

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6894

AN ORDINANCE relating to critical areas; Revising the City's development regulations governing critical areas, and revising other related development regulations, to comply with the state-mandated update deadline of December 31, 2025; Amending Chapters 20.20, 20.45A, 20.45B, and 20.50 of the Bellevue Land Use Code; Amending Parts 20.25D, 20.25H, 20.25L, 20.25P, 20.25Q, 20.30D, and 20.30P of the Land Use Code; Providing for severability; and setting an effective date.

WHEREAS, the Growth Management Act, Chapter 36.70A RCW, (GMA) requires all cities and counties to adopt development regulations that protect critical areas and their functions and values, which can be costly, or even impossible, to replace once they are lost; and

WHEREAS, development regulations that protect critical areas and their functions and values are commonly referred to as a jurisdictions "Critical Areas Ordinance"; and

WHEREAS, these regulations help to preserve the natural environment, maintain fish and wildlife habitat, and protect drinking water; and

WHEREAS, protecting critical areas also helps reduce exposure to risks, such as landslides or flooding, and maintains the natural elements of our landscape; and

WHEREAS, under RCW 36.70A.130(5), the City is required to review and, if needed, update its development regulations protecting critical areas every ten years; and

WHEREAS, in accordance with RCW 36.70A.130(7), the City demonstrated substantial progress toward the review and update of its development regulations protecting critical areas and therefore received an additional 12 months to complete its review and update; and

WHEREAS, on February 25, 2025, the City Council initiated work on the text amendments to the Land Use Code contained in this ordinance and, in accordance with LUC 20.30J.125 and LUC 20.35.410, referred this ordinance to the Planning Commission for review, a public hearing, and recommendation; and

WHEREAS, on August 13, 2025, the text amendments to the Land Use Code contained in this ordinance were presented to the Bellevue Development Committee for review and feedback; and

WHEREAS, the Planning Commission held study sessions to review the text amendments contained in this ordinance on April 23, 2025, May 28, 2025, June 25, 2025, July 23, 2025, and September 24, 2025; and

WHEREAS, on July 15, 2025, the City Council received a Mid-Point Check-In on the status of the Planning Commission's review of the text amendments contained in this ordinance; and

WHEREAS, on October 8, 2025, a notice of a public hearing on the text amendments contained in this ordinance was published in the City's Weekly Permit Bulletin, notice of which was published in the Seattle Times; and

WHEREAS, on October 22, 2025, the Planning Commission held a public hearing on the text amendments to the Land Use Code contained in this ordinance and considered the amendments under LUC 20.35.410.B and the decision criteria in LUC 20.30J.135; and

WHEREAS, on October 1, 2025, notice was provided to the Washington State Department of Commerce in accordance with RCW 36.70A.106; and

WHEREAS, in accordance with RCW 36.70A.370, the City has reviewed the guidance provided by the Washington State Attorney General's Office and evaluated the proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property; and

WHEREAS, the text amendments to the Land Use Code contained in this ordinance are consistent with the City's Comprehensive Plan, including, but not limited to, policies CL-52, CL-54, CL-87, CL-88, CL-100, CL-106; and

WHEREAS, in reviewing this ordinance, the City Council has considered and weighed the goals outlined in the GMA; and

WHEREAS, the GMA requires that the City consider Best Available Science (BAS) when reviewing and updating its Critical Areas Ordinance; and

WHEREAS, on May 2, 2025, the City completed and published a review of current BAS applicable to the review of the City's regulations protecting Critical Areas; and

WHEREAS, on June 18, 2025, the City completed and published a Gap Analysis, which evaluated gaps in consistency between the City's existing regulations protecting Critical Areas and current BAS and GMA requirements; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, Chapter 22.02 BCC; and

WHEREAS, in accordance with Chapter 43.21C RCW and Chapter 22.02 BCC, the Environmental Coordinator for the City of Bellevue determined that the text amendments to the Land Use Code contained in this ordinance will not result in any probable, significant, adverse impact and issued a final threshold determination of non-significance on October 8, 2025; and

WHEREAS, on November 12, 2025, the City Council held a study session to review the text amendments contained in this ordinance; and

WHEREAS, on December 9, 2025, the City Council further reviewed the text amendments contained in this ordinance; and

WHEREAS, the City Council finds that the proposed LUC amendments meet the decision criteria of LUC 20.30J.135 in that the amendments: (A) are consistent with the Comprehensive Plan; (B) enhance the public health, safety, and welfare; and (C) are not contrary to the best interests of the citizens and property owners of the City of Bellevue; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

**Section 1.** The foregoing recitals are hereby adopted by the City Council as findings of fact supporting and explaining the legislative intent behind the adoption of this ordinance.

**Section 2.** Section 20.20.010 of the Land Use Code is hereby amended to read as follows, with all other provisions of Section 20.20.010 that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.20.010 Uses in land use districts dimensional requirements.**

**Chart 20.20.010**  
**Uses in land use districts – Dimensional Requirements**

STD LAN D USE COD E REF		Residential										
		LL-1	LL-2	SR-1	SR-2	SR-3	SR-4	LDR-1	LDR-2	LDR-3	MDR-1	MDR-2
LAND USE CLASSIFICATION												
	DIMENSIONS	(43, 52)	(43, 52)	(43, 52)	(43, 52)	(43, 52)	(43, 52)	(43, 52)	(52)	(52)	(52)	(52)
	Front yard Minimum Setback of Structures (feet) (18)(20)(38)(39)	35	30	20	20	20	20	20	20	20	20	20

Rear Yard Minimum Setback of Structures (feet) (11)(17)(18)(20)(38)(39)	25	25	25	25	20	20	20	20	20	20	20	20
Side Yard Minimum Setback of Structures (feet) (7)(11)(17)(18)(20)(38)(39)	5	5	5	5	5	5	5	5	5	5	5	5
2 Side yards Minimum Setback of Structures (feet) (7)(17)(18)(20)(38)(39)	20	15	15	15	15	15	10	10	10	10	10	10
Minimum Lot Area (Thousands of Sq. Ft.) (3)(39)	35	20	13.5	10	8.5	7.2	4.7			(12)	(12)	
Dwelling Units per Acre (22)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	10 (2)	15 (2)	20 (2)	30 (2)	
Minimum Width of Street Frontage (feet)	30	30	30	30	30	30	30					
Minimum Width Required in Lot (feet) (4)	100	90	80	70	65	60	50					
Minimum Depth Required in Lot (feet) (4)	150	80	80	80	80	80	80					
Maximum Building Height (feet) (10)(26)(45)	30/3 5 (44)	30/3 5 (44)	30/3 5 (44)	30/3 5 (44)	30/3 5 (44)	30/3 5 (44)	30/3 5 (44)	40	40	40	40	40
Maximum Lot Coverage by Structures (percent) (14)(16)(26)(27)(37)(39)	35	35	35	35	35	40	40	40	40	40	40	40
Maximum Hard Surface Coverage (percent) (37)(39)	75 (36)	75 (36)	75 (36)	75 (36)	75 (36)	80 (36)	80 (36)	90	90	90	90	90
Maximum Impervious Surface (percent) (37)(39)	45 (36)	45 (36)	45 (36)	45 (36)	45 (36)	55 (36)	55 (36)	65	65	65	65	65
Alternative Maximum Impervious Surface (percent) (35)(37)(39)(48)	50 (36)	50 (36)	50 (36)	50 (36)	50 (36)	55 (36)	55 (36)	80	80	80	80	80

	Minimum Greenscape Percentage of Front Yard Setback (40)(51)	50 (40)	50 (40)	50 (40)	50 (40)	50 (40)	50 (40)	50 (40)				
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**Notes: Uses in land use districts – Dimensional requirements:**

(1) At a minimum, one single-family structure is permitted per lot outside of the Critical Areas Overlay, unless developing middle housing. See LUC 20.20.538 for dimensional requirements for middle housing projects. See Part 20.25H LUC for restrictions on development within the Critical Areas Overlay, including development under a reasonable use exception.

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(13) Intentionally deleted.

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(21) Intentionally deleted.

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**Section 3.** Subsection 20.20.025.C.5 of the Bellevue Land Use Code is hereby amended to read as follows:

5. Minor building elements may extend into a critical area structure setback required by LUC 20.25H.035 only to the extent authorized under LUC 20.25H.055.D.

Note: Heat pumps are not minor building elements. Retaining walls and rockeries 30 inches or greater in height are not minor building elements.

**Section 4.** Subsection 20.20.538.A of the Bellevue Land Use Code is hereby amended to read as follows:

**A. Applicability.**

This section outlines the dimensional requirements applicable to middle housing developments as defined in LUC 20.50.034. For dimensional standards applicable to single-family development and attached or detached multifamily dwelling development see Chart 20.20.010 in LUC 20.20.010. For additional site design regulations for cottage housing see LUC 20.20.250. For additional site design regulations for courtyard housing see LUC 20.20.252.

**Section 5.** Subsection 20.20.590.K of the Land Use Code is hereby amended to read as follows, with all other provisions of Subsection 20.20.590.K that are omitted below, as indicated by an ellipsis, remaining unchanged:

**K. Parking Area and Circulation Improvements and Design.**

Parking of vehicles for all uses is only permitted in parking areas that meet the requirements of this section; except that vehicles on residential lots may also be parked in areas that meet the requirements of LUC 20.20.720 and 20.20.890 relating to the storage of recreational vehicles and trailers.

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10. Setback Area and Sidewalks. Development proposals without garages shall provide sufficient area for required on-site parking. Parked vehicles shall not block sidewalks.

11. Temporary Construction Parking – Permit Required. The property owner shall obtain a Temporary Use Permit pursuant to Part 20.30M LUC for an off-site construction parking area.

12. Minimum Dimensions.

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**Section 6.** Section 20.20.900 of the Land Use Code is hereby amended to read as follows, with all other provisions of Section 20.20.900 that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.20.900 Tree Retention and Replacement.**

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**B. Applicability**

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4. This section is inapplicable in the following circumstances:

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- c. This section does not apply to development activity in critical areas or critical area buffers. The retention and replacement of trees located in critical areas or critical area buffers is regulated by Part 20.25H, Critical Areas Overlay District.

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**C. Definitions**

The following definitions are specific to this section. Where a term defined below is used in this section its meaning shall be as defined below.

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5. "Tree Canopy Site Area" means, for the purpose of determining the minimum tree density required for a site, the area of a site remaining after subtracting the following areas from the gross site area:

- a. Critical areas and critical area buffers (as may be modified pursuant to Part 20.25 LUC, if applicable);

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**F. Tree Protection.**

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2. Tree Protection Covenant.

- a. The applicant shall record with the King County Recorder's Office a covenant in the following circumstances:
  - i. When a modification to development standards is granted under subsection E.5 of this section to avoid development within a TPZ;
  - ii. When required as a condition of approval for an application for a Subdivision, Short Subdivision, Unit Lot Subdivision, or Unit Lot Short Subdivision; or
  - iii. When required under Part 20.25H LUC.

