall contact any affected property owners in writing to notify them of the waiver and to receive permission to record a notice of buffer waiver on their property title with King County Recorder Office. The applicant shall provide documentation of the communication with the property owners. The waiver shall not be recorded if the adjacent property owner objects to the recording on their title;
- c. The recorded waiver shall be on a form approved by the City; and
- d. There is no waiver to the existing buffer requirement prior to the change in the adjacent stream.

90.85 Stream Channel Stabilization

1. When Permitted. Stream channel stabilization may be permitted if demonstrated to be necessary for the following:
 - a. Protecting existing legal structures and/or utilities that serve the structure(s), public facilities or improvements, unique natural resources determined by the City or where erosion results from the stream channel itself, rather than from unregulated stormwater flows to its banks; or
 - b. Providing the only feasible vehicular access to a property.
2. Stabilization Measures Options.
 - a. Measures including vegetation enhancement, upland drainage control, or protective walls or

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embankments placed outside of the stream and buffer shall be considered and utilized where feasible.

- b. Soft-bank stabilization measures may only be used if it is demonstrated that the measures in subsection 2a above are not a feasible alternative due to site-specific soil, geologic, and/or hydrologic conditions, or location of existing primary structures, utilities or public facilities. The soft-bank stabilization measures may include bank enhancement, anchor trees, gravel placement, stepped back rockeries, vegetative plantings and similar measures that use natural materials engineered to preserve functions and values of the stream.
 - c. Hard-bank stabilization measures may only be used if it is demonstrated first that the measures in subsection 2a and 2b above are not feasible due to site-specific soil, geologic and/or hydrologic conditions. Hard-bank measures may include rock revetments, gabions, retaining walls, bulkheads and similar measures that present a vertical or nearly vertical interface with the water.
3. Process. Any proposal for stream channel stabilization shall be reviewed and decided upon pursuant to a Process I, described in Chapter 145 KZC.
 4. Decisional Criteria. In addition to criteria of Process I, the Planning Director shall only approve stream channel stabilization if:
 - a. Mitigation sequencing found in KZC 90.145 has been met;
 - b. There is a demonstrated risk to legal primary structures and/or utilities due to erosion or slope failure and that stabilization is necessary to prevent damage to these improvements;
 - c. Stream channel stabilization plan will prevent stream bank erosion while minimizing impacts to the stream and the buffer; and
 - 1) For proposed hard-bank measures, show evidence that soft-bank measures cannot be used, consistent with subsection 2 above;
 - 2) The ability of both permanent and temporary impacts to the stream can be mitigated.
 - d. There will be no adverse impact to water quality;
 - e. There will be no adverse impact to fish, wildlife, and their habitat;
 - f. There will be no increase in the velocity of stream flow, unless approved by the City to improve fish habitat;
 - g. There will be no decrease in flood storage volumes; and
 - h. The installation of the stabilization measure will not lead to unstable earth conditions, create erosion hazards or contribute to scouring actions.

The stream channel stabilization plan, the additional requirements in subsection 7 below and any conditions of approval shall be conditions for all related land surface modification and/or building permit approvals.

5. Streambank Assessment. As part of the application for stream channel stabilization, the applicant shall submit a streambank assessment prepared by a qualified critical area professional approved by the City. The applicant shall also fund the City's peer review of the assessment. The assessment shall contain the following:
 - a. The City's stream determination decision pursuant to KZC 90.105 and the critical area report pursuant to KZC 90.110, including the vegetative buffer assessment, and a survey of the stream and its buffer;
 - b. Level and extent of risk to a primary structure and/or utilities due to erosion or slope failure and the ability of the proposed measure to mitigate that risk;
 - c. Description of the proposed modification to the streambank;

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- d. Analysis of mitigation sequencing in KZC 90.145;
 - e. Description of the proposed method to stabilize a streambank and why the method must be used. If soft or hard stabilization is proposed, justify its use;
 - f. Whether the level and extent of risk of damage from erosion is substantially more compared to the environmental impact of the proposed disturbance to the stream, including any continued impacts on functions and values over time;
 - g. Evaluation of the effects of the proposed stream channel stabilization on the functions and values of the stream and the buffer, including on water quality and fish habitat, and suitability of the proposed stabilization;
 - h. The ability of both permanent and temporary impacts to the stream and fish passage can be mitigated; and
 - i. Any other information or studies determined necessary by the Planning Official.
6. Stream Channel Stabilization Plan. The plan shall include the following:
- a. Detailed site plan and cross elevation of the stabilization measure in relationship to the stream, topography, soil conditions and existing improvements; and
 - b. Explanation on how the stream channel stabilization measure is consistent with Washington Department of Fish and Wildlife's guidelines on streambank protection;
7. Additional Requirements for Stream Channel Stabilization.
- a. All work shall be carried out under the direct supervision of a qualified critical area professional approved by the City and paid for by the applicant during all phases of the project;
 - b. Work must be done during the summer low flow and timed to avoid stream disturbance during periods when use of the stream is critical to fish consistent with the Department of Fish and Wildlife construction window; if applicable; and
 - c. Any required state and federal permits and authorizations shall be obtained prior to conducting site work.

90.90 MINOR LAKES - TOTEM LAKE AND FORBES LAKE

The majority, if not the entirety, of the perimeters of Totem Lake and Forbes Lake are wetlands. All activities in the shallow areas of the lakes relating to contiguous wetlands located above the high waterline are regulated pursuant to KZC 90.55 and KZC 90.60.

Activities and uses waterward of the lakes' perimeter wetlands and outside of the wetland shall be regulated as follows:

1. General Standards. As part of a permit or approval under this chapter, the City may require maintenance or rehabilitation of the lake as part of a project by removing material detrimental to the lake, such as inorganic debris, sediment, or non-native vegetation. Rehabilitation is required when an existing condition is detrimental to water quality or habitat.
2. Moorage Facilities. Moorage facilities may be constructed, expanded or replaced using the process and meeting the standards below.
 - a. Process. Any proposal for a moorage facility shall be reviewed and decided upon pursuant to a Process I, described in Chapter 145 KZC.
 - b. Decision Criteria. A new, expanded or replaced moorage structure may be approved if the

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standards in subsection c. below are met.

c. Standards.

- 1) Moorage structure shall not extend farther than 25 feet waterward of the high waterline;
- 2) Only one (1) moorage structure may be located on a subject property;
- 3) It is accessory to an allowed use on the subject property;
- 4) Moorage structure associated with a dwelling unit shall be for the exclusive use of the residents and guests of the associated dwelling unit. Structures shall not be leased, rented or sold;
- 5) Moorage structure shall not be treated with creosote or oil base or toxic substances;
- 6) Any existing in-water structures abandoned or in disrepair must be removed as part of a new permit; and
- 7) A critical area determination shall be made pursuant to KZC 90.105 and a critical area report shall be prepared pursuant to KZC 90.110 to assess impacts to wetlands and streams and any wildlife habitat area due to construction and use of the moorage structures. If any impacts are identified, a mitigation plan shall be prepared and implemented pursuant to KZC 90.145 and KZC 90.150.
- 8) For pedestrian access trails or boardwalks, see KZC 90.40.

3. Repair of Moorage Facilities. Moorage facilities may be repaired and maintained as an exempted activity pursuant to KZC 90.35, but they may not be reconstructed or expanded under repair and maintenance.

4. Viewing Platforms.

- a. Public viewing platforms in a lake associated with a public park may be approved as part of a Park Master Plan process, pursuant to KZC 90.40.6.
- b. If the platform would be located in a wetland, the final critical area determination and critical report is required pursuant to KZC 90.105 and KZC 90.110, and mitigation is required pursuant to KZC 90.145 and KZC 90.150.
- c. The platform shall not be treated with creosote or oil base or toxic substances.
- d. Private viewing platforms are not permitted.

5. Public Park. Construction of a park associated with a minor lake shall be reviewed through a Park Master Plan process, pursuant to KZC 90.40.6.i.

90.95 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

1. Location of Fish and Wildlife Habitat Areas.

- a. Fish and wildlife habitat conservation areas can be found in or near critical areas, forested areas or Lake Washington.
- b. Fish habitat is protected under the provisions of KZC 90.65, Streams. Thus, the provisions in subsections 3 through 7 of this section do not apply to fish habitat.

2. Criteria. Fish and wildlife habitat conservation areas are those that meet one or more of the following species and habitat criteria:

- a. State or federally designated endangered, threatened, and sensitive species that have a primary association with the habitat area.
- b. State priority habitats and habitats with which State priority species have a primary association

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that are located in the City. Those in Kirkland are deemed to be Habitats and Species of Local Importance.

3. Wildlife Habitat Conservation Area Assessment. As part of a critical area report pursuant to KZC 90.110, a determination shall be made if a wildlife habitat conservation area exists on the subject property or near the property by a qualified critical area professional approved by the City with experience preparing reports for the relevant type of habitat. The assessment shall include the following information:
 - a. Evaluation. Evaluation of the presence or absence of potential wildlife habitat on the subject property or within the vicinity. A wildlife habitat assessment shall include the following information:
 - 1) Identification of state priority species, or state or federally listed endangered, threatened or sensitive species that have a primary association with habitat on or in the vicinity of the property;
 - 2) Extent of wildlife habitat areas, including acreage, and required buffers based on the species;
 - 3) Vegetative, faunal, and hydrologic characteristics;
 - 4) Evaluation of direct and indirect potential impacts on habitat by the project, including potential impacts to water quality; and
 - 5) A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations that have been developed for the species or habitats.
 - b. Maps. The following maps shall be used in the evaluation:
 - 1) Department of Fish and Wildlife priority habitat and species maps; and
 - 2) Federal and state information and maps related to those species and habitat identified in subsection 2 above.
4. Process. Modification to wildlife habitat conservation areas shall be proposed as part of the required critical area approval under this chapter for a project.
5. Decisional Criteria. Modification to wildlife habitat conservation areas may only be approved if the following criteria are met:
 - a. Mitigation sequencing is met pursuant to KZC 90.145;
 - b. It can be demonstrated that required habitat areas can be protected through implementation of protection measures in accordance with a management plan; and
 - c. It can be demonstrated that the management plan and requirements in subsections 6 and 7 can be met with the proposed project.
6. Wildlife Habitat Management Plan.
 - a. A wildlife habitat management plan shall be prepared by a qualified critical area professional with experience preparing reports for the relevant type of habitat and approved by the City and based on recommendations from the Washington State Department of Fish and Wildlife;
 - b. The applicant shall fund the cost and implementation of the management plan, and also fund peer review by the City of the management plan;
 - c. The plan shall establish:
 - 1) Seasonal restriction of construction activities as determined by the Washington State Department of Fish and Wildlife;
 - 2) Duration and timetable for periodic review of mitigation activities;
 - 3) Vegetative buffer widths that reflect the sensitivity of the habitat and the type and intensity of activity or use proposed to be conducted nearby. The buffer widths shall be consistent with

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the management recommendations issued by the Washington Department of Fish and Wildlife and U.S Fish and Wildlife Services;

- 4) Measures to provide appropriate wildlife corridor for the conservation of the species if a wetland scoring 5 or greater is within 300 feet of the habitat area;
 - 5) Limitations on pesticide and herbicide use in conservation area; and
 - 6) Monitoring and maintenance program for the mitigating measures. The applicant shall fund the monitoring and maintenance program and also fund peer review by the City. Installation of vegetation shall follow the monitoring and maintenance schedule for a 5-year program pursuant to KZC 90.160;
- d. Clustering of a development shall be considered in the plan if a project contains more than one dwelling unit or building if it would provide less impact and/or greater protection of the conservation area; and
 - e. Consultation with the Washington State Department of Fish and Wildlife, affected tribes or other appropriate agency regarding the effectiveness of any proposed mitigating measures shall occur if the Planning Official determines that it is needed.
7. Standard Requirements for Wildlife Habitat Conservation Area. Improvements, structures or activities located in or near wildlife habitat conservation areas shall meet the following standards:
- a. Preservation of critically important vegetation and/or habitat features, such as large trees, snags and downed wood;
 - b. Buffers shall consist of an undisturbed area of native vegetation or areas identified in a management plan for restoration to protect the integrity, functions, and values of the affected habitat;
 - c. Limitation of access to the wildlife habitat area, including fencing and signage, to deter unauthorized access;
 - d. Introduction of any plant or wildlife not indigenous to the region shall be prohibited unless authorized by a state or federal approval;
 - e. A performance, monitoring and maintenance security shall be submitted pursuant to KZC 90.165 to ensure completion and success of proposed mitigation; and
 - f. The management plan shall be implemented through the life of the use or activity.
8. Designation of Wildlife Habitats or Species of Local Importance. The City may designate additional habitat or species of local importance as an amendment to the definition in Chapter 5 KZC through Chapter 160 KZC.