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**Section 7.** Subsection 20.25D.080.A of the Bellevue Land Use Code is hereby amended to read as follows, with all other provisions of Subsection 20.25D.080.A that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.25D.080 Dimensional Requirements**

A. General.

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**Chart 20.25D.080.A  
Dimensional Requirement in BelRed Districts**

BeIR ed Land Use Distr ict (19)	Tower Type (1) (17)	Minimum Setbacks/Step backs (3) (5) (7) (8) (10)			Gross SF/Floor Above 40 ft. (gsf/f) (16) (20) (21)	Gross SF/Floor Above 80 ft. (gsf/f) (16) (20) (21)	Maximum Impervi ous Surface / Lot Cov erage	Building Height (4)(22)		Floor Area Ratio (4)	
		Front	Rear	Side				Base	Max.	Base	Max.
MO-1 OR-1 RC-1	Nonresidential Residential	0 (2)	0 (14)	0 (14)	28,000 28,000/12 ,000	28,000 9,000	75%	45	15 0	1.0	4.0
OR-2 RC-2	Nonresidential Residential	0 (2)	0 (14)	0 (14)	28,000 28,000/12 ,000	28,000 9,000	75%	45	12 5	1.0	4.0
RC-3 (15)	Nonresidential Residential	0 (2)	0	0	28,000 28,000	NA	75%	45 (13)	70 (13)	1.0	4.0
CR (15)	Nonresidential Residential	0 (2)	0	0	28,000 28,000	NA	75%	45 (13)	70 (13)	1.0	2.0
R	Nonresidential Residential	0 (2)	0	0	NA	NA	75%	30	45	1.0	2.0
MO OR	Nonresidential Residential	0 (2)	0	0	28,000 28,000	NA	75%	70	70	1.0	1.0
GC	Nonresidential Residential	0 (2)	0	0	NA	NA	75%	45	45	1.0	1.0
ORT	Nonresidential Residential	20	30	20	NA	NA	75%	45(1 1)	45 (11)	0.7 5	0.7 5



All	Parking (12) (18)				NA	NA	75%	30	30	0.5	0.5
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**Notes: Chart 20.25D.080.A Dimensional Requirement in BelRed Districts:**

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**(6)** Intentionally deleted

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**(9)** Intentionally deleted

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**Section 8.** Part 20.25H of the Bellevue Land Use Code, excluding Section 20.25H.130, is hereby repealed and replaced to read as shown on **Attachment A** to this ordinance. While not included on **Attachment A**, Section 20.25H.130 shall remain unchanged and in effect. The City Clerk is hereby authorized to replace any reference in **Attachment A** to “[INSERT EFFECTIVE DATE OF ORDINANCE]” with the actual month, day, and year that this ordinance takes effect as calculated pursuant to Section 28 of this ordinance.

**Section 9.** Section 20.25L.030 of the Bellevue Land Use Code is hereby amended to read as follows, with all other provisions of Section 20.25L.030 that are omitted below, as indicated by an ellipsis, remaining unchanged:

#### **20.25L.030 Dimensional requirements.**

Except for the dimensional requirements chart at LUC 20.20.010, the provisions of Chapter 20.20 LUC apply to development within the OLB-OS Land Use District. The following chart establishes the dimensional requirements for the OLB-OS Land Use District.

<b>Dimensions</b>	<b>OLB-OS Land Use District</b>
Minimum Setbacks of Structures (feet) (2) (3) (13)	50
Rear Yard (2) (3) (4) (10) (13)	50
Side Yard (2) (3) (4) (10) (13)	30
2 Side Yards (2) (3) (4) (10) (13)	60
Minimum Lot Area (5) (12)	2 acres
Minimum Dimensions (feet) Width of Street Frontage	200
Width Required in Lot (6)	200
Maximum in Building Height (feet) (7)	70
Maximum Lot Coverage by Structures (8) (10)	35
Floor Area Ratio (11)	0.5
Impervious Surface (14) (15) (16)	80

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**(1)** Intentionally deleted

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**(9)** Intentionally deleted

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(11) Any office building or any office portion of a building shall not exceed a floor area ratio of 0.5, calculated by dividing the total amount of gross square footage of buildings or structures to be constructed in the development area by the net on-site land area (as described in the definition of “Floor Area Ratio” in LUC 20.50.020) of the entire parcel designated OLB-OS, including both the development area and the reserved area.

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**Section 10.** Subsection 20.25P.060.A of the Bellevue Land Use Code is hereby amended to read as follows, with all other provisions of Subsection 20.25P.060.A that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.25P.060 Dimensional requirements.**

A. General.

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**Chart 20.25P.060.A**  
**Dimensional Requirements in Eastgate Transit Oriented Development District**

<b>LAND USE CLASSIFICATION DIMENSIONS</b>	<b>Eastgate Transit Oriented Development Land Use District (EG-TOD)</b>
Minimum Setbacks of Structures (feet) Front Yard	0 (2) (3) (4)
Minimum Façade Separation (feet) (setback/stepback)	10 (5)
Rear Yard (feet)	5 (2) (3) (4)
Side Yard (feet)	5 (2) (3) (4)
2 Side Yards	
Floor Area Ratio	2.0
Maximum in Building Height (feet)	160/55 (6)
Maximum Lot Coverage by Structures (percent) (8) (9) (14)	35
Maximum Hard Surface Coverage (11) (12)	85
Maximum Impervious Surface (percent) (10) (11)	60
Alternative Maximum Impervious Surface (percent) (10) (11) (13)	80

**Notes:** Chart 20.25P.060.A Dimensional Requirements in Eastgate Transit Oriented Development Land Use District

(1) Intentionally deleted

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(7) Intentionally deleted

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**Section 11.** Subsection 20.25Q.060.A of the Bellevue Land Use Code is hereby amended to read as follows, with all other provisions of Subsection 20.25Q.060.A that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.25Q.060 Dimensional requirements.**

A. Dimensional Chart.

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**Table 20.25Q.060.A.  
Dimensional Requirements in the East main Transit-Oriented Development  
Districts**

<b>East Main Land Use District</b>	<b>East Main Transit Oriented District (Higher Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Higher Density)  Residential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Residential (1)</b>
	<b>EM-TOD-H Nonresidential (2)(3)</b>	<b>EM-TOD-H Residential (2)(3)</b>	<b>EM-TOD-L Nonresidential (3)</b>	<b>EM-TOD-L Residential (3)</b>
Minimum Setbacks (4)(5)(6)				
Front	0	0	0	0
Rear	0	0	0	0
Side	0	0	0	0
Minimum Tower	20 ft	20 ft	N/A	N/A

<b>East Main Land Use District</b>	<b>East Main Transit Oriented District (Higher Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Higher Density)  Residential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Residential (1)</b>
	<b>EM-TOD-H Nonresidential (2)(3)</b>	<b>EM-TOD-H Residential (2)(3)</b>	<b>EM-TOD-L Nonresidential (3)</b>	<b>EM-TOD-L Residential (3)</b>
Setback above 80 ft where Building exceeds 100 ft				
Maximum Floor Plates above 40 ft gsf/f (6)	30,000 gsf/f	unlimited	30,000 gsf/f	unlimited
Maximum Floor Plates above 80 ft gsf/f (6)	25,000 gsf/f	13,500 gsf/f	25,000 gsf/f	13,500 gsf/f
Base Building Height	115 ft	230 ft	70 ft	70 ft

<b>East Main Land Use District</b>	<b>East Main Transit Oriented District (Higher Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Higher Density)  Residential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Residential (1)</b>
	<b>EM-TOD-H Nonresidential (2)(3)</b>	<b>EM-TOD-H Residential (2)(3)</b>	<b>EM-TOD-L Nonresidential (3)</b>	<b>EM-TOD-L Residential (3)</b>
Maximum Building Height (7)(8)(9)	300 ft	300 ft	100 ft	100 ft
Maximum Building Height with Mechanical Equipment (7)(8)(9)	320 ft (10)	320 ft (10)	100 ft	100 ft
Base FAR	2.5	3.5	0.5	0.5
Maximum FAR (11)	5.0	5.0	1.0	1.0
Tower Separation above 80 ft where	60 ft	60 ft	N/A	N/A

<b>East Main Land Use District</b>	<b>East Main Transit Oriented District (Higher Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Higher Density)  Residential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Nonresidential (1)</b>	<b>East Main Transit Oriented District (Lower Density)  Residential (1)</b>
	<b>EM-TOD-H Nonresidential (2)(3)</b>	<b>EM-TOD-H Residential (2)(3)</b>	<b>EM-TOD-L Nonresidential (3)</b>	<b>EM-TOD-L Residential (3)</b>
Building exceeds 100 ft				

**Notes: Dimensional Requirements in East Main Land Use Districts:**

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**(12)** Intentionally deleted

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**Section 12.** Subsection 20.30D.165.A.2 of the Bellevue Land Use Code is hereby amended to read as follows, with all other provisions of Subsection 20.30D.165.A.2 that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.30D.165 Planned Unit Development plan – Request for modification of zoning requirements.**

**A. Density and Floor Area Ratio.**

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2. Bonus Decision Criteria. The City may approve a bonus in the number of dwelling units allowed by no more than 10 percent over the base density for proposals complying with this subsection A.2. Base density shall be determined based on the gross land area of the property excluding either that area utilized for traffic circulation roads or 20 percent, whichever is less. The bonus allowed by this section may be approved only if:

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**Section 13.** Subsection 20.30D.167.D of the Bellevue Land Use Code is hereby amended to read as follows:

**D. Additional Bonus.**

The City may authorize additional bonus density, up to 30 percent of the base density, for proposals including additional conservation design features above the amount required in LUC 20.30D.160.A. Base density shall be determined based on the gross land area of the property excluding either that area utilized for traffic circulation roads or 20 percent, whichever is less. Bonus density shall be based on the square footage credit earned divided by the minimum lot size of the underlying land use district. Bonus density may be approved only if the proposal meets the criteria of LUC 20.30D.165.A.2.a and A.2.b.

**Section 14.** Section 20.30P.115 of the Bellevue Land Use Code is hereby amended to read as follows:

**20.30P.115 Applicability.**

This part applies to each application for a proposed development or activity within the Critical Areas Overlay.

**Section 15.** Section 20.30P.120 of the Bellevue Land Use Code is hereby amended to read as follows:

**20.30P.120 Purpose**

A Critical Areas Land Use Permit is the mechanism by which the City may approve limited use and disturbance of a critical area or critical area buffer. The provisions of Parts 20.25H and 20.25E LUC establish the uses and activities that may be allowed in a critical area or critical area buffer. The provisions of this part establish the requirements for a Critical Areas Land Use Permit, exemption, or modification.

**Section 16.** Part 20.30P of the Bellevue Land Use Code is hereby amended to include a new Section 20.30P.157 to read as follows:

**20.30P.157 Exemption for a Critical Areas Land Use Permit**

- A. **Purpose.** Development projects that qualify for an exemption or a modification that does not require a new decision may be processed as a Land Use Exemption.
- B. **Applicability.** The Director may approve a Land Use Exemption or a subsequent modification to a specific use and site plan that has previously been approved through a Critical Areas Land Use Permit, provided the change meets the standards of Part 20.25H LUC. Otherwise, the applicant is required to apply for and obtain approval of a new Critical Areas Land Use Permit.

**C. Land Use Exemption from for a Critical Areas Land Use Permit.**

1. The Director may determine that an exemption for, or modification to, a critical areas land use permit is exempt from further review or review as a new application, provided the following criteria are met:
  - a. The proposal does not result in any significant adverse impacts beyond the site;
  - b. The proposal, if proposing a modification, is within the general scope of the purpose and intent of the original approval; and
  - c. The proposal complies with applicable Land Use Code requirements, and all applicable development standards.
2. The Director may determine that a new development or proposed activity that meets the criteria in LUC 20.25H.050.B.2 is exempt from review as a new application.

**D. Conditions.**

1. The Director may impose conditions on a land use exemption to ensure that the applicable critical areas regulations are met; and
2. For proposed modifications, the Director may impose conditions on a land use exemption to ensure that any conditions of the original approval are met.

**Section 17.** Section 20.30P.160 of the Bellevue Land Use Code is hereby amended to read as follows:

**20.30P.160 Assurance device.**

In appropriate circumstances, the City may require a reasonable performance or maintenance assurance device in conformance with LUC 20.40.490 to assure compliance with the provisions of the Land Use Code and the Critical Areas Land Use Permit or land use exemption, as approved.

**Section 18.** Section 20.30P.180 of the Bellevue Land Use Code is hereby amended to read as follows:

**20.30P.180 Critical areas report – Additional review procedures.**

See LUC 20.25H.265 and 20.25H.270 for additional review procedures that may be required for critical areas reports.

**Section 19.** Section 20.45A.060 of the Bellevue Land Use Code is hereby amended to read as follows, with all other provisions of Section 20.45A.060 that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.45A.060 Special requirements for plats with critical areas or critical area buffers.**

**A. Allowed Density.**



Density shall be calculated pursuant to LUC 20.20.010.

**B. Conservation Subdivision.**

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3. Dimensional Standards Modification. The dimensional standards set forth in LUC 20.20.010 are modified as follows for sites processed through the conservation subdivision process. All other dimensional standards and requirements of LUC 20.20.010 shall apply, including applicable footnotes:

<b>Land Use District</b>	<b>LL-1</b>	<b>LL-2</b>	<b>SR-1</b>	<b>SR-2</b>	<b>SR-3</b>	<b>SR-4</b>	<b>LDR-1</b>	<b>LDR-2</b>	<b>LDR-3</b>	<b>MDR-1</b>	<b>MDR-2</b>
Minimum Setbacks of Structures (feet) Front Yard (1) (2) (7)	25	20	10	10	10	10	10	10	10	10	10
Rear Yard (4) (7)	20	20	20	15	15	15	15	20	20	20	20
Side Yard (4) (7)	5	5	5	5	5	5	5	5	5	5	5
2 Side Yards (4) (7)	15	10	10	10	10	10	10	10	10	10	10
Minimum Lot Area Acres (A) or Sq. Ft.	22,750	13,000	8,775	6,500	5,525	4,680	3,055	5,525	5,525	5,525	5,525
Maximum Lot Coverage by Structures (percent)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)
Impervious Surface	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)

**Notes:**

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**(3)** Intentionally deleted

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**Section 20.** Section 20.45B.055 of the Bellevue Land Use Code is hereby amended to read as follows, with all other provisions of Section 20.45B.055 that are omitted below, as indicated by an ellipsis, remaining unchanged:

**20.45B.055 Special requirements for short plats with critical areas or critical area buffers.**

**A. Allowed Density.**

Density shall be calculated pursuant to LUC 20.20.010.

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**B. Conservation Subdivision.**

...

3. Dimensional Standards Modification. The dimensional standards set forth in LUC 20.20.010 are modified as follows for sites processed through the conservation short subdivision process. All other dimensional standards and requirements of LUC 20.20.010 shall apply, including applicable footnotes:

Land Use District	LL-1	LL-2	SR-1	SR-2	SR-3	SR-4	LDR -1	LDR -2	LDR -3	MDR -1	MDR -2
Minimum Setbacks of Structures (feet) Front Yard (1) (2) (7)	25	20	10	10	10	10	10	10	10	10	10
Rear Yard (4) (7)	20	20	20	15	15	15	15	20	20	20	20
Side Yard (4) (7)	5	5	5	5	5	5	5	5	5	5	5
2 Side Yards (4) (7)	15	10	10	10	10	10	10	10	10	10	10
Minimum Lot Area Acres (A) or Sq. Ft.	22,750	13,000	8,775	6,500	5,525	4,680	3,055	5,525	5,525	5,525	5,525
Maximum Lot Coverage by Structures (percent)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)

Land Use District	LL-1	LL-2	SR-1	SR-2	SR-3	SR-4	LDR-1	LDR-2	LDR-3	MDR-1	MDR-2
Impervious Surface	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)

**Notes:**

...

(3) Intentionally deleted

...

**Section 21.** The definition of “Critical Areas” contained in Section 20.50.014 of the Bellevue Land Use Code is hereby amended to read as follows:

**Critical Areas.** Areas required to be protected under the Growth Management Act, Chapter 36.70A RCW. The City’s critical areas are designated in Part 20.25H LUC, and include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, and critical aquifer recharge areas. Fish and wildlife habitat conservation areas are comprised of streams, wetlands, and habitats associated with species of local importance or other riparian management areas.

**Section 22.** The definition of “Floor Area Ratio (FAR)” contained in Section 20.50.020 of the Bellevue Land Use Code is hereby amended to read as follows:

**Floor Area Ratio (FAR).** A measure of development intensity equal to the gross floor area, excluding parking and mechanical floors or areas, divided by net on-site land area (square feet). Net on-site land area includes the area of an easement but does not include public right-of-way. This definition does not apply to single-family dwellings (refer to the definition of Floor Area Ratio (FAR) – Single-Family Dwelling contained in this section), or to Downtown (refer to the definition of DT – Floor Area Ratio (FAR)).

**Section 23.** Section 20.50.038 of the Bellevue Land Use Code is hereby amended to include a new definition of “Ordinary High-Water Mark” to read as follows. The City Clerk is hereby authorized to codify this new definition in Section 20.50.038 in a manner that maintains an alphabetical listing of defined terms.

**Ordinary High-Water Mark.** That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, with respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or the Department of Ecology.

**Section 24.** The definition of “Qualified Professional” contained in Section 20.50.042 of the Bellevue Land Use Code is hereby amended to read as follows:

**Qualified Professional.** A “Qualified Professional” is a person with experience and training in the applicable field or critical area in accordance with WAC 365-195-905(4). A qualified professional must have obtained a Bachelor of Science or Bachelor of Arts degree, or equivalent, from an accredited college or university and have at least two years of related work experience.

1. A qualified professional for wetlands must be a certified professional wetland scientist or wetland specialist with a minimum of two years of full-time work experience as a wetlands professional. This experience must include delineating wetlands using the U.S. Army Corps of Engineers Wetland Delineation Manual and applicable regional supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.
2. A qualified professional for streams and lakes must have demonstrated expertise in freshwater ecology, aquatic habitat assessment, or related subject matter, and must have conducted work consistent with critical area regulations and best available science.
3. A qualified professional for preparing geotechnical reports and geotechnical design recommendations for erosion hazard areas must be a civil engineer with geotechnical certification licensed by the state of Washington. Where specified in code, a qualified professional for preparing geotechnical reports and geotechnical design recommendations for landslide hazard areas must be both a geotechnical engineer with a professional civil engineering license and a licensed geologist, licensed by the state of Washington, or geotechnical reports and geotechnical design recommendations must be prepared jointly by a licensed geotechnical engineer with a professional civil engineering license and a licensed geologist, licensed by the state of Washington.
4. A qualified professional for preparing critical aquifer recharge reports must be a professional hydrogeologist or geologist licensed in the state of Washington.

**Section 25.** The definition of “Structure” contained in Section 20.50.046 of the Bellevue Land Use Code is hereby amended to read as follows:

**Structure.** A combination of materials constructed and erected permanently on or under the ground or attached to something having a permanent location on or under the ground. Not included are residential fences, retaining walls less than 30 inches in height, rockeries less than 30 inches in height, paved areas, and similar improvements of a minor character. For the purposes of Part 20.25E LUC, regulations for the Shoreline Overlay District, a different definition applies. See LUC 20.25E.280 – “Structure.”

**Section 26.** The definition of “Wetland Mitigation” contained in Section 20.50.054 of the Bellevue Land Use Code is hereby amended to read as follows:

**Wetland Mitigation.** Mitigation means the offsetting or countering of adverse environmental impacts that development can have on wetlands and other aquatic habitats. Wetland mitigation usually occurs in a sequence of steps or actions. Wetland compensatory mitigation is one of the last steps in the mitigation sequence when unavoidable impacts to wetland functions are offset by creating or re-establishing, rehabilitating, enhancing, or preserving other wetlands. Wetland creation or re-establishment, rehabilitation, enhancement, and preservation as compensatory mitigation methods are described in Washington State Department of Ecology Publication Number 21-06-003, as may be amended. In the event that the Washington State Department of Ecology no longer publishes Publication Number 21-06-003, then the Director may adopt by rule definitions for the following terms: wetland creation or re-establishment, rehabilitation, enhancement, and preservation.

**Section 27. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

**Section 28. Effective Date.** This Ordinance shall take effect and be in force at 12:00 AM on January 1, 2026.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2025 and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

(SEAL)

\_\_\_\_\_  
Lynne Robinson, Mayor

Approved as to form:  
Trisna Tanus, City Attorney

\_\_\_\_\_  
Robert Sepler, Assistant City Attorney

Attest:

\_\_\_\_\_  
Charmaine Arredondo, City Clerk

Published \_\_\_\_\_

## **Attachment A to Ordinance No. 6894**

### **Part 20.25H Critical Areas Overlay District**

#### **I. SCOPE AND PURPOSE**

##### **20.25H.005 Scope.**

This part establishes standards and procedures that apply to development within the Critical Areas Overlay District, which includes any site that is designated, in whole or in part, as a critical area or critical area buffer. All development within the Critical Areas Overlay District must be reviewed and approved pursuant to this part in addition to being subject to all other relevant standards of the Bellevue City Code. Except for frequently flooded areas, the Critical Areas Overlay District does not apply Downtown.

##### **20.25H.010 Purpose.**

The Critical Areas Overlay District is a mechanism by which the City recognizes the existence of natural conditions which affect the use and development of property. Through this part, the City designates and classifies ecologically sensitive and hazard areas using best available science and imposes regulations on the use and development of affected property in order to protect the functions and values of these areas and the public health, safety, and welfare, and to allow the reasonable use of private property.