90.100 FREQUENTLY FLOODED AREAS

No disturbance or land surface modification may take place and no improvements or activities may be located in frequently flooded areas that are areas of special flood hazard, except as specifically provided in Chapter 21.56 KMC, Flood Damage Prevention. See Federal Emergency Management Agency (FEMA) for flood maps.

GENERAL STANDARDS

90.105 Critical Area Determination

1. Initial Determination. Either prior to or during review of a development application, the Planning Official shall make an initial assessment based on a site inspection and other information as to whether:

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- a. A wetland is present on any portion of the subject property or surrounding area within 300 feet of the subject property. If a site inspection does not indicate the presence of a wetland on the subject property or within 300 feet of the subject property, no additional wetland assessment will be required.
 - b. If the initial determination indicates that a wetland exists or may exist on the subject property or within 300 feet of the subject property and/or a stream exists on the subject property or within 125 feet of the subject property, then the applicant shall have a critical area report prepared pursuant to KZC 90.110.
 - c. A stream is present on any portion of the subject property or surrounding area within 125 feet of the subject property. If a site inspection does not indicate a stream on or within 125 feet of the subject property, no additional stream assessment will be required.
 - c. If the Planning Official is not able to determine the classification of a stream or is uncertain if a watercourse is classified as a stream, a critical area report shall include a recommendation on a stream determination as to whether the site does contain a stream and if so, its classification. If the critical area report determines that no stream exists on or within 125 feet of the subject property, no further assessment is need.
2. Final Determination. The Planning Official shall make a final determination based on the critical area report. As part of the critical area determination, the Planning Official shall determine:
 - a. The critical area boundaries, wetland category and rating and/or stream classification;
 - b. The location of the buffer and buffer width standards for the critical area;
 - c. Whether the wetland or stream needs to be restored due to degraded vegetation, wildlife habitat, water quality and hydrologic functions, and if so, what measures are needed.
 - d. Whether the required buffer meets the vegetative standards found in KZC 90.130. If not, what changes need to be made to the buffer to meet the standard;
 - e. Whether the subject property contains or is within the vicinity of a known habitat for species that are federally or state listed pursuant KZC 90.95; and
 - f. Whether the standard buffer width must be increased due to severe erosion area, fish and wildlife habitat conservation area or frequently flooded area on or adjacent to the subject property pursuant to KZC 90.125.
 3. Development Review. The determination shall apply to any development permit application or request that would modify a site that includes a critical area or associated buffer, other than those exempted pursuant to KZC 90.35.
 4. Validity of Determination. The critical area determination is valid for five (5) years from the date of the decision. However, the Planning Official may modify the final critical area determination whenever physical circumstances have markedly and demonstrably changed on the subject property or within 300 feet of the subject property for wetlands and 125 feet for streams because of natural processes or authorized human activity.

90.110 Critical Area Report

1. General. An application for a development permit that includes a critical area and/or its buffer, except those exempted pursuant to KZC 90.35, shall provide a critical area report that uses the best available science to evaluate the proposal and all probable impacts.

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2. Preparation of Report.
 - a. The critical area report shall be prepared by a qualified critical area professional.
 - b. The applicant shall either:
 - 1) Fund a report prepared by the City or the City's consultant; or
 - 2) Submit a report prepared by a qualified critical area professional approved by the City. In addition, fund a peer review of the critical area report by the City or the City's consultant.
3. Report Format. The critical area report shall be provided in electronic form. The City may establish specific administrative requirements for the format of the report.
4. Report Content – General. A critical area report shall evaluate the subject property and critical areas within 300 feet of the subject property for wetlands and 125 feet for streams. A critical area report shall include the following information:
 - a. The name and contact information of the applicant; the name, qualifications, and contact information from the primary author(s) of the report;
 - b. Documentation of any fieldwork performed on the site, including field data sheets for wetland delineation and rating system forms, stream classification, baseline hydrologic data;
 - c. A description of the methodologies used to conduct the wetland delineations and rating system forms, stream classification if done as part of the critical area report, and impact analyses including references;
 - d. Identification, characterization and boundaries of all critical area, and buffers on or adjacent to the subject property. For areas off site of the subject property, estimated conditions within 300 feet of the subject property boundaries for a wetland and 125 feet of a stream using the best available information;
 - e. A vicinity map and a site plan of the property, drawn to scale, with existing improvements and site features, including significant trees;
 - f. Project narrative describing the proposal; anticipated temporary and permanent impacts to critical area or its buffer, construction activities and sequencing of construction, and other relevant information;
 - g. A description of existing native, ornamental or invasive vegetation, fauna, and hydrologic characteristics found in the critical area and its buffer both on-site and on adjacent properties;
 - h. An assessment of whether the wetland or stream needs to be restored due to degraded vegetation, wildlife habitat, water quality and hydrologic functions, and if so, what measures are needed.
 - i. An assessment of existing vegetation in the required buffer and whether it meets the vegetative buffer standards found in KZC 90.115. If the vegetation in the buffer does not meet the vegetative standards, submit a detailed preliminary re-vegetation plan meeting KZC 90.115. If re-vegetation of the buffer is part of a stream or wetland modification proposal, the plan must be a detailed final re-vegetation plan;
 - j. An assessment of whether the standard buffer width must be increased due to severe erosion area, fish and wildlife habitat conservation area or frequently flooded area on or adjacent to the subject property pursuant to KZC 90.125;
 - k. An assessment of any existing habitat for species that are federally or state listed or priority species, including species of local importance pursuant to KZC 90.95 on the subject property or in the vicinity;
 - l. A professional survey as specified in subsection 7 below;
 - m. A statement specifying the accuracy of the report and all assumptions made and relied upon; and
 - n. Any other information deemed necessary by the Planning Official.

5. Additional Report Content – Wetlands. In addition to the requirements for the General Report Content pursuant to subsection 4 above, the critical area report shall include:
- a. Identification of wetlands and delineation of their boundaries in accordance with the current approved federal delineation manual and applicable regional supplements described in WAC 173-22-035, as amended. All determinations and delineations of wetlands shall be based on the entire extent of the wetland, irrespective of property lines, ownership patterns, existing improvements or features;
 - b. Wetland rating and category including the rationale for the proposed rating and the required buffer based on the regulations in this code;
 - c. A completed Army Corps of Engineers Wetland Field Data Form;
 - d. Existing wetland acreage that may be approximated if the wetland extends onto adjacent properties;
 - e. Soil and substrate conditions;
 - f. A description of historical hydrologic, vegetative, habitat, topographic, and soil modifications, if any; and
 - g. Description of the water sources entering and leaving the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – drift lines, algal layers, water marks, and sediment deposits).
6. Additional Report Content – Streams. In addition to the requirements for the General Report Content pursuant to subsection 4 above, the critical area report shall include the stream classification and rationale, based on WAC 222-16-030, as amended. Best available information shall be used to determine if fish are present in the stream given known fish barriers and other conditions.
7. Professional Survey and Measuring Buffer Boundary.
- a. The survey shall be based on the King County Datum (NAVD 88 vertical, NAD 83/91 horizontal) and shall indicate the temporary or permanent benchmark used in the survey depicting:
 - 1) The approved delineation marking of a wetland and/or buffer boundary on the subject property and an estimate of the location of off-site wetlands and buffers within 300 feet of the subject property, based on the determined wetland category and rating, and the buffer standards in this chapter; and/or
 - 2) The ordinary high water mark (OHWM) of any stream or the opening of a pipe where any stream enters or exits a pipe and/or any buffer surveyed on the subject property and an estimate of the location of any off-site stream and buffer within 125 feet of the subject property based on the stream classification determination and the buffer standards in this chapter.
 - b. For wetlands, buffer widths shall be measured along the outer edge of the entire wetland.
 - c. For streams, buffer widths shall be measured outward in each direction on the horizontal plane from the OHWM or from the top of the bank if the OHWM cannot be identified (see Chapter 180 KZC, Plate 16). Where a stream enters or exits a pipe, the buffer shall be measured perpendicular

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at the pipe opening (see Chapter 180 KZC, Plate 16A).

8. Site and Construction Plans. For a site proposed to be developed, the critical area report shall include general plans showing the following:
 - a. Site plan-view cross-sectional drawings;
 - b. Slope gradients, and existing and final grade elevations at two-foot intervals;
 - c. The type and extent of all critical areas and buffers on the subject property and an estimate of any offsite critical areas and buffer within 300 feet of any wetland and 125 feet of any stream measured from the subject property;
 - d. An approximate location of springs, steeps, surface water runoff features, or other surface expressions of groundwater on or within 300 feet of a wetland and 125 feet of a stream from the subject property;
 - e. Proposed development, including the location of existing and proposed structures, fill, grading clearing limits with dimensions indicating distances to the critical area, areas of proposed impacts to the critical areas and/or buffers (include square footage estimates), and storage of construction materials and equipment if available;
 - f. A depiction of the proposed stormwater management facility and outlets for the project, including estimated areas of permanent and temporary intrusion into the critical area buffer;
 - g. Other drawings to demonstrate construction techniques; and
 - h. Any other information deemed necessary by the Planning Official.
9. Waiver. The Planning Official may waive the requirement of certain information for the report if it is determined that:
 - a. The information is not needed to evaluate a critical area or requirement of this chapter; or
 - b. If the development proposal will affect only a part of the subject property, the Planning Official may limit the scope of the required report to include only that part of the site that would be affected by the development.

90.115 Buffer Averaging

1. Applicability. Buffer averaging may be applied to wetland and stream buffers. Both the standard buffer and the alternative buffer may use buffer averaging pursuant to this section.
2. Standards. Averaging of buffer widths for either the standard buffer or alternative buffer may only be allowed if all of the following criteria are met as demonstrated in a critical area report:
 - a. The applicable standard buffer or alternative buffer width is not reduced below 75% of the required width in any location;
 - b. The total area contained in the buffer area after averaging is no less than that which would be contained within the applicable standard buffer or alternative buffer and must be contiguous;
 - c. Buffer averaging will provide additional protection to the critical area and result in a net improvement of the critical area habitat, functions, and values; and
 - d. The critical area contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland or stream would benefit from a wider buffer in one area and would not be adversely impacted by a narrower buffer in another area.
3. Process. The Planning Official makes the decision based on the standards of subsection 2 above and review of the critical area report described in KZC 90.110.

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90.120 Limited Buffer Waivers1. Interrupted Buffer Waiver.

- a. Where an existing legally established and improved public right-of-way or improved easement road interrupts a portion of the critical area buffer from the portion of the buffer adjacent to the critical area, the Planning Official may waive the required critical area buffer in that portion of the buffer isolated from the critical area. The Planning Official may require a critical area report be prepared to address the criteria in KZC 90.120.1.d below.
- b. Where an existing legally established building, detached garage, accessory dwelling unit, driveway, commercial parking area or retaining wall over six feet in height divides a portion of the critical area buffer from the portion of the buffer adjacent to the critical area, the Planning Official may waive the required critical area buffer in that portion of the buffer isolated from the critical area if the applicant demonstrates conclusively in a critical area report that all of the criteria in KZC 90.120 1.d below are met.
- c. A waiver may not be requested for such improvements as fences, sheds, patios, decks or other minor structures and impervious surfaces.
- d. The Planning Official may waive the buffer requirement if the waiver request is found to meet the following criteria (see Chapter 180 KZC, Plate 25):
 - 1) The existing legal improvement creates a substantial barrier to the buffer function;
 - 2) The interrupted buffer does not provide additional protection of the critical area from the proposed development; and
 - 3) The interrupted buffer does not provide significant hydrological, water quality and wildlife buffer functions relating to the portion of the buffer adjacent to the critical area.
- e. If the applicant's consultant prepares the critical area report, the applicant shall also fund peer review of the report by the City's consultant.

90.125 Increase in Buffer Width Standard

1. Criteria to Require Increase in Buffer Width. The City shall determine if a critical area buffer must be increased beyond the standards in this chapter based on best available science and the recommendation of a critical area report for a project. The increase in buffer width may be required when a larger buffer is necessary to protect critical area functions and values either on the subject property or on an adjacent property. This determination shall be based on one or more of the following criteria:
 - a. Severe Erosion Areas. If the critical area buffer abuts land that contains a slope with severe erosion, has minimal vegetative cover and is designated as hazardous in Chapter 85. KZC, and erosion control measures will not effectively prevent adverse impacts on the critical area based on a geotechnical study, a larger buffer shall be required;
 - b. Fish and Wildlife Habitat Conservation Areas. If the wetland or stream contains documented habitat for state or federally listed endangered, threatened, and sensitive species or state priority species, including species of local importance, a larger buffer may be required to protect the habitat consistent with the management recommendations issued by the Washington Department of Fish and Wildlife or the United States Fish and Wildlife Services; or
 - c. Frequently Flooded Areas. If a site contains a frequently flooded area and the frequently flooded area is wider than the buffer standard required for a wetland or stream, the buffer shall be increased to incorporate the entire frequently flooded area.

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2. Process. The Planning Official shall make a determination if a buffer width must be increased beyond the standard buffer width based on the critical area report as part of the final critical area determination in KZC 90.105.

90.130 Vegetative Buffer Standards

1. General. The entire Wetland Buffer Width of KZC 90.55 and Stream Buffer Width of KZC 90.65, referred hereafter, as the "buffer" shall be vegetated pursuant to the requirements of this section.
2. Vegetative Buffer Standard.
The following vegetative buffer standards shall be met:
 - a. Native cover of at least 80% on average throughout the buffer area. Additionally, two out of three of the following strata of native plant species each must compose of at least 20% areal cover:
 - 1) Multi-age forest canopy (combination of existing and new vegetation);
 - 2) Shrubs; and
 - 3) Woody groundcover (such as kinnikinnick, salal and sword fern) or unmowed herbaceous groundcover;
 - b. At least three (3) native species each making up a minimum of 10% coverage (for diversity);
 - c. Less than 10% noxious weeds cover using King County weed list and permanent removal of all knotweed; and
 - d. Removal of lawn and any illegal fill as determined by the City.
3. Additional Standards.
 - a. All existing improvements and structures in a buffer must be removed when redevelopment of the entire site is proposed;
 - b. The following existing improvements must be removed from the buffer if a new or expanded footprint of greater than 1,000 square feet is proposed:
 - 1) Decks, patios, sheds, hot tubs, outdoor structures for barbeque areas, benches, walkways, paths and pedestrian bridges and similar improvements;
 - 2) Play structures, garden sculptures, light fixtures, trellis and similar decorative structures; and
 - 3) Parking areas, except driveways and commercial parking lots, and other impervious surfaces.
 - c. Native vegetation appropriate for wetlands and streams shall be used based on the City's Critical Areas Plant List. Other vegetation may be proposed if appropriate for the site and approved by the City;
 - d. Trees and shrubs in the buffer shall be located along the bank of streams to provide effective shading of the stream to lower water temperature.
 - e. Existing healthy native vegetation may count towards meeting the requirements if the overall standard is met;
 - f. The City may require amended soil if needed to provide a well-functioning buffer;
 - g. The City may require supplemental mulch to meet the Planning and Building Department standards;
 - h. A reliable temporary irrigation source must be available while the vegetation is being established and the source must be indicated on the planting plan;
 - i. Installation shall be done by hand unless use of mechanical equipment is specifically authorized due to site conditions. By hand includes any hand held equipment that is gas or electric powered;
 - j. A Perpetual Landscape Maintenance Agreement, in a form approved by the City, shall be recorded over the vegetated buffer prior to final inspection; and
 - k. Buffers shall not be mowed and animals may not be used to remove weeds, except goats may be

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used to remove invasive species for only public restoration projects pursuant to KZC 90.35 and KZC 90.40.

4. When Vegetative Buffer Standard Applies.

- a. The required vegetative buffer standard shall be installed within the entire standard buffer for all new or expanded building footprints or increased impervious areas, excluding fences, rockeries and retaining walls, on the subject property that require a development permit. Replacement of existing buildings or impervious areas with the same or reduced size and same location of the existing footprint are not required to provide the vegetative buffer.
- b. Exceptions:
 - 1) When the total new or expanded building footprint or an increase of impervious area is between 50 square feet and 1,000 square feet on the subject property, the following standards shall apply:
 - a) The buffer shall be vegetated at a minimum 1:1 ratio (square feet of new or expanded building footprints/impervious area is equal to or smaller than the total square feet of buffer vegetation) meeting the vegetated buffer standard at the proportional rate of the standard;
 - b) If the new or expanded building footprint results in removal of a significant tree in a buffer, the tree shall be replaced with two (2) native trees in the buffer. The replacement trees shall be six (6) foot tall for a conifer and 2-inch caliper for deciduous or broadleaf. For a removed significant tree in a buffer that is 24" in diameter, the tree shall be replaced with three (3) native trees. ;
 - c) The vegetated buffer area shall be located in the buffer abutting or nearest to the critical area at a minimum width of 10 feet;
 - d) The location of the vegetation in the buffer shall be across from the new structure footprint and approved by the Planning Official;
 - 2) When a new or expanded structure or improvement on the subject property totals less than 50 square feet, no vegetation is required to be planted in the buffer; and
 - 3) For new utility poles the buffer shall be calculated based on the combined area of all new utility pole footprints and be vegetated at a minim 1:1 ratio (square feet of new or expanded building footprints/impervious area equals total square feet of buffer vegetation), meeting the vegetated buffer standard at a proportional rate.
- c. For Permitted Activities, Improvements and Uses Subject to Development Standards pursuant to KZC 90.40, vegetative buffer requirements will be determined as part of mitigation sequencing.
- d. For Nonconformances, see KZC 90.185.

5. Process. The Planning Official shall determine whether an existing buffer meets the standards in KZC 90.130.2 above as part of the final critical area determination based on information in the critical area report.

6. Submittal of Vegetative Buffer Plan - Timing and Contents.

- a. When an existing buffer does not meet the standards in subsection 2 above, the applicant shall submit a final vegetative buffer plan with the development permit application;
- b. The vegetative buffer plan shall be prepared by a qualified critical area professional. The applicant shall also submit funds to the City for peer review of the vegetative buffer plan; and
- c. The Planning Official shall approve the plan only if it meets the vegetative buffer standard in this section.
- d. If a modification is proposed to a wetland or stream pursuant to KZC 90.60 or 90.70, a detailed planting plan shall be submitted with the wetland or stream modification plan.

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7. Maintenance, Monitoring and Financial Security. A maintenance and monitoring program pursuant to KZC 90.160 and a financial security pursuant to KZC 90.165 for the vegetative buffer shall be submitted prior to issuance of a building permit or before commencement of an activity.
8. Protection of Vegetative Buffer. Critical areas and buffers shall be placed in recorded critical area easements or tracts pursuant to KZC 90.210 and shall be maintained in perpetuity.

90.135 Trees in Critical Areas and Critical Area Buffer

1. Removal of Trees.
 - a. Other than as specifically approved as part of a critical area approval under this chapter, no trees shall be removed from a critical area of critical area buffer unless determined to be nuisance or hazardous trees. Any removal shall be authorized in advance through a tree removal permit pursuant to KZC 95.23 unless tree removal is an emergency to prevent immediate damage to a structure. In case of an emergency, documentation to the City must be provided within seven (7) days of removal that supports that the tree was a nuisance or hazardous.
 - b. If a tree in a critical area or its buffer meets the criteria of a nuisance or hazard based on this code at the determination of the Planning Official, then a snag tree shall be created;
 - c. If creation of a snag is not feasible, then the felled tree shall be left in place unless the Planning Official approves tree removal in writing; and
 - d. Any tree approved to be removed or created as a snag or felled must be replaced with one (1) to three (3) native trees at a minimum height of six (6) feet in the buffer depending on the size, quality and species of removed tree. The Planning Official shall determine the required number of replacement trees.
2. Pruning of Trees. Pruning or topping of trees in critical areas or buffers is prohibited other than City approved creation of snags for nuisance or hazard trees.

90.140 Structure Setback from Critical Area Buffer

1. Buildings and other structures shall be set back at least 10 feet from the edge of the wetland or stream buffer to ensure adequate width for construction staging, maintenance and repair of primary buildings and accessory structures, and use of improvements without disturbing the critical area buffer or critical area. This section does not apply to:
 - a. Category IV wetlands that are less than 1,000 square feet that do not have a buffer requirement and thus no building setback requirement.
 - b. Those linear utility improvements associated with either Permitted Activities, Improvements or Uses or Public Agency and Utility Exceptions that have been approved to be located in a critical area or buffer and therefore can traverse the structure setback.
2. The following improvements may extend into the structure setback, provided that they do not necessitate encroachment into the critical area buffer for construction, maintenance and use. No other improvements are permitted.

Table 90.140.1 Structure Setback from Critical Area Buffers

Structure Setback	Improvement	Location within Setback:
10 feet in width from	Chimneys, bay windows, greenhouse windows, eaves, cornices, awnings and canopies, and decks above the ground floor	May extend no more than 18 inches into

edge of buffer		structure setback
	Uncovered improvements less than 18 inches above finished grade to 4 inches above finished grade, such as ground floor decks, and railings less than 4 feet above finished grade	May extend no more than 5 feet into structure setback
	Uncovered play structures	
	Rockerries and retaining walls that are not more than 4 feet above finished grade	
	Uncovered improvements less than 4 inches above finished grade, such as patios, driveways and parking areas, including curbing	May extend no more than 9 feet into structure setback
	Garden sculpture, light fixtures, trellises and similar decorative structures	
	Benches, walkways, paths and pedestrian bridges	
	Bio-retention, such as rain gardens, and dispersion techniques that result in sheet flow such as level spreaders, dispersion trenches, splash blocks and similar techniques	
	Fence perpendicular to the structure setback at up to 6 feet in height above finished grade	May extend to the upland edge of the critical area buffer
	Split rail, open slatted with at least 18" spacing, wrought iron and chain link, or similar non-solid fence parallel to the structure setback up to 6 feet in height above finished grade. Solid fencing is not permitted. Except for split rail, a gate is required for access to the buffer.	Along the entire upland edge of the buffer

90.145 Mitigation - General

1. General. If a modification is proposed to a critical area or buffer, as part of the application the applicant must have the proposal evaluated using mitigation sequencing and then submit a mitigation plan that addresses the impacts to the critical area.
2. Mitigation Sequencing. The intent of mitigation sequencing is to evaluate and implement opportunities to avoid, minimize, eliminate or compensate for impacts to critical areas while still meeting the objectives of the project. When a modification to a critical area and buffer is proposed, the modification shall be avoided, minimized, or compensated for, as outlined by WAC 197-11-768, in the following order of preference:
 - a. Avoiding the impact altogether by not taking a certain action or parts of actions;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations

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- during the life of the action;
- e. Compensating for the impact by replacing or providing substitute resources or environments; and/or
- f. Monitoring the impacts and compensation projects and taking appropriate corrective measures.

3. Location of Mitigation.

- a. Preference. Preference shall be given to the location of the mitigation in the following order unless it can be demonstrated that off-site in-kind mitigation is ecologically preferable:
 - 1) On-site in-kind
 - 2) Off-site in City in-kind
 - 3) Off-site in-kind within the Lake Washington/Cedar/Sammamish Watershed
- b. On-Site versus Off-Site Mitigation.
 - 1) Mitigation shall occur on-site except when the City determines that the following criteria have been met as part of a proposal under this chapter:
 - a) There is no opportunity for on-site mitigation or on-site opportunities do not have a high likelihood of success due to the size of the property, site constraints, or size and quality of the wetland or location and quality of the stream;
 - b) Off-site mitigation has a greater likelihood of providing equal or improved critical area functions than the impacted critical area;
 - c) Off-site locations shall be in the same Water Resource Inventory Area (WRIA) 8 Lake Washington/Cedar/Sammamish Watershed as the impacted critical area; and
 - d) The off-site critical area mitigation will best meet formally established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions that have been established and strongly justify location of mitigation at another site.
 - 2) When considering mitigation outside of the City, preference should be given to using mitigation banking or an in-lieu fee program pursuant to subsection 4 below.

4. Responsible Party for Mitigation Site. Mitigation for lost or diminished critical area functions and values for either wetlands or streams shall use the following options:

- a. Applicant-Responsible Mitigation The applicant is responsible for the implementation, monitoring and success of the mitigation pursuant to this Chapter.
- b. Non-Applicant Responsible Mitigation – Mitigation Bank and In-lieu Fee Mitigation.
 - 1) Funds are collected from the applicant by the sponsoring agency, non-profit, private party or jurisdiction. The sponsor is responsible from that point forward for the completion and success of the mitigation. The applicant's fee is based on the project impact and includes all costs for the mitigation, including design, land acquisition, materials, construction, administration, monitoring, and stewardship.
 - 2) Credits purchased by an applicant from a mitigation bank or in-lieu program that is certified under Federal and State rules may be used as a method of mitigation if approved by the City to compensate for impacts when all of the following apply:
 - a) The City determines as part of the critical area approval that it would provide appropriate compensation for the proposed impacts;
 - b) Projects shall have debits associated with the proposed impacts calculated by the

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- applicant's qualified critical area professional using the credit assessment method or appropriate method for the impact as specified in the approved instrument for the program. The assessment shall be reviewed and approved by the City;
- c) The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank or in-lieu fee program instrument; and
 - d) The record of payment for credits shall be provided to the City in advance of the authorized impacts but no later than issuance of the building or land surface modification permit.

c. City-Responsible Mitigation – Advance Mitigation.