##### **20.25H.015 Applicable procedure.**

- A. Any alteration, development, use, or activities proposed within, or adjacent to, critical areas or their required buffers shall comply with the provisions of this Part and require the provision of a Critical Areas Report subject to Article XII of this Part. No alteration shall be made to critical areas or their required buffers, except as allowed by this Part 20.25H LUC.
- B. If a proposal avoids all development within the critical area and critical area buffer then the proposal is subject to the provisions of this Part through the review process for the underlying permit or approval required for the development, or may qualify for an exemption, and a decision on such application may be appealed according to the appeal process for the underlying permit or approval.
- C. If a proposal involves development within the critical area or critical area buffer, then in addition to the review process for the underlying permit or approval required for the development, the proposal shall require a Critical Areas Land Use Permit, Part 20.30P LUC, except where otherwise indicated in this Part.
- D. When any provision of this title conflicts with this Part 20.25H LUC or when the provisions of this Part are in conflict, then the provision that provides more protection to critical areas shall apply, unless specifically provided otherwise in this Part or unless such provision conflicts with federal or state laws or regulations.

## II. DESIGNATION OF CRITICAL AREAS AND DIMENSIONAL STANDARDS

### 20.25H.025 Designation of critical areas.

The areas identified in the table directly below are hereby designated as critical areas. For additional information about identifying each critical area, see the specific sections noted. Together, streams, habitats associated with species of local importance, and steep slopes comprise fish and wildlife habitat conservation areas.

Critical Area Category or Type	Additional Information Identifying Critical Area
<b>Streams</b>	
Type S water	LUC <a href="#">20.25H.075</a>
Type F water	LUC <a href="#">20.25H.075</a>
Type Np water	LUC <a href="#">20.25H.075</a>
Type Ns water	LUC <a href="#">20.25H.075</a>
Closed segment	LUC <a href="#">20.25H.075</a>
<b>Wetlands</b>	
Category I	LUC <a href="#">20.25H.095</a>
Category II	LUC <a href="#">20.25H.095</a>
Category III	LUC <a href="#">20.25H.095</a>
Category IV	LUC <a href="#">20.25H.095</a>
<b>Geologic Hazard Areas</b>	
Landslide hazards	LUC <a href="#">20.25H.120</a>
Steep slopes	LUC <a href="#">20.25H.120</a>

Critical Area Category or Type	Additional Information Identifying Critical Area
Coal mine hazard areas	LUC <a href="#">20.25H.120</a>
Seismic hazard areas	LUC <a href="#">20.25H.120</a>
Erosion hazard areas	LUC <a href="#">20.25H.120</a>
<b>Fish and Wildlife Habitat Conservation Areas</b>	
Fish and Wildlife Habitat Conservation Areas	LUC <a href="#">20.25H.150</a>
<b>Frequently Flooded Areas</b>	
Frequently flooded areas	LUC <a href="#">20.25H.175</a>
<b>Critical Aquifer Recharge Area</b>	
Critical Aquifer Recharge Area	LUC 20.25H.112

### **20.25H.030 Identification of critical area.**

#### **A. Determining Presence of Critical Area.**

A determination of whether a site contains a critical area or critical area buffer shall be made as part of the review process for the proposal, based on information provided by the applicant. The Director may specify the information required to determine the presence and extent of such areas, including, but not limited to: site surveys, topographic maps, technical environmental analysis, peer reviews, or other information the Director deems necessary. The location and extent of critical areas and critical area buffers may be required to be surveyed, marked in the field with permanent signage, and fenced to separate such areas from development.

#### **B. Recording Required.**

1. Site Plan. The property owner receiving approval of a use or development within the Critical Areas Overlay District pursuant to this part shall record a site plan, covenant, maintenance agreement, or other instrument clearly delineating the critical area, critical area buffer, and critical area structure setback with the King County Recorder's Office prior to occupancy. The recorded instrument must include a statement that the provisions of this part, as now or hereafter amended, control use and development of the subject property.



2. Native Growth Protection Area. The Director may also require recording of the delineation of, and restrictions of, Native Growth Protection Areas (NGPA) designated as part of an approval of a subdivision, short subdivision, or Planned Unit Development within the Critical Areas Overlay District, and as part of any approval to modify a critical area or critical area buffer. The NGPA can be recorded as an easement or a tract. The Director may also require amendments to NGPAs previously required by operation of this Part 20.25H LUC. The NGPA shall contain at minimum:
  - a. An assurance that the NGPA will be kept free from all development and disturbance except where allowed or required for habitat improvement projects, vegetation management, and new or expanded City parks pursuant to LUC 20.25H.055; and that native vegetation, existing topography, and other natural features will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat;
  - b. The right of the City of Bellevue to enter the property to investigate the condition of the NGPA upon reasonable notice;
  - c. The right of the City of Bellevue to enforce the terms of the restriction; and
  - d. A management plan for the NGPA designating future management responsibility.
3. Tree Protection Covenant and Maintenance Assurance. The Director may, pursuant to LUC 20.20.900.F, also require recording of a Tree Protection Covenant, a maintenance assurance device, or both as part of a development application.

#### **20.25H.035 Critical area buffers and structure setbacks.**

##### **A. Critical Area Buffers.**

Critical area buffer means a designated area contiguous to a regulated critical area that is necessary to support the continued function and stability of the critical area. For wetlands, streams, frequently flooded areas, and fish and wildlife conservation areas, buffers protect the critical area from degradation caused by human activity. For geologic hazard areas, buffers are intended to reduce risk to public safety and property by providing separation from potential geologic hazards.

The following critical area buffers are established for each critical area set forth below. For information about modifying required critical area buffers and structure setbacks, see the referenced sections noted in the table.

Critical Area Category or Type	Critical Area Buffer Width	Modification of Buffer
<b>Streams</b>		
Type S water	100 ft	LUC <a href="#">20.25H.075</a> LUC <a href="#">20.25H.230</a>
Type F water	150 ft	LUC <a href="#">20.25H.075</a> LUC <a href="#">20.25H.230</a>
Type Np water	75 ft	LUC <a href="#">20.25H.075</a> LUC <a href="#">20.25H.230</a>
Type Ns water	50 ft	LUC <a href="#">20.25H.075</a> LUC <a href="#">20.25H.230</a>
Closed segment	See LUC 20.25H.075.D.2	LUC <a href="#">20.25H.075</a> LUC <a href="#">20.25H.230</a>
<b>Wetlands</b>		
Category I		LUC <a href="#">20.25H.095</a> LUC <a href="#">20.25H.230</a>
Natural heritage wetland and bogs – habitat score 8 – 9	225 ft	

Critical Area Category or Type	Critical Area Buffer Width	Modification of Buffer
Natural heritage wetland and bogs – all others	190 ft	
Forested wetland	Based on score for habitat	
Habitat score of 8 – 9	225 ft	
Habitat score of 6 – 7	110 ft	
Water quality score of 3 – 5	75 ft	
Category II		LUC <a href="#">20.25H.095</a>
Habitat score of 8 – 9	225 ft	LUC <a href="#">20.25H.230</a>
Habitat score of 6 – 7	110 ft	

Critical Area Category or Type	Critical Area Buffer Width	Modification of Buffer
Water quality score of 3 – 5	75 ft	
Category III		LUC <a href="#">20.25H.095</a>
Habitat score of 8 – 9	225 ft	LUC <a href="#">20.25H.230</a>
Habitat score of 6 – 7	110 ft	
Habitat score of 3 – 5	60 ft	
Category IV over 1,000 square feet		LUC <a href="#">20.25H.095</a>
All	40 ft	LUC <a href="#">20.25H.230</a>
<b>Geologic Hazard Areas</b>		
Landslide hazards	50 ft	LUC <a href="#">20.25H.120</a> LUC <a href="#">20.25H.230</a>

Critical Area Category or Type	Critical Area Buffer Width	Modification of Buffer
Steep slopes	50 ft	LUC <a href="#">20.25H.120</a> LUC <a href="#">20.25H.230</a>
Seismic hazards	None	N/A
Coal mine hazard areas	See LUC <a href="#">20.25H.130</a>	LUC <a href="#">20.25H.120</a> LUC <a href="#">20.25H.230</a>
<b>Habitat Associated with Species of Local Importance</b>		
Habitat associated with species of local importance	Only if required for known species on site	N/A
Naturally occurring ponds with no other critical area designation	50 ft	LUC <a href="#">20.25H.230</a>
<b>Frequently Flooded Areas</b>		

Critical Area Category or Type	Critical Area Buffer Width	Modification of Buffer
Frequently flooded areas	None	N/A

**B. Critical Area Structure Setbacks.**

The purpose of the critical area structure setback is to protect critical areas and their buffers from the impacts of construction, shading, and other indirect effects associated with adjacent development.

Except as provided below, all critical areas shall have a 15-foot critical area structure setback from the edge of the critical area buffer. LUC 20.25H.055.D governs what activities and uses are allowed in a critical area structure setback.

1. Geologically Hazardous Areas shall not have a critical area structure setback. Instead, such areas shall only have an associated buffer as regulated by Article VII.
2. Critical Aquifer Recharge Areas shall not have a critical area structure setback.
3. Piped Streams shall have the setback specified in LUC 20.25H.075.D.2.

**20.25H.040 Standards for modifying non-critical area setbacks.**

**A. When Applicable.**

Certain provisions of this Part allow limited impacts within a critical area and/or its buffer, including buffer modifications such as averaging or reduction, where specifically permitted by code. This section applies when an applicant proposes any buffer modification or encroachment into a critical area.

Prior to modifying a critical area buffer or disturbing a critical area, the applicant must demonstrate that all applicable development standards, except for those contained in Part 20.25H LUC, have been modified to the maximum extent practicable to avoid or minimize intrusion, including but not limited to, applicable structure setbacks, dimensional standards, and site layout requirements.

**B. Allowed Modifications to General Dimensional Chart.**

For development in residential land use districts subject to the required dimensions of LUC 20.20.010, non-critical area setbacks may be reduced to no less than the minimums set forth in this subsection; provided, that the

modification shall be the minimum necessary to allow avoidance of the critical area and critical area buffer. All other provisions of LUC 20.20.010 shall apply, including the applicable footnotes from the general dimensional chart.

Land Use District	LL-1	LL-2	SR-1	SR-2 SR-3 SR-4 LDR-1	LDR-2 LDR-3 MDR-1	MDR-2
Front Yard Minimum Setback of Structures (feet)	25	20	10	10	10	10
Rear Yard Minimum Setback of Structures (feet)	20	20	20	15	20	20
Side Yard Minimum Setback of Structures (feet)	5	5	5	5	5	5
2 Side Yards Minimum Setback of Structures (feet)	15	10	10	10	10	10

### III. USES, ACTIVITIES, AND DEVELOPMENT IN THE CRITICAL AREAS OVERLAY DISTRICT

## **20.25H.050 Uses, activities, and development in the Critical Areas Overlay District.**

### **A. Uses.**

1. General. If a use would be allowed in the underlying land use district by operation of this Title, then such use may be undertaken in the Critical Areas Overlay District so long as all development associated with the use complies with the provisions of this Part 20.25H LUC.
2. Shorelines. Where the Critical Areas Overlay District and Shoreline Overlay District apply to the same site, the uses established by LUC 20.10.440 for the underlying land use district may be undertaken. Additional uses in the Shoreline Overlay District are set forth in LUC 20.25E.020 and 20.25E.030. The applicable permitting process to establish the allowed uses within the Shoreline Overlay District is set forth in LUC 20.25E.100 through 20.25E.190. All development associated with the use shall comply with the provisions of this part and Part 20.25E LUC.