The City does mitigation on City-owned property as mitigation credit either for City critical area projects or at the discretion of the City for other public agencies with critical area projects. The mitigation program shall be implemented pursuant to federal and state rules, and state water quality regulations.

5. Timing of Mitigation.

a. On-Site Mitigation.

- 1) On-site mitigation shall be completed immediately before or following disturbance and prior to use or final inspection of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife and flora; and
- 2) The Planning Official may allow flexibility with respect to seasonal timing of excavation or planting for mitigation. If on-site mitigation must be completed after final inspection of a building or land surface modification permit or commencement of an activity, a performance financial security shall be required pursuant to KZC 90.165 along with a timeline commitment for completion.

b. Off-Site Mitigation.

- 1) For in-lieu fee, mitigation bank or advance mitigation programs:
 - a) Mitigation shall be completed based on the programs established timeline, except advance mitigation shall be completed prior to issuance of the development permit.
 - b) The applicant shall provide documentation of the proof of purchase of credits for in-lieu fee and mitigation banking in advance of the authorized impacts but no later than issuance of the building or land surface modification permit. However, if the program sponsor requires proof of development permit prior to credit purchase, the documentation may be provided to the City prior to final inspection.
 - c) For advanced mitigation, the applicant shall submit documentation of completion of the advance mitigation prior to issuance of a land surface modification or building permit.
- 2) For all other off-site mitigation:
 - d) Mitigation shall be completed immediately before or following disturbance and prior to use or final inspection of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife and flora. The Planning Official may allow flexibility with respect to seasonal timing of excavation or planting for mitigation; and
 - e) Documentation of the proof of purchase of off-site property shall be provided in

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advance of the authorized impacts but no later than issuance of the building or land surface modification permit.

6. Mitigation Plan Standards. All critical area mitigation plans, except mitigation met through mitigation bank or an in-lieu fee program, shall meet the following standards. In addition, for wetlands the standards for Compensatory Wetland Mitigation pursuant to KZC 90.150 shall be followed.
- a. A mitigation plan shall be prepared by a qualified critical area professional, approved by the City that:
 - 1) Addresses the impacts to a critical area and buffer based on best available science;
 - 2) Is designed to maintain and enhance ecological functions and values, and to prevent risk from hazards posed to the critical area; and
 - 3) Provides a description of the mitigation site, including location and vicinity map, and rationale for selection of the mitigation site.
 - b. The plan shall show that:
 - 1) The vegetative buffer standards and requirements in KZC 90.130 are met. If the buffer does not currently meet the vegetative buffer standards, a detailed final revegetation plan shall be submitted including specification on size and type of each native species of plants, and number and spacing of the plants meeting the City of Kirkland's Critical Area Plant List and standards;
 - 2) Seed source must be as local as possible, and plants must be nursery propagated unless transplanted from on-site areas approved for disturbance. These requirements must be included in the mitigation plan specifications;
 - 3) Plant materials may be supported with material (e.g. stakes, guy wires) only when necessary. Staking and ties shall follow the International Society of Arboriculture standards. Where support is necessary, stakes, guy wires, or other measures must be removed as soon as the plant can support itself, usually after the first growing season;
 - 4) The stream buffer mitigation area replacement ratio of 1:1 pursuant to KZC 90.65 is met;
 - 5) Proposed erosion control measures comply with the City's Public Works Pre-Approved Plans;
 - 6) Mitigation is consistent with other requirements in this code, including site distance requirements at intersection pursuant to KZC 115.135; and
 - 7) All planted areas of the mitigation project have a temporary, above ground sprinkler system set to automatic timers. Temporary sprinkler systems shall be removed in the final year of monitoring once vegetation is well established. When public or private water is not available, a plan for reliable watering by truck or hand shall be included.

90.150 Compensatory Wetland Mitigation

1. General. Compensatory mitigation for modifications to wetlands and related impacts to buffers shall be used for impacts that cannot be avoided or minimized and shall achieve equivalent or greater wetland functions. Approved modifications to a wetland and related impacts to the buffer require compensatory mitigation based on mitigation ratios in subsection 2 below so that the goal of no net loss of wetland functions and values is achieved.
2. Compensatory Wetland Mitigation Ratios.
 - a. Acreage Replacement Ratios.

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The following ratios shall apply to creation, re-establishment, rehabilitation, and enhancement of wetlands. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank or in-lieu fee program pursuant to KZC 90.145.4. The first ratio number specifies the acreage of replacement wetlands and the second number specifies the acreage of wetlands altered.

Table 90.150.1 Mitigation Ratios for Wetlands and Buffers

Category of Wetland Impacted	Creation	Re-establishment-Rehabilitation Only	Creation and Rehabilitation	Creation and Enhancement	Enhancement Only
Category IV	1.5:1	3:1	1:1 C and 1:1 RH	1:1 C and 2:1 E	6:1
Category III	2:1	4:1	1:1 C and 2:1 RH	1:1 C and 4:1 E	8:1
Category II	3:1	6:1	1:1 C and 4:1 RH	1:1 C and 8:1 E	12:1
Category I: Forested	6:1	12:1	1:1 C and 10:1 RH	1:1 C and 20:1 E	24:1
Category I: based on total functions	4:1	8:1	1:1 C and 6:1 RH	1:1 C and 12:1 E	16:1
Category I: Bog	Not possible	6:1 RH of a bog 8:1	Not possible	Not possible	Case-by-case
Buffer (see additional requirements in subsection 2. c. below)	Minimum of 1:1	Minimum of 1:1	Minimum of 1:1	Minimum of 1:1	Minimum of 1:1

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

- b. Remedial Action: Remedial actions resulting from unauthorized alterations of a wetland or its buffer may require greater ratios depending on the extent of impact to the value and function of the wetland based on an analysis by a critical area professional and a final determination by the Planning Official.
 - c. Buffer Enhancement Ratio. The City may require a buffer enhancement ratio of greater than 1:1 for exceptional second growth forest or mitigation of an already functioning buffer based on the critical area report, buffer modification or consideration of vegetation structure slope and flow paths.
 - d. Credit/Debit Method. As an alternative to the mitigation ratios, the City may allow mitigation based on the "credit/debit" method developed by the Department of Ecology. This method may be appropriate where a wetland is not eliminated, but is otherwise modified.
3. Mitigation for Lost Values and Affected Functions. Compensating for lost values and affected functions must be addressed in the compensatory mitigation plan of subsection 6 below to achieve functional equivalency or improvement. The goal and preference shall be for the compensatory mitigation to provide in-kind wetland functions for those lost, except when:

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- a. The filled/impacted wetland provides minimal functions as determined by a site-specific function assessment, and the proposed mitigation action(s) will provide equal or greater functions or will provide functions shown to be limited within Kirkland's watershed; or
- b. Out-of-kind replacement will best meet formally identified Water Resource Inventory Area (WRIA) 8 Lake Washington/Cedar/Sammamish Watershed goals, such as replacement of historically diminished wetland types.

4. Preference of Compensation.

- a. Compensation shall occur in the following order of preference based on in-kind mitigation:
 - 1) Restoring wetlands on upland sites that were formerly wetlands. This action includes re-establishment and rehabilitation;
 - 2) Creating/establishing wetlands on disturbed upland sites, such as those with vegetative cover consisting primarily of non-native species;
 - 3) Enhancing significantly degraded wetlands; or
 - 4) Preserving/maintaining a wetland to remove threat or prevent decline, such as purchasing land. Preservation does not result in gain of wetland acres.
- b. Location of compensatory mitigation shall occur in the order of preference established in KZC 90.145.3.

5. Compensatory Mitigation Plan. A compensatory mitigation plan shall be prepared by a qualified critical area professional approved by the City consistent with state guidelines and submitted with the wetland modification assessment of KZC 90.60 for approval as part of the critical area permit using Process I. The plan shall contain the following:

- a. A topographic survey showing existing and proposed topography and improvements. Surveys should be of sufficient quality to determine accurate 1-foot minimum contour intervals;
- b. Description of the compensatory mitigation site, including location and vicinity map, rationale for selection of site and how it meets the required mitigation ratios of subsection 2 above;
- c. Description of proposed actions for compensation of wetland and buffer areas affected by the project, overall goals and targets of the proposed mitigation plan, and proposed mitigation timing. Documentation if the compensatory mitigation will be done through a mitigation banking or fee-in-lieu program pursuant to KZC 90.145.3;
- d. Protective construction measures that are necessary, such as siltation prevention measures and scheduling the construction activity to avoid interference with wildlife nesting activities;
- e. Description of surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created or restored compensatory mitigation areas;
- f. Schedule of the project for all work;
- g. Description of performance standards for post-installation, a monitoring and maintenance schedule based on the time period required in KZC 90.160 along with a financial security estimate for the entire compensatory mitigation project that meet the standards in KZC 90.165;
- h. Proof of title ownership for the wetlands and buffers, including the compensatory mitigation

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areas, when mitigation is done by the applicant;

- i. If the applicant does not hold title ownership to the applicant-responsible mitigation site, proof of perpetual right to locate the mitigation shall be provided; and
- j. List of all local, state and/or federal wetland-related permits required for the project.

7. Timing of Compensatory Mitigation. See KZC 90.145.5 for when an applicant must install the compensatory mitigation or document if a non-applicant responsible mitigation program is used to meet the mitigation requirement.

90.155 Measures to Minimize Impacts to Wetlands

The following measures must be incorporated into the design of a site containing a wetland and/or buffer. The Planning Official shall determine the applicability of each measure based on the uses, improvements and/or activities on the subject property.

Table 90.155.1 Measures to Minimize Impact to Wetlands and Associated Buffers

Disturbance	Required Measures to Minimize Impacts
Lights	- Shield exterior lights that face the wetland or buffer so that they are downcast and directed away from critical area and associated buffer pursuant to KZC 115.85.
Noise	- Activities that generate noise, such as parking lots, drive thru facilities, generators and HVAC units shall be located away from the wetland or buffer to the maximum extent possible, or noise shall be minimized through use of design measures, insulation techniques and/or additional native vegetation. - Activities or uses that generate relatively continuous, potentially disruptive exterior noise, such as certain industrial, manufacturing and repair services shall provide an additional 10 feet in width of heavily vegetated buffer strip immediately adjacent to the outer wetland buffer that meets KZC 95.42, Buffer Standard 1.
Toxic runoff	- Treat all runoff from pollution generating surfaces prior to discharge to the wetlands. - Establish covenants for homeowner's associations and commercial developments where applicable for restriction of pesticide use within 150 feet of wetland. - Apply integrated pesticides management pursuant to KZC 90.195.
Stormwater runoff	- As part of redevelopment, replacement or expansion of an existing development, retrofit stormwater flow control and treatment for public streets when the value of all improvements, including interior improvements exceed 50% of the assessed value (or replacement value) of the existing site improvements. - Control stormwater flow and improve water quality from new and redevelopment, including to wetlands, through the requirements of the Western Washington Phase II Municipal Stormwater Permit, National Pollutant Discharge Elimination System (NPDES), administered by the Washington State Department of Ecology. - Use low impact development techniques per the City's standards.
Pets and human disturbance	- Install fence and signage pursuant to KZC 90.190 along the edge of the buffer. - Place wetland and buffer in a separate conservation easement or tract pursuant to KZC 90.210.

Dust	- Use best management practices to control dust.
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90.160 Monitoring and Maintenance

1. Timing.
 - a. After installation and acceptance by the Planning Official of the mitigation, the monitoring and maintenance program shall commence.
 - b. A monitoring report shall be submitted to the Planning Official after each site visit, pursuant to subsection 3.b below.
2. Monitoring and Maintenance Program for Buffer. Requirements for a monitoring and maintenance program for revegetation of a buffer shall include the following, unless an alternative program is approved by the City.
 - a. The goals and objectives of the monitoring and maintenance program;
 - b. The performance standards by which the mitigation will be assessed. At a minimum, buffer vegetation mitigation shall include the following performance standards:
 - 1) Year-1: 100 percent survival of installed vegetation through a combination of survival and replacement;
 - 2) Year-2: 80 percent survival of installed vegetation;
 - 3) Year-3: At least 50 percent native vegetation coverage within the enhanced and created buffer for installed vegetation;
 - 4) Year-5:
 - a) At least 80 percent native vegetation coverage on average throughout the mitigation area. Additionally, two out of three of the following strata of native plant species each must compose at least 20% areal cover;
 - (1) Trees;
 - (2) Shrubs; and
 - (3) Woody groundcover (such as kinnikinnick, salal and sword fern);
 - b) At least three native species each making up a minimum of 10 percent coverage;
 - 5) All years:
 - a) Less than 10 percent noxious weeds cover using King County weed list, except less than 20 percent cover of reed canarygrass where a pre-existing or proximate monoculture occurred; and
 - b) No presence of knotweed at any time during the duration of the program period.
 - c. Contingency plan identifying a course of action, corrective measures and a timetable to be taken if monitoring indicates that the performance measures have not been met.
3. Monitoring and Maintenance Program for Critical Area Mitigation. A monitoring and maintenance program shall be established for restoration for a wetland or stream due to prior degradation or an approved modification project as part of the mitigation plan. The monitoring and maintenance plan shall address goals and objectives as well as performance standards and a contingency plan.
4. Duration and Schedule of Monitoring and Maintenance Program. Unless otherwise required by the Planning Official, the minimum duration of the program shall be as follows:
 - a. Three growing seasons for new structures of less than 1,000 square feet of footprint approved pursuant to KZC 90.130 and for additions to nonconformances pursuant to KZC 90.185.
 - b. Five growing seasons for mitigation projects and revegetating a buffer to meet the buffer standards in KZC 90.130, except for forested and scrub -shrub wetlands; and
 - c. Ten growing seasons for forested or scrub -shrub wetland creation.

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- d. The required schedule for site visits and reporting for monitoring and maintenance is as follows:
 - 1) For three-year program: two site visits for each of the first two years;
 - 2) For five-year program: two site visits for each of the first two years and one site inspection every 12 months for subsequent years; and
 - 3) For ten-year program: visits in growing seasons 1, 2, 3, 5, 7 and 10.
 - e. The Planning Official may extend the duration of the program and the number of visits at the end of the established monitoring and maintenance period if the program requirements have not been met.
5. Maintenance Work. Prior to final inspection of the vegetation and any other mitigating measures required in this chapter, the applicant shall submit a copy of a signed contract with a qualified maintenance company with experience in maintaining critical area vegetation and other improvements, approved by the City. The contract shall be funded by the applicant and cover the life of the monitoring period.
6. Options for Monitoring Work. The applicant may choose one of the following methods for who performs the monitoring work:
- a. City Does Work. If the City will oversee the maintenance and monitoring through the City's consultant, the monitoring fee will be based on an actual cost estimate of the work. The applicant shall submit a cash prepayment for all work to the City prior to issuance of the development permit.
 - b. Applicant's Consultant Does Work.
 - 1) If the City will not perform the monitoring, the applicant shall submit a signed contract to fund a qualified critical area professional, approved by the City, to monitor the maintenance and perform the monitoring over the life of the program. The cost of the work must be included in the performance security under KZC 90.165; and
 - 2) In addition, the applicant shall submit a cash prepayment prior to final inspection of the development permit for the cost of the City to do peer review of the monitoring reports.
7. Financial Security. A financial security for performance, monitoring and maintenance is required pursuant to KCZ 90.165.

90.165 Financial Security for Performance, Maintenance and Monitoring

1. Performance or Maintenance Security Requirement.
- a. A security is required in the amount and form as the Planning Official deems necessary to assure that all work or actions are satisfactorily completed and maintained in accordance with the approved plans, specifications, and permit or approval requirements.
 - b. State agencies and local government bodies, including school districts, shall not be required to provide a performance or maintenance security. The Planning Official may enforce compliance by not approving final inspection, by administrative enforcement action, or by any other legal means.
 - c. The security shall be conditioned on the work being completed or maintained in accordance with requirements, approvals, or permits for the site being left or maintained in a safe condition. Also for 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.

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2. Submitted Documents.
 - a. The security shall be in the form of a:
 - 1) Surety bond obtained from companies registered as surety in the state or certified as acceptable sureties on federal bonds;
 - 2) Assignment of funds or account;
 - 3) Escrow agreement;
 - 4) Irrevocable letter of credit; or
 - 5) Other financial security device.
 - b. A completed security information form, security agreement and License to Enter Property document along with the required recording fee for that document shall be submitted. All forms shall as provided by the City.
3. When Submitted. A financial security for performance, monitoring and maintenance shall be submitted prior to issuance of a land surface modification or building permit for plantings, improvements and other mitigation measures required in this chapter. The performance portion of the security will be released upon City approval of the installed mitigation.
4. Determination of the Security Amount.
 - 3) Determination of the security amount shall be done using the City's security value worksheet based on the approved plans, specifications, permit or approval requirements, and applicable regulations. Construction, maintenance and monitoring costs shall be based on the King County Critical Areas Mitigation Bond Quantity Worksheet. The City may request changes in unit pricing if the worksheet is found to be out of date with respect to current market prices;
 - 4) The financial security shall be equal to or greater than 150 percent of the estimated cost of conformance to plans, specifications and permit or approval requirements of this chapter, including corrective work, compensation, enhancement, mitigation, monitoring, maintenance and restoration of critical areas; and
 - 5) Actual security costs shall include all labor, materials, erosion control and other general items, and sales tax associated with the required work. The security shall be sufficient to guarantee that all required improvements and measures will be completed in a timely manner and with sufficient funds in accordance with this chapter. The security shall cover all work or actions not satisfactorily completed or maintained that need to be corrected to comply with the approved plans.
5. Cash Deposit. A cash deposit for the cost of City administration of the security shall be submitted with the financial security as required in KZC 175.25.
6. Duration of Performance, Monitoring and Maintenance Security.
 - a. Duration of monitoring and maintenance security shall be consistent with the approved program pursuant to KZC 90.160;
 - b. The performance or maintenance security may be released upon written notification by the Planning Official, following final site inspection or when the Planning Official is satisfied that the work or activity complies with permits or approved requirement;
 - c. The Planning Official may require a security longer than KZC 90.160 for complex mitigation projects, such as creation of wetlands, daylighting of a stream or relocating a stream channel, or to extend the length of a security for projects where vegetation or other improvements have been poorly maintained over several years or for code enforcement actions; and
 - d. No portion of the security may be released early during the established monitoring and maintenance period to ensure that potential catastrophic failure of the plantings and other

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improvements that may occur in the future are covered.

7. Corrective Measures.

- a. If, during the term of the performance, maintenance and monitoring security, the Planning Official determines that conditions exist which do not conform with the plans, specification, approval or permit requirements, the Planning Official may issue a stop work order prohibiting any additional work or maintenance until the condition is correct;
- b. The Planning Official may call in all or a portion of a performance, maintenance and monitoring security to correct conditions that are not in conformance with plans, specifications, approval or permit requirements; and
- c. Where monitoring reveals a failure of mitigation or maintenance measures, the applicant shall be responsible for appropriate corrective action which, when approved by the Planning Official, shall be subject to further monitoring. The Planning Official shall determine the additional monitoring requirements as needed.

8. Transfer of Security. In the event that a performance, monitoring and maintenance security is transferred to a subsequent property owner or management entity:

- a. An additional City administrative fee shall be charged for transferring a security to a subsequent owner;
- b. The applicant and the subsequent owner must document the transfer authority of the security; and
- c. A written agreement from the subsequent owner shall be submitted agreeing to the costs and other responsibilities of the maintenance and monitoring program.

9. Obligation. Any inability of a security device to fund the cost of the security shall not discharge the obligation of an applicant or violator to complete the required mitigation, maintenance or monitoring.

90.170 Subdivisions and Maximum Development Potential

1. Subdivisions - The subdivision and/or short subdivision of land in a wetland, stream or related buffer is subject to the following criteria and subsections 2 through 4 below:

- a. Land that is located entirely within a wetland, stream or related buffer may not be subdivided.
- b. Land that is located partially within a wetland, stream or related buffer may be subdivided if, as part of the short plat or subdivision application, the applicant demonstrates that :
 - 1) Each lot contains sufficient developable area to accommodate the allowed use(s) in that zone, including required vehicular access, parking, and stormwater management facilities outside of the critical area and its buffer; and
 - 2) Each lot meets all zoning requirements applicable to that zone, except for reduced Dimensional Design Standards for Residential Uses pursuant to KZC 90.175.

2. Calculating Allowed Number of Dwelling Units. The maximum potential number of dwelling units for a subject property that contains a wetland, stream, minor lake or their buffers is reduced from the maximum potential number of dwelling units that otherwise are allowed in the underlying zone.

3. Maximum Development Potential Calculation.

- a. The maximum potential number of dwelling units 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 critical area buffer in square feet divided by the

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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 as provided in the formula below:

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)]

- b. For purposes of this subsection only, "buildable area" means the total area of the subject property minus critical areas and their buffers.
 - c. A professional survey of the approved delineation markings shall determine the area of critical area and buffer on the subject property pursuant to KZC 90.110.
 - d. For multifamily development, and single family development in RSA zones, 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.
 - e. For single family development in low density zones other than the RSA zones, the number of permitted dwelling units shall be rounded down to the previous whole number (unit) regardless of the fraction of the whole number.
 - f. For developments providing affordable housing units pursuant to Chapter 112 KZC, or cottage, carriage or two/three unit homes pursuant to Chapter 113 KZC, or low impact development pursuant to Chapter 114 KZC, the maximum dwelling unit potential of this section establishes the base density allowed. The additional density or bonus units allowed by those chapters shall be in addition to the maximum dwelling unit potential.
 - g. The provisions in KZC 125.30 for density under a Planned Unit Development shall not be applied to properties containing critical areas or buffers.
 - h. The maximum development potential formula shall not be construed to preclude application of Chapter 22.28 KMC (lot size reduction, low impact development, small lot single family, and historic preservation) to potentially achieve an increased number of single-family dwelling units for short plats and subdivisions.
 - i. 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.
4. 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 critical area buffer is derived from the following table:

Table 90.170.1 Maximum Development Potential

Percentage of Site in Critical Area Buffer		Counted at	
< 1%	To	10%	100%
> 10%	To	20%	90%

Percentage of Site in Critical Area Buffer			Counted at
> 20%	To	30%	80%
> 30%	To	40%	70%
> 40%	To	50%	60%
> 50%	To	60%	50%
> 60%	To	70%	40%
> 70%	To	80%	30%
> 80%	To	90%	20%
> 90%	To	100%	10%

90.175-Dimensional Design Standards for Residential Uses

1. Reduced Dimensional Standards for Residential Uses. The following dimensional requirements may be reduced for the non-critical area portion of the site to accommodate the constraints of the buildable area of the site, provided that the applicant shall demonstrate that:
 - a. The reduction is be the minimum necessary to allow avoidance of the critical area, critical area buffer and structure setback; and
 - b. The resulting development is compatible with other development or potential development in the immediate vicinity of the subject property in the same zone and with similar site constraints.
2. Standards. The reduced standards are as follows:

Table 90.175.1 Reduced Dimensional Standards for Residential Uses

Reduced Dimensional Standards for Residential Uses	
Minimum Required Yards	<ul style="list-style-type: none"> • 0' for interior side and rear yards within the proposed development to encourage clustering between dwelling units • 10' for front yards • 5' for side and rear yards that abut properties that are not part of the proposed development
Minimum Parking Pad Dimensions ¹	<ul style="list-style-type: none"> • width - 8.5 feet per required stall • depth - 18.5 feet per required stall
Tandem Parking	<ul style="list-style-type: none"> • allowed where stalls are shared by the same dwelling unit

Notes:

1. Any garage or other structure shall be set back a minimum of 18.5 feet from the property line to allow on-site parking on the driveway without blocking a sidewalk.