### **B. Development.**

1. Seismic Hazard Areas, Coal Mine Hazard Areas, Erosion Hazard Areas, and Habitat Associated with Species of Local Importance. The seismic hazard areas, coal mine hazard areas, erosion hazard areas, and habitat associated with species of local importance designated as critical areas by this part do not include absolute restrictions on development or activity. Instead, uses allowed under subsection A of this section may be undertaken in such critical areas, so long as the performance standards of LUC 20.25H.125 (Landslide hazards, steep slopes, and seismic hazards), LUC 20.25H.130 (coal mine hazard areas), or LUC 20.25H.160 (habitat associated with species of local importance), as applicable, are satisfied. Erosion Hazard Areas are subject to the erosion control standards in LUC 20.25H.135.
2. Other Critical Areas. Except as set forth in subsection B.1 of this section, all development, use, land alteration, or other activity within the Critical Areas Overlay District shall be located outside of the critical area and the critical area buffer, unless allowed pursuant to one or more of the following:
  - a. Activities and development allowed within critical area or critical area buffer, see LUC 20.25H.055;
  - b. Critical area buffer modifications for the following critical areas:
    - i. Streams, see LUC 20.25H.075;
    - ii. Wetlands, see LUC 20.25H.095;
    - iii. Geologic hazards, see LUC 20.25H.120 and LUC 20.25H.125.
  - c. Development in frequently flooded areas, see LUC 20.25H.180;
  - d. Reasonable use exceptions, see LUC 20.25H.190;



- e. Variances, see Parts 20.30G and 20.30H LUC; or
  - f. Shoreline-specific uses and development, where allowed within the Shoreline Overlay District, see Part 20.25E LUC.
3. Proposals that involve modification or impacts to critical areas and their buffers that require mitigation require a Critical Areas Land Use Permit per Part 20.30P LUC. Activities and development allowed per LUC 20.25H.055 may qualify for an exemption or may be reviewed with the underlying permit application(s) if it can be demonstrated by a qualified professional that impacts can either be avoided or minimized according to the mitigation sequencing in LUC 20.25H.215.

**20.25H.055 Activities and development allowed within critical areas – Performance standards.**

The activities and development described in subsection B of this section may be undertaken in a critical area or critical area buffer if all of the requirements of the referenced sections are met. Any proposal to modify a critical area or its buffer must demonstrate compliance with mitigation sequencing under LUC 20.25H.215. A Critical Areas Land Use Permit shall be required unless otherwise noted. This section does not apply to Critical Aquifer Recharge Areas (CARAs). Activities and development allowed within CARAs shall be governed by Article VI of this Part 20.25H LUC.

**A. Hierarchy of Alteration.**

Where an activity or development is proposed on a site with more than one type of critical area, preference shall be given to disturbing those critical areas with the least sensitivity to human disturbance, based on a consideration of both existing functions and values, and future functions and values if left undisturbed.

**B. Activities and Development Allowed within Critical Areas.**

The following chart lists activities and development that may be allowed in a critical area or critical area buffer. The sections noted in the chart for each allowed activity or development and type of critical area refer to the applicable performance standards that must be met.

Allowed Activity or Development	Type of Critical Area			
	Streams	Wetlands	Geologic Hazard Areas <sup>7</sup>	Frequently Flooded Areas
Repair and maintenance	<a href="#">20.25H.055.C.1</a>	<a href="#">20.25H.055.C.1</a>	<a href="#">20.25H.055.C.1</a>	<a href="#">20.25H.055.C.1</a>

Allowed Activity or Development	Type of Critical Area			
	Streams	Wetlands	Geologic Hazard Areas <sup>7</sup>	Frequently Flooded Areas
Use of parks and parks facilities, including trails <sup>1, 2</sup>	<a href="#">20.25H.080.A</a>	<a href="#">20.25H.100</a>	<a href="#">20.25H.125</a>	<a href="#">20.25H.180.B</a> <a href="#">20.25H.180.C.2</a>
Repair and maintenance of utility facilities, utility systems, stormwater facilities and essential public facilities <sup>1, 2</sup>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.180.B</a>
Repair and maintenance of public rights-of-way, private roads, access easements, surface parking areas, and driveways <sup>1, 2</sup>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.180.B</a>

Allowed Activity or Development	Type of Critical Area			
	Streams	Wetlands	Geologic Hazard Areas <sup>7</sup>	Frequently Flooded Areas
Repair and maintenance of bridges and culverts <sup>1, 2</sup>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.180.B</a>
Temporary Disturbance and Construction staging <sup>1, 2, 11</sup>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.180.B</a>
Existing agricultural activities <sup>2</sup>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.055.C.3.a</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.055.C.3.a</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.055.C.3.a</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.1</a> <a href="#">20.25H.055.C.3.a</a> <a href="#">20.25H.180.B</a>
Emergency actions	<a href="#">20.25H.055.C.3.b</a>	<a href="#">20.25H.055.C.3.b</a>	<a href="#">20.25H.055.C.3.b</a>	<a href="#">20.25H.055.C.3.b</a>
New or expanded utility facilities, utility systems, stormwater facilities <sup>3</sup>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.080.A</a> <a href="#">20.25H.080.B</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.180.B</a>

Allowed Activity or Development	Type of Critical Area			
	Streams	Wetlands	Geologic Hazard Areas <sup>7</sup>	Frequently Flooded Areas
New or expanded essential public facilities <sup>12</sup>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.080.A</a> <a href="#">20.25H.080.B</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.180.B</a> <a href="#">20.25H.180.C.3</a>
Public flood protection measures <sup>4</sup>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.c</a> <a href="#">20.25H.080.A</a> <a href="#">20.25H.080.B</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.c</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.c</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.c</a> <a href="#">20.25H.180.B</a> <a href="#">20.25H.180.C.5</a>
Instream structures <sup>5</sup>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.d</a> <a href="#">20.25H.080.A</a> <a href="#">20.25H.080.B</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.d</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.d</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.d</a> <a href="#">20.25H.180.B</a>
New or expanded public rights-of-way, private roads, access easements	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.080.A</a> <a href="#">20.25H.080.B</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.180.B</a> <a href="#">20.25H.180.C.4</a>

Allowed Activity or Development	Type of Critical Area			
	Streams	Wetlands	Geologic Hazard Areas <sup>7</sup>	Frequently Flooded Areas
and driveways				
New or expanded bridges and culverts	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.e</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.e</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.e</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.e</a> <a href="#">20.25H.180.B</a>
New or expanded private or public nonmotorized trails	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.f</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.f</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.f</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.2</a> <a href="#">20.25H.055.C.3.f</a> <a href="#">20.25H.180.B</a>
New or expanded City and public parks	<a href="#">20.25H.055.C.3.g</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.3.g</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.3.g</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.3.g</a> <a href="#">20.25H.180.B</a> <a href="#">20.25H.180.C.2</a>
Existing landscape maintenance <sup>2</sup>	<a href="#">20.25H.055.C.3.h</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.3.h</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.3.h</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.3.h</a> <sup>1</sup> <a href="#">20.25H.180.B</a>
Vegetation management <sup>6</sup>	<a href="#">20.25H.055.C.3.i</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.3.i</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.3.i</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.3.i</a> <a href="#">20.25H.180.B</a>

Allowed Activity or Development	Type of Critical Area			
	Streams	Wetlands	Geologic Hazard Areas <sup>7</sup>	Frequently Flooded Areas
Habitat improvement projects <sup>2</sup>	<a href="#">20.25H.055.C.3.j</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.3.j</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.3.j</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.3.j</a> <a href="#">20.25H.180.B</a>
Forest practices	<a href="#">20.25H.055.C.3.k</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.3.k</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.3.k</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.3.k</a> <a href="#">20.25H.180.B</a>
Aquaculture	<a href="#">20.25H.055.C.3.l</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.3.l</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.3.l</a>	<a href="#">20.25H.055.C.3.l</a> <a href="#">20.25H.180.B</a>
Stabilization measures	<a href="#">20.25H.055.C.3.m</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.055.C.3.m</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.055.C.3.m</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.055.C.3.m</a> <sup>1</sup> <sup>3, 15</sup> <a href="#">20.25H.180.B</a>
Expansion or replacement of existing primary structures	<a href="#">20.25H.065</a> <a href="#">20.25H.080.A</a>	<a href="#">20.25H.065</a> <a href="#">20.25H.100</a>	<a href="#">20.25H.065</a> <a href="#">20.25H.125</a>	<a href="#">20.25H.065</a> <a href="#">20.25H.180.B</a> <sup>9</sup> <a href="#">20.25H.180.C.1</a>
Reasonable use exception <sup>8</sup>	<a href="#">20.25H.080.A</a>	<a href="#">20.25H.100</a>	<a href="#">20.25H.125</a>	<a href="#">20.25H.180.B</a> <a href="#">20.25H.180.C.1</a>
Recreational vehicle storage <sup>10</sup>				<a href="#">20.25H.180.B</a> <a href="#">20.25H.180.C.6</a>

Allowed Activity or Development	Type of Critical Area			
	Streams	Wetlands	Geologic Hazard Areas <sup>7</sup>	Frequently Flooded Areas
Moorage and docks associated with a residential use				<a href="#">20.25E.065</a> <sup>14, 15</sup>

**Notes:**

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

**(2)** These uses do not require a Critical Areas Land Use Permit. The requirements of this part shall be applied through the review process applicable to the underlying use or activity, except for uses located within the floodplain.

**(3)** Conflicts between the requirements of Part 20.25H LUC and the requirements of the Utilities Codes, Title 24 BCC, shall be governed by BCC 24.02.041, BCC 24.04.041, or BCC 24.06.025, as applicable to the conflict at issue.

**(4)** Examples of public flood protection measures include, but are not limited to: flood control projects, flood damage reduction facilities such as levees, revetments, and pumping stations, streambank stabilization structures and surface water conveyance facilities, bridge piers and abutments.

**(5)** Examples of instream structures include, but are not limited to: sediment ponds, instream ponds, dams, and weirs.

**(6)** Permit requirements may vary. See subsection C.3.i of this section.

**(7)** For information on requirements applicable to geologic hazard areas see LUC 20.25H.120.

**(8)** Except in frequently flooded areas, development authorized pursuant to a reasonable use exception, LUC 20.25H.190, shall incorporate the required

performance standards to the maximum extent feasible. Development in frequently flooded areas shall incorporate the required performance standards, unless a Variance is granted pursuant to Part 20.30G.

**(9)** In frequently flooded areas located within shoreline jurisdiction, expansion of existing single-family homes and new single-family homes (including full replacement (i.e., teardowns) are allowed in the area of special flood hazard when developed in accordance with the Residential shoreline regulations, LUC 20.25E.065 (including the shoreline vegetation conservation standards and requirements, LUC 20.25E.065.F), and also in accordance with the performance standards required by LUC 20.25H.180.C and 20.25H.180.C.1. A Critical Area Land Use Permit will be required.