90.180 Reasonable Use Exception

1. Purpose. The purpose of the reasonable use exception is to:
 - a. Provide the City with a mechanism to approve limited use and disturbance of a critical area and critical area buffer when strict application of this chapter would deny all economically viable use of the subject property;
 - b. Establish guidelines and standards for the exercise of this authority adjusted to the specific conditions of each subject property; and

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- c. Protect public health, welfare and safety of the citizens of Kirkland.
2. Reasonable Use. 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 the subject property, an owner of the subject property may apply for a reasonable use exception. The application shall be considered under Process I of KZC 145.
 4. Submittal Requirements: As part of the reasonable use exception request application the applicant shall submit a critical area report pursuant to KZC 90.110, prepared by a qualified critical area professional approved by the City, and also fund peer review of this report by the City's consultant. The report shall include the following:
 - a. For a wetland, the additional report information requirements specified in KZC 90.110.5. For a stream, the additional report information requirements specified in KZC 90.110.6;
 - b. An analysis of whether any other reasonable use with less impact on the critical area and critical area buffer is possible;
 - c. Site design and construction staging of the proposal shall have the least impact to the critical area and critical area buffer;
 - d. A site plan showing:
 - 1) The critical area, critical area buffer and structure setback required by this chapter;
 - 2) The proposed area of disturbance both on and off the subject property pursuant to the disturbance area limitations of subsection 5.c below;
 - 3) The footprint of all proposed structures and improvements meeting the conditions of subsection 5 below, including;
 - a) buildings
 - b) garages and parking areas
 - c) driveways
 - d) paved surfaces, such as walking paths
 - e) patios, decks and similar structures
 - f) utility and storm water improvements
 - g) yard landscaping
 - h) retaining walls and rockeries
 - e. A description of protective measures that will be undertaken, such as siltation curtains, compost berms 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 proposed development would have on the critical area and the critical area buffer;

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- g. How the proposal mitigates for impacts to the critical areas and buffers;
 - h. How the proposal minimizes to the greatest extent possible net loss of critical area functions;
 - i. Whether the improvement is located away from the critical area and the critical area buffer to the greatest extent possible; and
 - j. Such other information or studies as the Planning Official may reasonably require.
5. Decisional Criteria: For purposes of this section, "site" means the area of disturbance on the subject property, on abutting lots, and/or within the right of way. The City shall approve applications for reasonable use exceptions only if all of the following criteria are met:
- a. The following land uses may be proposed with a reasonable use exception:
 - 1) Residential zones - one (1) single family dwelling
 - 2) Commercial or Office zones:
 - a) An office use, except veterinary offices with outdoor facilities, and
 - b) A limited retail establishment, excluding restaurants and taverns, gas stations, vehicle or boat sales, service or repair, car washes, drive-thru, outdoor seating area and storage. In order to limit disturbance and impacts to the critical area and buffer these uses shall:
 - (1) Locate parking on the opposite side of the building from the critical area and
 - (2) Limit hours of operation to between 8:00 a.m. and 11:00 p.m.
 - b. There is no feasible alternative to the proposed activities and uses on the subject property, 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 critical 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 and all land alteration associated with the proposed development activity, including but not limited to land surface modification, utility installation, decks, driveways, paved areas, and landscaping, shall not exceed the following limits:
 - 1) If the subject property contains 6,000 square feet of area or less, no more than 50 percent of the site may be disturbed.
 - 2) 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.
 - 3) For the subject property 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.
 - 4) The amount of allowable disturbance shall be that which will have the least impact on the critical area and the critical area buffer given the characteristics and context of the subject property, critical area, and buffer.
 - 5) Public improvements within the right-of-way required by KZC Chapter 110, (for example required curb, gutter and sidewalk improvements), are not counted in the maximum allowable area of site disturbance. The City shall allow or require modifications to the public improvement standards that minimize the impact to the critical area and buffer and any impacts associated with required public improvements shall be mitigated by the applicant.

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- 6) The portion of a driveway located within an improved right-of-way is not counted in the maximum allowable area of site disturbance. However, a driveway or any other private improvement located in an unimproved right-of-way shall be counted in the maximum allowable area of site disturbance. See subsection 6.a.2 below for modification to calculating on-site driveways.

The applicant shall pay for a qualified critical area professional, approved by the City, to assist 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 critical area site constraints.
 - e. The proposal utilizes to the maximum extent possible innovative construction, design, and development techniques that minimize to the greatest extent possible net loss of critical area functions and values, including pin construction, vegetated roofs, and pervious surfaces;
 - f. The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the subject property.
 - g. The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter.
 - h. The proposed development is on a lot meeting the criteria of KZC 115.80 Legal Building Site.
 - i. The inability to derive reasonable use is not the result of the applicant's actions or that of previous property owners, such as by altering lot lines pursuant to Chapter 22 KMC that results in an undevelopable condition; and
 - j. 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 shall include any conditions and restrictions in the written decision that the City determines are necessary to eliminate or minimize any undesirable effects of approving the proposal. To provide reasonable use of the subject property and reduce the impact on the critical area and critical area buffer, the Planning Director pursuant to a Process I under Chapter 145 KZC is authorized to approve the following modifications:
- a. Residential.
 - 1) Where the applicant demonstrates that the residential development cannot meet the City's code requirements without encroaching into the critical area or critical area buffer:
 - a) The required front yard may be reduced by up to 50 percent provided that a minimum of 18.5-foot-long parking pad between the structure and the lot line is provided; and
 - b) The required side and rear yards may be reduced to 5 feet in width.
 - 2) The portion of a driveway exceeding 30 feet in length may be exempt from the calculation of the permitted disturbance area, provided that the driveway length is the minimum necessary to provide access to the building.
 - 3) The structure setback from a critical area buffer pursuant to KZC 90.140 may be reduced to 5 feet in width, provided that those improvements allowed in this area are limited to:

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- a) Chimneys, bay windows, greenhouse windows, eaves, cornices, awnings and canopies, and decks above the ground floor extending no more than 18 inches into the structure setback;
 - b) Benches, walkways, paths and pedestrian bridges extending no more than 4 feet into the structure setback;
 - c) Garden sculpture, light fixtures, trellises and similar decorative structures extending no more than 4 feet in width into structure setback; and
 - d) Non-native and native landscaping.
- 4) The garage width requirements of KZC 115.43.3.b for detached dwelling units in low-density zones may be waived.
 - 5) The maximum height of structures may be increased up to 5 feet if needed to reduce the slope a driveway to a structure based on existing grade. The applicant must demonstrate that the additional height is needed to reduce the steepness of the slope and no other option is available.

b. Commercial.

Where the applicant demonstrates that the commercial development cannot meet the City's code requirements without encroaching into the critical area or critical area buffer:

- 1) The required front yard may be reduced by up to 50%.
- 2) The structure setback from a critical area buffer may be reduced by 5 feet in width, provided that those improvements allowed in this area are limited to:
 - a) Chimneys, bay windows, eaves, cornices, awnings and canopies;
 - b) Benches, walkways, paths and pedestrian bridges extending no more than 4 feet into the structure setback;
 - c) Light fixtures, trellises and similar decorative structures extending no more than 4 feet into the structure setback; and
 - d) Non-native and native landscaping.
- 3) The maximum height of structures may be increased up to 5 feet if needed to reduce the slope of a driveway to a structure based on existing grade. The applicant must demonstrate that the additional height is needed to reduce the steepness of the slope and no other option is available.
- 4) The portion of a driveway exceeding 30 feet in length may be exempt from the calculation of the permitted site disturbance area, provided that the driveway length is the minimum necessary to provide access to the building.

4. 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 five (5) years of the final decision granting or approving the exception. However, in the event judicial review is initiated per KZC 145.110, the running of the five (5) years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. "Final decision" means the final decision of the Planning Director; and

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- b. The applicant must substantially complete construction for the development activity, use of land, or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within seven (7) years after the final approval on the matter, or the decision becomes void.

8. Complete Compliance Required.

- a. General. Except as specified in subsection 8.b below of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this chapter in order to construct the improvements authorized by the approval.
- b. Exception: Subsequent Modification. The Planning Official may approve a subsequent modification to a specific use and site plan that has been approved through the reasonable use exception, provided the change meets the standards of this chapter. Otherwise, the applicant is required to apply for and obtain approval through a Process I pursuant to Chapter 145 KZC for a new reasonable use exception.

90.185 Nonconformances1. General Provisions for Nonconforming Structures and Improvements in Critical Areas or Buffer.
The following general provisions apply to properties that contain nonconformances due to the existence of buffers and/or critical areas, until such times as redevelopment of the property is proposed that meets the threshold in KZC 90.130:

- a. Legally established structures and improvements may remain and be repaired and maintained. See KZC 90.35 and KZC 90.185.3;
- b. New structure or improvements may not be added or expanded in the buffer and/or critical area, including those listed in KZC 90.140;
- c. Legally established lawns may be mowed and maintained, but not expanded in the buffer and/critical area; and
- d. Non-native vegetation may be maintained, but not expanded in the buffer and/or critical area.

2. Specified Requirements.

The following requirements for KZC 90.185.3 through 6 must be met:

- a. Any structures or improvements that are nonconforming because of the regulations in this chapter shall be regulated pursuant to the following provisions rather than the provisions of Chapter 162 KZC. However, nonconforming multifamily structures for density pursuant to KZC 162.35.12 and continued uses pursuant to KZC 162.55 shall be regulated under KZC 162 and shall not be eligible to use the provision in this section;
- b. No disturbance to the critical area is permitted. Any disturbance to the critical area buffer as a result of development activity shall be the minimum necessary and all disturbed areas shall be restored to pre-existing condition;
- c. Any existing vegetation removed in the buffer as part of the disturbance shall be replaced with native vegetation at a 1:1 ratio;
- d. The limits of disturbance and a replanting plan for disturbed areas, if applicable, shall be submitted as part of the building permit application;
- e. Temporary construction fencing is required pursuant to KZC 90.190. The Planning Official shall determine the appropriate location of the fencing depending on the location of existing improvements in relationship to the critical area buffer;

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- f. Lawn and non-native landscaped areas shall not be expanded in the buffer area; and
- g. All costs for review by a qualified critical area professional and the City's review, mitigation and restoration shall be at the expense of the applicant.

3. Maintenance and Repair of Nonconforming Structure.

- a. A legal nonconforming structure may be maintained and repaired as an Exemption pursuant to KZC 90.35 of this chapter provided that the work does not increase the previously approved structure footprint or impervious area.
- b. Multifamily structures in multifamily zones that are nonconforming for density may not increase the density as part of the work on the structure. See KZC 162.35.12.

4. Reconstruction of Existing Nonconforming Structures.

a. General Standards:

- 1) If there is no increase in the structure footprint or impervious area, then the requirements of KZC 90.105 and KZC 90.110 for a critical area determination and report, KZC 90.130 for vegetative buffer, KZC 90.190 for critical area fencing and signage and KZC 90.210 for dedication of critical area and buffer are not required.
- 2) Existing buffer fencing, native buffer vegetation and dedication of the critical area must be retained.

b. Detached Dwelling Units.

- 1) An existing legally nonconforming building or detached garage may be reconstructed as repair, replacement or due to casualty damage such as a fire, provided that there is no expansion of the existing footprint, including decks or patios or other improvements, no increase of impervious surface, no expansion of exterior walls, including adding exterior walls below a cantilevered structure, no increase in the nonconformity in any way, and reconstruction is built on the existing foundation;
- 2) If the foundation must be replaced due to casualty damage or for any other reason, the new foundation must be located outside of the critical area, its buffer and the structure setback to the greatest extent possible given other required yards and existing improvements; and
- 3) Additional upper floors may be added above the ground floor if they do not encroach into the critical area, its buffer or the structure setback any further than the exterior walls of the existing nonconforming structure.

c. All Other Uses:

- 1) An existing legally nonconforming structure may be reconstructed as repair, reconstruction or due to a casualty damage such as a fire, provided that there is no expansion of the existing footprint or increase of impervious area, including decks, patios or other improvements, no expansion of exterior walls, including adding exterior walls below a cantilevered structure, no increase in the nonconformity in any way, and reconstruction is built on the existing foundation; and
- 2) Additional upper floors may be added above the ground floor if they do not encroach into the critical area, its buffer or the structure setback any further than the exterior walls of the existing nonconforming structure.
- 3) If the cost of the reconstruction as repair or due to a casualty damage or for any additions exceeds 50 percent of the assessed or appraised value of that improvement, whichever is greater, the structure and improvements shall be brought into conformance.

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- d. In case of casualty damage, the following is required:
- 1) A complete building permit application to rebuild a nonconforming structure must be submitted within two (2) years of the date of the damage or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and
 - 2) Rebuilding of the nonconforming structure shall be substantially complete within four (4) years of the date of the damage or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and
 - 3) Documentation showing the date of the damage, the location and dimensions of the damaged structure and cause of the damage shall be submitted to the Planning Official for review and confirmation.

5. Expansion of Nonconforming Structure that does not Increase the Degree of Nonconformance.

- a. Except as disallowed under KZC 185. 3.b above for multifamily structures that are nonconforming for density, an expansion of a nonconforming structure that increases the footprint, impervious area or size of the structure, including new upper floors, is permitted if the expansion or any other change to the structure is outside of the critical area, critical area buffer, and structure setback;
- b. If the existing structure footprint or impervious area is increased, the requirements of KZC 90.105 and KZC 110 for a critical area determination and report, KZC 90.130 for vegetative buffer, KZC 90.160 and KZC 90.165 for monitoring and maintenance and financial security, KZC 90.190 for critical area fencing and signage and KZC 90.210 for dedication of critical area and buffer shall be met.

6. Expansion of Nonconforming Building that Increases the Nonconformance.

An existing, legally established nonconforming building may be expanded into a critical area buffer or the building setback under the following standards and limitations:

- a. General Standards for Any Expansion.
 - 1) Expansion is only permitted for those buildings, that have not received City approval for a critical area or buffer modification allowed under this or a previous code or not received approval for a reasonable use permit pursuant to KZC 90.180;
 - 2) A one (1)-time expansion of each option found in KZC 185.6.b. through 5.e. below is permitted on a subject property. However no more than one expansion is permitted for each option.
 - 3) No expansion is permitted in a critical area buffer that is a fish and wildlife conservation area without an approved management plan pursuant to KZC 90.95;
 - 4) A critical area determination, report and a survey pursuant to KZC 90.105 and KZC 90.110 are required if the wetland has not been rated and delineated pursuant to KZC 90.55 within the past five (5) years or the stream has not been classified or delineated pursuant to KZC 90.65;
 - 5) The following non-conforming improvements are allowed without going through review under KZC 185.6. b. through e. below if a new or replacement foundation is not required:
 - a) Upper floor additions are allowed above the ground floor of an existing nonconforming building if they do not encroach closer to the critical area buffer or structure setback from the buffer beyond the existing exterior walls;
 - b) Existing carports and decks with roofs may be enclosed if the new exterior walls do not extend beyond the existing foundation or corner supports of the structure; and

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- c) An interior open courtyard of an existing building may be enclosed if the courtyard is covered entirely with impervious material. See KZC 185.6.d. if the material is not entirely impervious.
- 6) Covering an existing deck with a roof or an existing pathway with a breezeway or similar improvements may be proposed using subsections b. through e. below;
- 7) Any commercial parking required for additions shall not be located in the critical area buffer;
- 8) Compensatory mitigation through buffer restoration shall be provided as follows:
 - a) A native vegetative buffer at a minimum ratio of 1:1 (new footprint area is equal to or less than vegetative buffer area) shall be provided;
 - b) If the new or expanded building footprint results in removal of a significant tree in a buffer, the tree shall be replaced with two (2) native trees in the buffer. The replacement tree shall be six (6) foot tall for a conifer and 2-inch caliper for deciduous or broadleaf. For a removed significant tree in a buffer that is 24" in diameter, the tree shall be replaced with three (3) native trees.;
 - c) The vegetative buffer shall be located along the edge of the critical area or as close to the critical area as possible if the critical area is located off-site;
 - d) The vegetative buffer shall be 10 feet in depth and located across from the building expansion area;
 - e) The buffer vegetative standards pursuant to KZC 90.130 shall be used as a guideline for the mitigation area; and
 - f) The mitigation is in addition to revegetation of any disturbed area.
- 9) A mitigation planting plan, prepared by a qualified critical area professional approved by the City, shall be submitted for approval as part of the building permit. Prior to final inspection, replanting of any disturbed area and the mitigation planting shall be installed and inspected by the City.
- 10) A performance and three-year maintenance and monitoring security shall be submitted with the building permit pursuant to KZC 90.165 for the mitigation plan;
- 11) Prior to final inspection, the Planning Official may require buffer fencing and signage to be installed pursuant to KZC 90.190 if the subject property does not already contain a fence and/or signage;
- 12) A critical area covenant on a form approved by the City shall be recorded along with an as-built site plan showing the location of the approved expansion and mitigation vegetation in the buffer to protect the vegetated portion of the buffer in perpetuity. A critical area dedication pursuant to KZC 90.210 is not required for the vegetated portion of the buffer; and
- 13) See Specific Requirements in KZC 90.185.2 above.

b. Expansion into Critical Area Buffer on Side of the Building opposite of Critical Area.

- 1) The footprint of an existing building may be expanded into the critical area buffer on the side of the dwelling unit opposite of the critical area buffer up to a maximum of 1,000 square feet. The existing building must be between the addition and the critical area (see KZC 180, Plate 26);
- 2) Only a one-time expansion of this option is permitted for the subject property. See KZC 90.185.6.a.2) above; and
- 3) See General Standards in KZC 185.6.a above for an expansion.

c. Expansion into Structure Setback from the Buffer.

- 1) The footprint of an existing building may be expanded into the structure setback up to a maximum of 500 square feet;
- 2) If an addition is located at the edge of the buffer, the portion of the buffer next to the side of the addition abutting the buffer is considered a structure setback from the buffer. Necessary maintenance and repair of the addition are permitted in this portion of the structure setback.

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However, no improvements pursuant to KZC 90.140 are permitted in this portion of the structure setback;

- 3) Only a one-time expansion of this option is permitted for the subject property. See KZC 90.185.6.a.2) above;; and
- 4) See General Standards in KZC 185.6.a above for a building expansion.

d. Expansion into Critical Area Buffer but No Closer than the Existing Building.

- 1) The footprint of an existing building may be expanded into the critical area buffer, but no closer than the edge of the existing building nearest to the critical area, up to maximum of 500 square feet (see KZC 180, Plate 26);
- 2) An interior open courtyard of an existing building may be enclosed up to 500 square feet if the courtyard is covered partially or entirely with pervious material. This improvement can be done in conjunction with KZC 90.185.6. d. 1) above if the total new imperious area of the expanded building does not exceed 500 square feet;
- 3) The minimum buffer width for the addition shall be 60% of the required buffer width standard pursuant to KZC 90.55 for wetlands and KZC 90.65 for streams;
- 4) Only a one-time expansion of this option is permitted for the subject property. See KZC 90.185.6.a) above;
- 5) The minimum buffer width for the addition shall be 60% of the required buffer width standard pursuant to KZC 90.55 for wetlands and KZC 90.65 for streams; and
- 6) See General Standards in KZC 185.6.a above for a building expansion.

e. Expansion into Critical Area Buffer between the Building and the Critical Area.

- 1) The footprint of a building may be expanded into the critical area buffer between the building and the critical area up to maximum of 250 square feet (see KZC 180, Plate 26);
- 2) The new footprint must be attached to the original building and not to any subsequent footprint addition under KZC 90.185.5.e;
- 3) Only a one-time expansion of this option is permitted for the subject property. See KZC 90.185.6.2) above; and
- 4) The minimum buffer width for the addition shall be 60% of the required buffer width standard pursuant to KZC 90.55 for wetlands and KZC 90.65 for streams;
- 5) See General Standards in KZC 90.185.6.a above for a building expansion.

90.190 Critical Area Markers, Fencing and Signage

1. Survey Stakes. Permanent survey stakes delineating the boundary of the critical area buffer shall be set, using iron or concrete markers as established by current survey standards. For public projects, alternative survey stakes may be approved by the Planning Official, such as flexible delineator posts.
2. Construction Fencing.
 - a. Prior to commencement of any grading or other development activities on the subject property, a 6-foot-high construction chain link fence with silt fencing must be installed along the entire edge of the buffer;
 - b. The fence may not be located in the critical area buffer;
 - c. The Planning Official shall inspect the fence prior to commencement of any work;
 - d. The fence must remain in place until completion of the project and not be removed at any time other than as authorized by the Planning Official;
 - e. The location of construction fencing for Nonconformances shall be on a case by case basis as determined by the Planning Official; and
 - f. The location of construction fencing for public agency and utilities activities, improvements or

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uses shall be determined on a case-by-case basis by the Planning Official.

3. Permanent Fencing.

- a. Except as specified in subsections 3.b and 3.c of this section, upon completion of the project:
 - 1) A permanent split rail, open slatted, wrought iron, chain link, or similar non-solid fence between three (3) and six (6) feet in height must be installed along the entire edge of the buffer;
 - 2) Solid fencing is not permitted;
 - 3) Except for split rail, a gate is required for pedestrian access to the buffer;
 - 4) The fence may not be located in the critical area buffer;
 - 5) The Planning Official shall inspect the fence prior to final inspection; and
 - 6) The fence must be maintained and remain in perpetuity.
- b. Except for utility substations, permanent fencing is not required for public or private utility activities or uses occurring in utility corridors, public rights-of-way, the Cross Kirkland Corridor or the Eastside Rail Corridor.
- c. The location of permanent fencing for public agency activities, improvements or uses shall be determined on a case-by-case basis by the Planning Official.
- d. The location of fencing for Nonconformances shall be determined on a case by case by the Planning Official. See KZC 90.185.

4. Permanent Signage.

- a. Upon completion of the project, permanent signage shall be attached to the fence stating that the protected critical area and buffer must not be disturbed other than necessary for maintenance of vegetation;
- b. The signs must be maintained and remain in perpetuity;
- c. Signage shall meet the administrative standards of the Planning and Building Department for design, number and location;
- d. The location of signage for public agency activities or uses shall be determined by the Planning Official on a case-by-case basis;
- e. Signage for Nonconformances shall be determined on a case-by-case basis by the Planning Official. See KZC 90.185; and
- f. The Planning Official shall inspect the signage prior to final inspection.

90.195 Pesticide and Herbicide Use

Application of pesticides, herbicides, or fertilizers and irrigation practices for residential, commercial and institutional uses shall follow the Best Management Practices (BMP) for landscaping activities and vegetation management in the King County Stormwater Pollution Prevention Manual, as amended. These practices include:

- 1. Never apply pesticides and fertilizers if it is raining or about to rain;
- 2. Do not apply pesticides within 100 feet of surface waters, such as lakes, ponds, wetlands, streams and stormwater conveyance ditches unless approved and permitted by the Washington State Department of Ecology;
- 3. Determine the proper fertilizer application for the types of soil and vegetation involved. Follow manufacturers' recommendations and label directions;

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4. Clean up after spills immediately;
5. Use mulch or other erosion control measures when soils are exposed for more than one week during the dry season or two days during the rainy season;
6. Ensure sprinkler systems do not spray beyond vegetated areas resulting in the excess water discharging into the storm drain system; and
7. Use of hazardous substances, pesticides and fertilizers in a critical area containing a fish and wildlife habitat conservation area must follow state and City standards.

90.200 Critical Area Buffer and Structure Setback from Buffer Required by Prior Approvals

1. If, subsequent to October 2, 1982 (the adoption date of first Chapter 90 KZC), the City approved a permit through a Planning Official decision, Processes I, II, IIA, or IIB, and/or a subdivision or short subdivision for the subject property with established critical area buffers or structure setbacks on the subject property from a stream or wetland, those setbacks or buffers shall apply only to the initial building permits issued pursuant to those zoning permit approvals on the subject property. All further development activity and construction shall comply with the provisions of this chapter.
2. All provisions of this chapter that do not directly conflict with the previously imposed structure setback or buffer requirements shall fully apply to the subject property.

90.205 Code Enforcement

Violations shall be subject to the City's code enforcement procedures and penalties under Chapter 1.12 KMC. In addition to any enforcement action or determinations pursuant to KMC 1.12, enforcement for critical area violations shall meet the following requirements:

1. Unauthorized development activity, use, land surface modification or other disturbances to a critical area or buffer shall cease immediately. All disturbances shall be rectified and restored consistent with an approved correction plan;
2. A correction plan, prepared by a qualified critical area professional approved by the City, must be submitted to the City within 30 calendar days of the enforcement notice from the City in conformance with this chapter unless otherwise approved by the City;
3. The correction plan shall include:
 - a. Site plan drawn to scale;
 - b. Location of the sensitive area and buffer;
 - c. Affected area;
 - d. A restoration plan that includes a planting plan that meets the requirements for a vegetative buffer in KZC 90.130 if the disturbance occurred in the buffer. If the disturbance occurred in a stream or wetland, the restoration plan must propose appropriate restoration based on the type of wetland or stream;
 - e. The Planning Official may require a critical area report pursuant to KZC 90.110, funded by the property owner, or at a minimum a wetland delineation of the disturbed wetland, classification of a stream if it cannot be determined by the City, boundary of the critical area buffer and a survey depending on the extent and nature of the disturbance;
 - f. The critical area report shall make recommendations on a correction plan. The City may require the applicant to fund City peer review of the correction plan depending on the nature and extent of disturbance.
4. The Planning Official shall review and approve the correction plan based on the regulations in this chapter and inspect the restoration after installation. The City may require the applicant to fund City peer review to inspect the restoration plan depending on the nature and extent of disturbance;
5. The applicant shall pay the City's cost for the enforcement, including review of the plan and do the

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inspection;

6. The City may require a monitoring and maintenance plan for approval by the Planning Official pursuant to KZC 90.160 depending on the nature and extent of the disturbance;
7. The City may require a performance and maintenance/monitoring financial security for restoration depending on the nature and scope of the disturbance. If a security is required, the security shall be in a form and amount determined by the Planning Official. See KZC 90.165.
8. The correction work shall be completed within 60 calendar days from the date of the enforcement notice, unless otherwise specifically approved by the Planning Official;
9. The requirements for a critical area dedication must be met pursuant to KZC 90.210;
10. For repeat violators, the City is authorized to require monitoring and maintenance to extend beyond requirements of KZC 90.160 and funded by the violator; and

90.210 Dedication and Maintenance of Critical Area and Buffer

1. Dedication.

- a. 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;
- b. Land survey information shall be provided by the applicant for this purpose in a format approved by the Planning Official;
- c. The applicant shall record the dedication with the King County Recorder's Office as part of a subdivision recording or prior to issuance of a final inspection for all other developments; and
- d. The applicant shall provide proof of title ownership for the wetlands and buffers, including any compensatory mitigation areas; and
- e. If the applicant does not hold title ownership to the mitigation site, proof of perpetual right to locate the mitigation on the subject property shall be provided.