**(10)** Such storage is not allowed in critical areas or critical area buffers except within the frequently flooded areas in compliance with applicable performance standards.

**(11)** Authorized only in areas of the critical area buffer within areas of existing permanent disturbance, including, for example: paved or gravel surface parking areas, access drives, and other similar disturbed areas.

**(12)** Refer to Part 20.25M LUC, Light Rail Overlay District, for specific requirements applicable to EPF defined as a regional light rail transit facility or regional light rail transit system pursuant to LUC 20.25M.020. A Conditional Use Permit is not required when the City Council has approved a regional light rail transit facility or regional light rail transit system by resolution or ordinance, or by a development agreement authorized by Chapter 36.70B RCW and consistent with LUC 20.25M.030.B.1.

**(13)** Authorized only in frequently flooded areas located within shoreline jurisdiction and only when developed in accordance with LUC 20.25E.080.F.

**(14)** Authorized only in frequently flooded areas located within shoreline jurisdiction and only when developed in the aquatic environment in accordance with LUC 20.25E.065.

**(15)** In frequently flooded areas located within shoreline jurisdiction performance standards required by this section will be applied through the applicable permit required by Part 20.25E LUC and do not require a Critical Areas Land Use Permit.

**(16)** Authorized only in frequently flooded areas located within shoreline jurisdiction and only when developed in accordance with this part.

**(17)** In frequently flooded areas located within shoreline jurisdiction, existing landscape maintenance and all modifications to landscaping and landscape features shall comply with the shoreline vegetation conservation standards and requirements, LUC 20.25E.065.F, rather than this section.



**C. Performance Standards.**

The following performance standards apply as noted in the table in subsection B of this section. The critical areas report may not be used to modify the performance standards set forth in this subsection C:

1. Repair and Maintenance, Temporary Disturbance, or Construction Staging.
  - a. Work shall be consistent with all applicable City of Bellevue codes and standards;
  - b. Removal of landmark trees or significant trees is prohibited; and
  - c. Areas of temporary disturbance associated with the work shall be restored to pre-project conditions, pursuant to a restoration plan meeting the requirements of LUC 20.25H.210.
2. New and Expanded Uses or Development. As used in this section, “facilities and systems” is a general term that encompasses all structures and improvements associated with the allowed uses and development described in the table in subsection B of this section:
  - a. New or expanded facilities and systems are allowed within the critical area or critical area buffer only where no technically feasible alternative with less impact on the critical area or critical area buffer exists. A determination of technically feasible alternatives will consider:
    - i. The location of existing infrastructure;
    - ii. The function or objective of the proposed new or expanded facility or system;
    - iii. Demonstration that no alternative location or configuration outside of the critical area or critical area buffer achieves the stated function or objective, including construction of new or expanded facilities or systems outside of the critical area;
    - iv. Whether the cost of avoiding disturbance is substantially disproportionate as compared to the environmental impact of proposed disturbance; and
    - v. The ability of both permanent and temporary disturbance to be mitigated
  - b. If the applicant demonstrates that no technically feasible alternative with less impact on the critical area or critical area buffer exists, then the applicant shall comply with the following:

- i. Location and design shall result in the least impacts on the critical area or critical area buffer;
  - ii. Disturbance of the critical area and critical area buffer, including disturbance of vegetation and soils, shall be minimized;
  - iii. Disturbance shall not occur in habitat used for salmonid rearing or spawning or by any species of local importance unless no other technically feasible location exists;
  - iv. Any crossing over of a wetland or stream shall be designed to minimize critical area and critical area buffer coverage and critical area and critical area buffer disturbance, for example by use of bridge, boring, or open cut and perpendicular crossings, and shall be the minimum width necessary to accommodate the intended function or objective; provided, that the Director may require that the facility be designed to accommodate additional facilities where the likelihood of additional facilities exists, and one consolidated corridor would result in fewer impacts to the critical area or critical area buffer than multiple intrusions into the critical area or critical area buffer;
  - v. All work shall be consistent with applicable City of Bellevue codes and standards;
  - vi. The facility or system shall not have a significant adverse impact on overall aquatic area flow peaks, duration or volume or flood storage capacity, or hydroperiod;
  - vii. Associated parking and other support functions, including, for example, mechanical equipment and maintenance sheds, must be located outside critical area or critical area buffer except where no feasible alternative exists; and
  - viii. Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan meeting the requirements of LUC 20.25H.210.
3. Performance Standards for Specific Uses or Development. In the event of a conflict between the generally applicable performance standards and specific standards, those more protective of critical area functions and values shall prevail.
- a. Legally Established Agricultural Uses.
    - i. Erosion control measures, such as crop rotation, mulching, strip cropping and contour cultivation, must be used in conformance with guidelines and standards established by the Natural Resources Conservation Service, U.S. Department of Agriculture;

- ii. Wetland areas must be protected from significant impacts of agricultural chemicals and pesticides as required by the Storm and Surface Water Utility Code, BCC 24.06.195, now or as hereafter amended, and must meet the water quality standards of BCC 24.06.060.K, now or as hereafter amended;
  - iii. All development shall be consistent with the City of Bellevue's "Environmental Best Management Practices Manual" now or as hereafter amended.
- b. Emergency Actions. Emergency actions are those that must be undertaken immediately or within a time too short to allow full compliance with this part, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation. The Director, or the designee thereof, shall designate when such an action constitutes an emergency action.

Emergency actions within the critical area or critical area buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or critical area buffer. The person or agency undertaking such action shall notify the Director of the existence of the emergency and emergency actions within one working day following commencement of the emergency activity. Within 10 working days following completion of the emergency activity, the person or agency undertaking such action shall provide a written description of the work undertaken, site plan, description of pre-emergency site conditions and such other information required by the Director to make the determination required under this subsection.

Within 30 days, the Director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then the applicant shall be subject to penalties and enforcement pursuant to Chapter 1.18 BCC. If the Director determines that the action taken was within the scope of an allowed emergency action, the applicant shall submit a restoration and/or mitigation plan pursuant to LUC 20.25H.210 based on the impacts of the emergency action to the critical area or critical area buffer within 60 days following the Director's determination. Any critical area restoration required must be initiated within one year of the date of the emergency and completed in a timely manner. This is to help prevent temporal loss of functions and values.

- c. Public Flood Protection Measures. New public flood protection measures and expansion of existing ones may be permitted only in accordance with a design prepared by a qualified professional.

- d. Instream Structures. Instream structures may be permitted only in accordance with a design prepared by a qualified professional and where the applicant demonstrates measurable benefits, such as decreased erosion, peak flow reduction, improved water quality, stream stabilization or improved habitat from the proposal. The applicant shall obtain any required state or federal permits prior to undertaking development.
- e. New or Expanded Bridges and Culverts. New culverts shall be designed in accordance with the Washington State Department of Fish and Wildlife "Water Crossing Design Guidelines" now or as hereafter amended. Culvert expansions shall be considered new culverts and be required to be designed in accordance with "Water Crossing Design Guidelines" now or as hereafter amended when the expansion is associated with a project increasing vehicular capacity and (i) there are fish present downstream; (ii) there is potential fish habitat upstream; and (iii) the benefits of so designing the culvert are substantial when compared to expanding the culvert based on its then-existing design.
- f. Private Nonmotorized Trails. New nonmotorized trails within the critical area or critical area buffer are limited to those accessing single-family residential moorage or serving nonresidential uses, multifamily residential uses and more than one single-family lot. Private nonmotorized trails shall comply with the performance standards for trails in subsection C.3.g of this section. Nothing in this section prohibits the creation of a soft surface nonmotorized trail in a critical area buffer on a single-family lot for use of the residents of that lot. Such trail shall not exceed four feet in width, and shall not involve the removal of any significant trees or bank-stabilizing roots. In stream and wetland buffers, trails shall not be generally parallel to the stream or wetland edge, shall be located in the outer 25 percent of the buffer, and shall be located no closer than 25 feet from the upland edge of the wetland or stream. Any clearing of brush or vegetation shall be the minimum necessary, and shall be with hand tools only.
- g. New and Expanded City and Public Parks.
  - i. Trails. New nonmotorized trails within the critical area or critical area buffer must meet following standards:
    - (A) Trail location and design shall result in the least impacts on the critical area or critical area buffer;
    - (B) Trails shall be designed to complement and enhance the environmental, educational, and social functions and values of the critical area with trail design and construction focused on managing and controlling public access and limiting uncontrolled access;
    - (C) Trails shall be designed to avoid disturbance of significant trees and to limit disturbance of native understory vegetation;

- (D) Trails shall be designed to avoid disturbance of habitat used for salmonid rearing or spawning or by any species of local importance;
- (E) The trail shall be the minimum width necessary to accommodate the intended function or objective;
- (F) All work shall be consistent with the City of Bellevue's "Environmental Best Management Practices" and all applicable City of Bellevue codes and standards, now or as hereafter amended;
- (G) The facility shall not significantly change or diminish overall aquatic area flow peaks, duration or volume or flood storage capacity, or hydroperiod;
- (H) Where feasible and consistent with any accessibility requirements, any trail shall be constructed of pervious materials;
- (I) Crossings over and penetrations into wetlands and streams shall be generally perpendicular to the critical area, and shall be accomplished by bridging or other technique designed to minimize critical area disturbance considering the entire trail segment and function; and
- (J) Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan meeting the requirements of LUC 20.25H.210.

ii. Public Use Structures.

- (A) New or expanded permanent public use structures, including interpretative centers, community centers, and other structures designed for public use and access are allowed in the critical area or critical area buffer only if no technically feasible alternative with less impact on the critical area or critical area buffer exists. A determination of technically feasible alternatives will consider:
  - (1) The location of existing infrastructure;
  - (2) The function or objective of the proposed new or expanded structure;
  - (3) Demonstration that no alternative achieves the stated function or objective;
  - (4) Whether the cost of avoiding disturbance is substantially disproportionate as compared to the environmental impact of proposed disturbance; and

- (5) The ability of both permanent and temporary disturbance to be mitigated.
- (B) If the applicant demonstrates that no technically feasible alternative with less impact on the critical area or critical area buffer exists, then the applicant shall comply with the generally applicable performance standards of subsection C.2.b of this section.
- iii. Other Parks Uses. Other parks uses proposed within the critical area or critical area buffer, including public access drives, public loading areas, and public boat launches and ramps, shall meet the generally applicable performance standards of subsection C.2.b of this section; provided, that active use playfields shall not be allowed in critical area or critical area buffers; and provided, that parking supporting parks uses shall be allowed in a critical area buffer only if no technically feasible alternative, as demonstrated through application of the criteria of subsection C.2.a of this section, exists.
- h. Existing Landscape Maintenance. Routine maintenance of existing legally established landscaping and landscape features developed prior to August 1, 2006, in the critical area or critical area buffer may be continued in accordance with this section. For purposes of this section, "routine maintenance" includes mowing, pruning, weeding, planting annuals, perennials, fruits and vegetables, and other activities associated with maintaining a legally established ornamental or garden landscape and landscape features. Also, for purposes of this subsection, "landscape features" refers to fences, trellises, rockeries and retaining walls, pathways, arbors, patios, play areas and other similar improvements. To be considered routine maintenance, activities shall have been consistently carried out so that the ornamental species predominate over native or invasive species. Maintenance shall be performed with hand tools or light equipment only, and no significant trees may be removed, except in accordance with vegetation management under subsection C.3.i of this section. Use of fertilizers, insecticides, and pesticides is not recommended unless performed in accordance with the City of Bellevue's "Environmental Best Management Practices" now or as hereafter amended. Routine maintenance performed in accordance with this section does not constitute an alteration to a nonconforming site for the purposes of LUC 20.25H.065.
- i. Vegetation Management. Modification of vegetation in a critical area or critical area buffer that is not considered routine maintenance under subsection C.3.h of this section may be allowed if it meets the requirements of this section. Removal of trees in critical areas and critical area buffers is prohibited unless the tree qualifies as a hazardous tree, as defined in LUC 20.20.900, or as part of an approved vegetation management plan. Except where otherwise noted, a Critical Areas Land Use Permit is required. The following activities may also require a Clearing

and Grading Permit, Chapter 23.76 BCC and/or SEPA review and must comply with all other Land Use Code provisions related to tree preservation and landscaping, including but not limited to LUC 20.20.520 and 20.20.900.

- i. Invasive or Noxious Species. The removal of the invasive or noxious vegetation with hand labor and hand-operated equipment, or other practical and commonly accepted tools, from a critical area or buffer is allowed without requiring a Critical Areas Land Use Permit or a Vegetation Management Plan. Invasive or noxious species means the same as is defined in LUC 20.20.900, including, but not limited to, the following:
  - (A) Invasive and noxious weeds;
  - (B) English ivy (*Hedera helix*);
  - (C) Himalayan blackberry (*Rubus ulmifolius*, *Rubus bifrons*); and
  - (D) Evergreen blackberry (*Rubus laciniatus*).
- ii. Hazardous Trees. The removal of trees from the critical area or critical area buffer that are hazardous as defined by LUC 20.20.900.C.3, is allowed without requiring a Critical Areas Land Use Permit or a Vegetation Management Plan; provided, that:
  - (A) The applicant submits a tree risk assessment form provided by a qualified tree professional who also has the International Society of Arboriculture (ISA) Tree Risk Assessment Qualification (TRAQ) and provides a replanting schedule for the replacement trees;
  - (B) The hazardous tree may only be removed if it is demonstrated that the hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices such as pruning or crown thinning. Where pruning or crown thinning is not sufficient to address the hazard, trees should be subject to partial removal. Where partial removal is not sufficient to address the hazard, trees should be converted to wildlife snags if feasible. If creation of a snag is not feasible, then the felled tree shall be left in place ;
  - (C) All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for creating a fire hazard, creating an in-stream hazard, or for disease or pest transmittal to other healthy vegetation. Debris, or a portion of debris, may be chipped and left on-site if larger debris has the potential to create a fire hazard, an in-stream hazard, or for disease or pest transmittal to other healthy vegetation;

- (D) The landowner shall replace any trees created as a snag, felled, or removed with three native trees pursuant to a restoration plan meeting the requirements of LUC 20.25H.210. Replacement coniferous trees must be a minimum of 6 feet tall and replacement deciduous trees must be at least 2 inches caliper;
  - (E) If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods for removal that will minimize impacts; and
  - (F) Hazardous trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner on whose property the tree is located prior to receiving the permits required under this part; provided, that the landowner makes reasonable efforts to notify the City, and within 14 days following such action, the landowner shall submit plans and documentation, including a restoration plan, that demonstrates compliance with the provisions of this part.
- iii. Forest Health. Measures to control a fire or halt the spread of disease or damaging insects; provided, that the removed vegetation shall be replaced pursuant to a restoration plan meeting the requirements of LUC 20.25H.210.
  - iv. Fire Safety. Where required pursuant to the International Fire Code, Section 304.1.2, as adopted and amended by the City of Bellevue, vegetation may be removed from the critical area or critical area buffer; provided, that the removed vegetation shall be replaced pursuant to a restoration plan meeting the requirements of LUC 20.25H.210.
  - v. Vegetation Management Plan – Maintenance for Utility, Transportation, Parks and Public Facility Projects. Vegetation may be periodically removed from the critical area or critical area buffer as part of an ongoing routine maintenance plan for utility, transportation, park and other public facility projects allowed pursuant to subsection B of this section. Such removal shall be pursuant to a Vegetation Management Plan meeting the requirements of this subsection.
    - (A) The Vegetation Management Plan shall be prepared by a qualified professional.
    - (B) The Vegetation Management Plan shall include:
      - (1) A description of existing site conditions, including existing critical area functions and values;
      - (2) A site history;



- (3) A discussion of the plan objectives;
- (4) A description of all critical area and buffer features;
- (5) Identification of soils, existing vegetation, and habitat associated with species of local importance present on the site;
- (6) Allowed work windows;
- (7) A clear delineation of the area within which clearing and other vegetation management practices are allowed under the plan; and
- (8) Short- and long-term management prescriptions, including restoration and revegetation requirements. Cleared areas shall be restored and revegetated with native species to the extent such vegetation does not interfere with the function of the allowed structure, trail, facility or system.

vi. Vegetation Management Plan – Other Uses. The Director may approve proposals for vegetation replacement in a critical area buffer, or within a geologic hazard critical area, pursuant to a Vegetation Management Plan. The Vegetation Management Plan may also include a description of proposed vegetation pruning, including pruning techniques and timing and extent of proposed pruning; provided, that proposals to prune vegetation within geologic hazard areas and geologic hazard area buffers may be undertaken without a Critical Areas Land Use Permit or a Vegetation Management Plan in accordance with subsection C.3.i.vii of this section. The Vegetation Management Plan shall satisfy the requirements of subsection C.3.i.v(B) of this section, except that the following replaces subsection C.3.i.v(B)(8):

- (8) Short- and long-term management prescriptions, including characterization of trees and vegetation to be removed, and restoration and revegetation plans with native species, including native species with a lower growth habit. Such restoration and revegetation plans shall demonstrate that the proposed Vegetation Management Plan will not significantly diminish the functions and values of the critical area or alter the forest and habitat characteristics of the site over time.

Trees and vegetation may not be removed pursuant to this subsection if removal would result in a significant impact to habitat associated with species of local importance, unless the impacted function can be replaced elsewhere within the management area subject to the plan. In no event may a tree or vegetation which is an active nest site for a species of local importance be removed pursuant to this subsection.

In determining whether the vegetation management plan should be approved, the Director shall take into consideration any applicable neighborhood restrictive covenants that address view preservation or vegetation management if so requested in writing. The existence of and provisions of neighborhood restrictive covenants shall not be entitled to any more or less weight than other reports and materials in the record.

- vii. **Select Vegetation Pruning.** Pruning of existing trees and vegetation within a geologic hazard critical area or geologic hazard critical area buffer, with hand labor and hand-operated equipment in accordance with this subsection is allowed without requiring a Critical Areas Land Use Permit or a Vegetation Management Plan, so long as the area is not included within a Native Growth Protection Area (NGPA). A Clearing and Grading Permit, Chapter 23.76 BCC, and SEPA review may still be required. The pruning allowed by this subsection shall be performed in accordance with guidelines established by the Director for each of the following pruning techniques: canopy reduction; canopy cleaning; canopy thinning; canopy raising or lifting; structural pruning; and canopy restoration. Where vegetation has been consistently managed by topping or other pruning methods, nothing in this part shall preclude the continuation of such practices. Pruning shall be performed in a manner that ensures continued survival of the vegetation.

In no event may a tree or vegetation which is an active nest site for a species of local importance be pruned pursuant to this subsection.

- j. **Habitat Improvement and Restoration Projects.** This provision applies to voluntary restoration only. Disturbance, clearing and grading are allowed in the critical area or critical area buffer for habitat improvement projects demonstrating an improvement to functions and values of a critical area or critical area buffer. Habitat improvement projects shall be:
  - i. Consistent with RCW 77.55.181, which provides streamlined permit review for fish habitat enhancement projects that meet the eligibility criteria of the Washington Department of Fish and Wildlife (WDFW) and qualify for exemption from local permits under the State Environmental Policy Act (SEPA) and Hydraulic Project Approval (HPA) processes;
  - ii. Sponsored or cosponsored by a public agency or federally recognized tribe and whose primary function is habitat restoration; or
  - iii. Approved by the Director pursuant to LUC 20.25H.230.
  - iv. Compliant with requirements for Frequently Flooded Areas in Title IX of LUC 20.25H and LUC 20.30P.

- k. Forest Practices. Forest practices may be allowed without requiring a Critical Areas Land Use Permit, where such practice is regulated and conducted in accordance with the provisions of Chapter 76.09 RCW, now or as hereafter amended, and forest practices regulations, WAC Title 222, now or as hereafter amended, and those that are exempt from the City's jurisdiction; provided, that forest practice conversions are not exempt. The applicant shall demonstrate that all required federal and state permits have been obtained prior to undertaking any work.
- l. Aquaculture.
  - i. Aquaculture development must be conducted in a way which does not adversely affect the aesthetic or environmental quality of the wetland and interrelated stream habitat; and
  - ii. Aquaculture must to the extent feasible use underwater structures for fish-rearing facilities.
- m. Stabilization Measures. Proposed stabilization measures within a critical area or critical area buffer to protect against streambank erosion or steep slopes or landslide hazards may be approved in accordance with this subsection. The performance standards of this part do not apply to shoreline stabilization measures in flood hazard critical areas when developed in accordance with LUC 20.25E.080.F.
  - i. When Allowed. New or enlarged stabilization measures shall be allowed only to protect existing primary structures and infrastructure, or in connection with uses and development allowed pursuant to subsection B of this section. Stabilization measures shall be allowed only where avoidance measures are not technically feasible.
  - ii. Type of Stabilization Measure Used. Where a stabilization measure is allowed, soft stabilization measures shall be used, unless the applicant demonstrates that soft stabilization measures are not technically feasible. An applicant asserting that soft stabilization measures are not technically feasible shall provide the information relating to each of the factors set forth in subsection C.3.m.iii.(D) of this section for a determination of technical feasibility by the Director. Only after a determination that soft stabilization measures are not technically feasible shall hard stabilization measures be permitted.
  - iii. Definitions.
    - (A) Hard Stabilization Measures. As used in this part, "hard stabilization measures" include: rock revetments, gabions, concrete groins, retaining walls, bulkheads and similar measures which present a vertical or nearly vertical interface with the water.