2. Critical Area Boundaries Subject to Change. Critical area categories, ratings, classifications and boundaries are subject to change due to amendments to this chapter and/or physical changes to the subject property or vicinity. Subsequent development on a subject property may require a change in the boundary of critical area tract or easement.

3. Removal or Modification of Dedication.

- a. The Planning Director may authorize removal or modification to a recorded critical area dedication, provided that removal or modification does not conflict with any requirement of this chapter or prior approval;
- b. The applicant shall submit a request in writing along with documentation as to why the dedication should be removed or modified and how the change is consistent with this chapter, along with any required review fee; and
- c. If the removal or modification is approved, the applicant shall record a document with King County Recorder's Office revising the dedication.

4. Maintenance of Critical Area and Buffer.

In critical areas and their buffers, native vegetation shall not be removed without prior City approval. It is the responsibility of the property owner to maintain critical areas and their buffers by

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removing nonnative, invasive, and noxious plants in a manner that will not harm critical areas or their buffers.

90.215 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 critical areas arising out of development activity on the subject property. The applicant shall record the agreement with the King County Recorder's Office.

90.220 APPEALS

Any decision made by the Planning Official or Planning Director 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 shall be heard as part of that other process.

90.225 LAPSE OF APPROVAL

Any decision made by the Planning Official and Planning Director authorized by this chapter shall be subject to the lapse of approval provisions of KZC 145.115.



719 Second Avenue, Suite 1150
Seattle, WA 98104-1728
206-623-9372
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September 29, 2016

Kirkland Planning Commission
Houghton Community Council
123 Fifth Avenue
Kirkland, WA 98033

Re: Proposed Chapter 90 KZC Amendments – Critical Area Ordinance

Honorable Commission and Community Council Members:

I am writing to present my comments and suggested revisions to the proposed amendments to Chapter 90 KZC.

For the past 30 years, my environmental law practice has focused on representing private and public clients addressing various development issues including compliance with regulations protecting wetlands, streams and other critical areas. I have worked on hundreds of new and redevelopment projects in or near critical areas. While I currently represent a number of Kirkland property and business owners, my comments are not focused on any one client, but rather, are based on my overall assessment of the draft regulations and the ways it could be improved.

Having worked on critical area regulations and having been involved in past challenges to critical area rules, I understand that your regulations must be based on Best Available Science. However, I also understand the flexibility that municipalities are afforded to meet the needs of its citizens, property and business owners affected by these far-reaching regulations. The protection of critical areas can be achieved while providing flexibility and a path that allows reasonable economic development.

Please consider and address the following comments before you propose a final regulation to be considered by the City Council.

Provide Private Citizens the Same Flexibility as Public Agencies.

The regulations, as drafted, provide significant flexibility to Kirkland's Public Works Department and other public agencies. The provisions specific to public agencies, no doubt, recognize that critical area regulations can be a significant burden on these public agencies and can impair their ability to maintain, improve, expand and construct roads, utilities and other

One way to address this issue is to authorize a buffer fill under the same provisions as a wetland modification. KZC 90.60.4-9 establishes a mechanism through which a property owner can be authorized to fill a wetland if several specific requirements are met, including mitigation sequencing pursuant to KZC 90.145. This process offers flexibility to a private landowner or business to demonstrate why filling a wetland cannot be avoided and how the impacts will be mitigated. Amazingly, however, the same flexibility for wetland fill is not explicitly offered when a project must intrude into a wetland buffer but no wetland fill is needed.

Many cities, including Bothell, Auburn, Kent, Redmond, Issaquah, and Mill Creek, as well as Snohomish County, have implicitly recognized and approved what is sometimes referred to as a “paper fill” of a wetland. A “paper fill” is a buffer fill only but is treated as a “hypothetical” wetland fill. It allows a development to intrude into a wetland buffer beyond that authorized by buffer averaging, when there is no other reasonably available alternative development plan, making the buffer intrusion necessary. Through this concept, a portion of the wetland is treated as if it had been filled so that the “remaining” portion of the wetland retains the standard required buffer width. The intrusion into the buffer must be fully mitigated. This approach is fair to owners and protective of the environment.

Kirkland should explicitly recognize the ability to intrude into a buffer by adding a new subsection to KZC 90.60 that authorizes buffer impacts so long as the general requirements of KZC 90.60.4-9 are met.

Expand the Interrupted Buffer Waiver.

KZC 90.120.1 authorizes some flexibility to address legally established roads and buildings that will suddenly be located within a wetland buffer when the greatly expanded buffer widths are established by the new rules. There is a process included in KZC 90.120.c to obtain an Interrupted Buffer Waiver, which includes demonstrating that the existing improvement creates a substantial barrier to the buffer function and that, given this condition, the buffer does not provide significant biological or hydrological function.

The Interrupted Buffer Waiver provisions, as drafted, do not go far enough. The regulation, as proposed, excludes retaining walls, detached garages, accessory dwelling units, impervious surfaces and other accessory structures. These exceptions from the Interrupted Buffer Waiver should be removed. Any individual should be able to seek Planning Official approval of the Interrupted Buffer Waiver by demonstrating that the site meets the three criteria in KZC 90.120.1.c. The City should not foreclose the ability of a property owner to prove to the Planning Director that previously authorized improvements create a significant barrier to the function of the newly expanded wetland buffer.

The Requirement to Remove Existing Structures from Buffers is Punitive and Inconsistent with the Nonconformity Provisions.

KZC 90.130.3.a. requires all existing improvements and structures to be removed from a buffer during site redevelopment. The only option available to such an owner is to accept an “alternative” buffer that is 33% larger. This requirement is punitive, will impose a great burden on existing property owners and runs counter to the City’s general approach to legal

mitigation requirements with those of EPA and USACE to avoid imposing unnecessary requirements and duplicate mitigation obligations.

Thank you for the opportunity to provide these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brent Carson", with a long horizontal line extending to the right.

Brent Carson

BC:jeh

From: Brent Carson [<mailto:brc@vnf.com>]
Sent: Friday, September 30, 2016 11:58 AM
To: John Kappler
Subject: Kirkland Critical Areas Code - Additional Thoughts

Nice seeing you last night. I liked your thorough review comments.

In addition to the comments in my letter, here are a few other concerns.

1. As you noted, there appears to be inconsistency between Table 90.55.1 on page 16/34 as compared with Section 90.130 Vegetative Buffer Standards on page 35/53. Per 90.130.2.a. standard buffers must be vegetated with native cover over at least 80%. Per 90.130.3.a all existing improvements and structures must be removed. And per 90.130.j no mowing is allowed. Per Table 90.55.1, Alternative buffers (33% larger) also require all existing structures and improvements to be removed and all mowing must cease. So, what is the benefit of the alternative buffer? I guess instead of native cover with a standard buffer, you get a larger permanent area of invasive plants. What's the point?
2. I continue to be perplexed and confused at the requirement to remove existing improvements in a buffer and to stop mowing compared with the nonconformity provisions. It would nice to get clarified. For example, once the Ordinance is in effect and assume the new buffer expands and includes an entire home lot:
 - A. Immediately, what can the owner do in this buffer? Can he mow? Can he keep existing structures?
 - B. If answered yes, what triggers the need to stop mowing? Remove structures?
 - C. How does the exemption in 90.35.1. to repair and maintain legally established structures, square with the requirement in Table 90.55.1 and 90.130 to remove structures in the buffer?
 - D. The provision in 90.60.3 says that "a wetland buffer may not modified without an approved wetland modification ? What is a modification? Is mowing or planting non-native trees? What about a swing set?
3. On the Federal Mitigation issue – I have had several projects approved by cities requiring on-site mitigation, yet the Corps rejected on-site mitigation under the 2008 Rule and required payment of the In-Lieu Fee. We then had to go back and convince the city to substitute this to avoid double mitigation. I'm concerned that the provisions in 90.145.3 (page 38-39/56-57) could force someone to build on site mitigation. Remember the list on 90.145.3.b. for on-site vs. off site is inclusive (see the "and" at the end of 90.145.3.b.1).c)) – you have to meet ALL of these to go off site. What if a site provides an opportunity to do on-site mitigation (ie. the City Preference). How do you really prove "no high likelihood of success? Most mitigation plans contain contingencies for failure. The 2008 Rule recognized that, in general, on-site in kind mitigation had a high likelihood of failure, so moved that down the list of preferences.
4. Finally, take a closer look at 90.185.3 on reconstruction of nonconforming structures. I liked your foundation comment. But, in addition, consider a SF lot fully engulfed in a new wetland buffer. Then says there is a loss over 50% of value. That requires "conformance". As written, a house fully in the buffer CANNOT conform, since there is no way to build in a wetland buffer (beyond using buffer averaging in the 1st 25% of the buffer). The "paper fill" proposal in my letter could solve this, but better, for the homeowner unfortunate enough to have a total loss, they should be able to rebuild, period.

Brent Carson | Partner

VanNess

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September 30, 2016

Kirkland Planning Commission
123 Fifth Avenue
Kirkland WA 98033

Re: Proposed Amendments to KZC Chapter 90

Dear Commission Members:

As a longtime taxpayer, property owner, and businessman in the City of Kirkland, I am writing to express my deep concerns and strong reservations about the changes proposed in KZC Chapter 90.

I support reasonable land use and environmental regulation, but the proposed amendments to Chapter 90 go too far and impose too great a burden on businesses and owners such as myself.

In order for business in the City of Kirkland to thrive, the City's land use and environmental regulations must be easy to understand and reasonable to implement. Neither is the case with these proposed amendments. The 62 pages of new critical area regulations impose numerous requirements that are nearly impossible to understand and follow. There appear to be several internal inconsistencies. These complex rules will make it difficult, if not impossible, for business owners to locate or expand in the City.

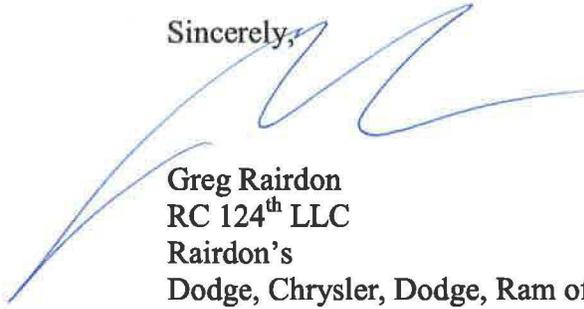
Of most concern is the huge increase in the width of regulated wetland buffers, some of which will increase from 50 feet to 225 feet. This dramatic increase in buffer widths will cause numerous existing legally approved developments to be instantaneously considered nonconforming intrusions into newly regulated wetland buffers. These rules could immediately affect how these properties can be used and managed. Any proposed expansion of these lawful businesses may be prohibited given these new buffer requirements. Even routing maintenance and repair of existing improvements and utilities will become far more onerous under these rules.

While the City of Kirkland is known for being a good environmental steward, it is also known for providing a business environment where economic development is encouraged to thrive. The City has enjoyed the fruits of economic development. The proposed amendments to KZC Chapter 90 threaten that development. There is limited land available in the City for new development. These proposed regulations will impose great constraints on new and existing businesses, who may need to locate elsewhere.

The City should revise its proposed regulations to strike a better balance of protecting both the environment and economic opportunities. The City should also provide a fair and reasonable transition period before the new rules come into effect, in order to allow property owners to be

fully educated on how the final adopted rules affect the use, maintenance, expansion, or redevelopment of their properties.

Sincerely,



Greg Rairdon
RC 124th LLC
Rairdon's
Dodge, Chrysler, Dodge, Ram of Kirkland
Rairdon's
Maserati, Alfa Romeo, FIAT of Kirkland

cc: Kirkland City Council

Teresa Swan

From: Bruce Burke <patbruce2@earthlink.net>
Sent: Tuesday, September 27, 2016 9:21 AM
To: Teresa Swan
Subject: chpt 90

One more comment:

Even though, we're grandfathered in, we believe all the restrictions could significantly devalue our house and property. Example: No tree trimming, no grass, special fencing, etc. If the house were more than 50% damaged by fire or earthquake, there wouldn't be room to move it closer to street on our pie shaped lot. We were counting on value of the house for retiremet and health issues.

Pat Moir
Bruce Burke
10610 NE 57th St.