- (B) Soft Stabilization Measures. As used in this part, “soft stabilization measures” include: biotechnical measures, bank enhancement, anchor trees, gravel placement, stepped back rockeries, vegetative plantings and similar measures that use natural materials engineered to provide stabilization while mimicking or preserving the functions and values of the critical area.
- (C) Avoidance Measures. As used in this part, “avoidance measures” refer to techniques used to minimize or prevent erosion or slope collapse that do not involve modification of the bank or slope. “Avoidance measures” include vegetation enhancement, upland drainage control, and protective walls or embankments placed outside of the critical area and critical area buffer.
- (D) Technically Feasible. The determination of whether a technique or stabilization measure is “technically feasible” shall be made by the Director as part of the decision on the underlying permit after consideration of a report prepared by a qualified professional addressing the following factors:
- (1) Site conditions, including topography and the location of the primary structure in relation to the critical area;
  - (2) The location of existing infrastructure necessary to support the proposed measure or technique;
  - (3) The level of risk to the primary structure or infrastructure presented by erosion or slope failure and ability of the proposed measure to mitigate that risk;
  - (4) Whether the cost of avoiding disturbance of the critical area or critical area buffer is substantially disproportionate as compared to the environmental impact of proposed disturbance, including any continued impacts on functions and values over time; and
  - (5) The ability of both permanent and temporary disturbance to be mitigated.

**D. Activities and Uses Allowed in a Critical Area Setback.**

1. The minor building elements listed in subsection D.1.a of this section may be allowed within the critical area structure setback, subject to the limitations contained in subsection D.1.b of this section. Any development, alteration, or modification within the critical area structure setback that is not expressly permitted under this section shall require a Critical Areas Land Use Permit, Part 20.30P LUC.

a. Minor Building Elements:

- i. Patios, decks, and platforms
  - ii. Open-sided porches, balconies, and lanais
  - iii. Fireplace chimneys and bay windows (without adding floor area)
  - iv. Eaves, cornices, and gutters
  - v. Trellises, open beams, greenhouse windows
  - vi. Other similar architectural elements, as determined by the Director
  - vii. Allowed uses and activities per LUC 20.25H.055
- b. Height limitations.
- i. Minor building elements 30 inches or less in height, measured from average elevation of the finished grade for commercial sites or existing average grade for residential sites, may extend to within five (5) feet of the buffer edge, provided no part encroaches or impacts the critical area or buffer.
  - ii. Minor building elements exceeding 30 inches in height, measured from the average elevation of the finished grade for commercial sites or existing average grade for residential sites, may intrude up to twenty percent (20%) of the required critical area structure setback.
- c. Prohibited building elements. The following are not permitted within the critical area structure setback unless otherwise approved under LUC 20.25H.055 or .205:
- i. Enclosed habitable floor area
  - ii. Retaining walls and rockeries over 30 inches in height
  - iii. Mechanical equipment, such as heat pumps or generators

**20.25H.065 Nonconforming uses, structures, and sites – Critical Areas, Critical Area Buffers, and Critical Area Structure Setbacks.**

**A. Applicability.**

This section applies to uses, structures, and sites legally established, wholly or partially, within the critical area, critical area buffer, or critical area setback prior to [INSERT EFFECTIVE DATE OF ORDINANCE].

**B. Nonconforming Uses.**

1. A use legally established, wholly or partially, within a critical area, critical area buffer, or critical area structure setback prior to [INSERT EFFECTIVE DATE

OF ORDINANCE] but could not legally be established in the same location today shall be considered a nonconforming use.

2. Nonconforming uses shall be regulated by LUC 20.20.560, LUC 20.20.561, LUC 20.25A.040, LUC 20.25D.060, LUC 20.25E.040, or LUC 20.25Q.040, as would be applicable to the nonconforming use by normal operation of this title.

### **C. Nonconforming Structures.**

1. A structure legally constructed, wholly or partially, within a critical area, critical area buffer, or critical area structure setback prior to [INSERT EFFECTIVE DATE OF ORDINANCE] but could not legally be constructed in the same location today shall be considered a nonconforming structure.
2. Nonconforming structures may remain unless specifically limited by the terms of subsection C of this section.
3. Nonconforming structures may be altered, subject to the following requirements:
  - a. The alteration must conform to all applicable development regulations;
  - b. If the alteration triggers proportional compliance under LUC 20.20.560, LUC 20.20.561, LUC 20.25A.040, LUC 20.25D.060, LUC 20.25E.040, or LUC 20.25Q.040, then improvements must be made that satisfy the applicable proportional compliance requirements; and
  - c. If operation of LUC 20.20.560, LUC 20.20.561, LUC 20.25A.040, LUC 20.25D.060, LUC 20.25E.040, or LUC 20.25Q.040 requires that the structure be brought into full compliance with existing Land Use Code requirements, then the structure must be brought into full compliance with existing Land Use Code requirements.
4. A Critical Area Land Use Permit is not required for alterations to a nonconforming structure constructed, wholly or partially, within a critical area or critical area buffer in the following circumstances and when all of the following requirements are met:
  - a. The alteration may expand the footprint of the nonconforming structure, but only where the expansion occurs outside of a critical area or critical area buffer.
  - b. The alteration may increase the height of the nonconforming structure, but only where the increase in height does not result in any altered portion of the structure projecting over, or otherwise overhanging, a critical area or critical area buffer.

- c. The alteration may expand nonconforming structures below grade, but only where the increase in height does not result in any altered portion of the structure projecting into, or otherwise under a critical area or critical area buffer.
  - d. If the structure is located in a frequently flooded area, then the alteration must comply with all development regulations applicable to alterations or development in the frequently flooded areas, including, but not limited to, LUC 20.25H.180.
  - e. The Director must determine either:
    - i. That the proposed alteration will not result in significant adverse impacts to critical areas or critical area buffers; or
    - ii. That any significant adverse impacts to critical areas or critical area buffers resulting from the proposed alteration will be mitigated in accordance with LUC 20.25H.215 and in a manner that results in no net loss of critical area functions or values.
5. An alteration to a nonconforming structure may result in an expansion into a critical area structure setback, but only as may be allowed under LUC 20.25H.035.B.

#### **D. Nonconforming Sites.**

- 1. A site containing nonstructural alterations to the natural landscape, above or below ground, legally performed, wholly or partially within a critical area, critical area buffer, or critical area setback prior to [INSERT EFFECTIVE DATE OF ORDINANCE] but could not legally occur in the same location today shall be considered a nonconforming site.
- 2. Nonconforming sites may be altered, subject to the following requirements:
  - a. The alteration must conform to all applicable development regulations;
  - b. If the alteration triggers proportional compliance under LUC 20.20.560, LUC 20.20.561, LUC 20.25A.040, LUC 20.25D.060, LUC 20.25E.040, or LUC 20.25Q.040, then improvements must be made that satisfy the applicable proportional compliance requirements; and
  - c. If operation of LUC 20.20.560, LUC 20.20.561, LUC 20.25A.040, LUC 20.25D.060, LUC 20.25E.040, or LUC 20.25Q.040 requires that the site be brought into full compliance with existing Land Use Code requirements, then the site must be brought into full compliance with existing Land Use Code requirements.
- 3. Alterations to a nonconforming structure allowed under subsection C of this section do not constitute alterations to a nonconforming site under subsection

D of this section unless the alterations include permanent, nonstructural alterations to the landscape, above or below ground, of the nonconforming site.

#### **IV. STREAMS**

##### **20.25H.075 Designation of critical area and buffers.**

###### **A. Definition of Stream.**

An aquatic area where surface water produces a channel, not including a wholly artificial channel, unless the artificial channel is:

1. Used by salmonids; or
2. Used to convey a stream that occurred naturally before construction of the artificial channel.

###### **B. Designation of Streams.**

The following streams are classified according to the Washington Department of Natural Resources water typing system per WAC 222-16-030 and hereby designated as critical areas subject to the regulations of this part:

1. "Type S water" means all waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW including periodically inundated areas of their associated wetlands. As of May 21, 2018, the only known Type S waters are Lower Kelsey Creek and Mercer Slough.
2. "Type F water" means all segments of waters that are not type S waters, and that contain fish or fish habitat as described in WAC 222-16-031, including waters diverted for use by a federal, state, or tribal fish hatchery from the point of diversion for 1,500 feet or the entire tributary if the tributary is highly significant for protection of downstream water quality.
3. "Type Np water" means all segments of waters that are not type S or type F waters and that are physically connected to a type S or F waters by an above ground channel system, stream, or wetland.
4. "Type Ns water" means all segments of waters that are not type S, F, or Np waters. They are intermittent, are not used by fish, and do not have the potential to provide fish habitat. Type Ns streams must have a free and open surface water connection to a type S, F, or Np.

###### **C. Designation of Stream Critical Area Buffers.**

The following critical areas buffers are established:



1. Stream Critical Area Buffers:

a. General – Open Streams.

- i. All sites shall have the following critical area buffers, measured from the Ordinary High-Water Mark (OHWM) or the outer edge of the Channel Migration Zone (CMZ), where mapped, whichever is farther from the channel.

Stream Type	Standard Buffer (1)	Increased Buffer (2)
Type S	100 feet	Regulated under SMP (Part 20.25E LUC)
Type F	150 feet	200 feet
Type Np	75 feet	100 feet
Type Ns	50 feet	67 feet

**(1)** The standard buffer widths apply so long as either the vegetated buffer standards outlined in subsection C.1.a.ii of this section are met or the buffer is enhanced to comply with the vegetated buffer standards through an approved mitigation plan in accordance with subsection C.1.a.ii of this section.

**(2)** The increased buffer widths apply when neither the vegetated buffer standards outlined in subsection C.1.a.ii of this section are met nor the buffer is enhanced through an approved mitigation plan in accordance with subsection C.1.a.ii of this section.

- ii. Vegetated buffer standards. Standard stream buffer widths required by this section assume the stream buffer is densely vegetated with a native plant community appropriate for the ecoregion, consisting of an average of 80% native cover comprised of trees, shrubs, and groundcover plants. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer must either be enhanced through an approved mitigation plan or the increased buffer per the table above will be applied to ensure the buffer provides adequate functions.
- iii. Where an NGPA has been recorded, the critical area structure setbacks shall be measured either from the NGPA boundary or the edge of the buffer, whichever is greater.

- b. General – Closed Stream Segments. Closed stream segments are subject to the piped stream segment setbacks established in LUC 20.25H.075.D.2, rather than a buffer and standard critical area structure setback.
  - c. Buffers Modified Under Prior LUC 20.25H.070.A.2.d. Where the critical area buffer on a site was modified through an approved reach study and restoration plan pursuant to the City's previous critical areas regulations (prior LUC 20.25H.070.A.2.d as noted in Ordinance No. 4816), the critical area buffer for that site shall be as determined in that adopted reach study and restoration plan.
  - d. Buffer Requirements for Streams Adjacent to Steep Slopes. When the OHWM of any stream is within a steep slope or landslide hazard area, the following minimum stream buffers must be the greater of:
    - i. The minimum stream buffer for that stream class; or
    - ii. Twenty-five feet beyond the top of slope.
    - iii. Proposed stream buffer modifications shall include review of a geotechnical report confirming the buffer modification will not reduce slope stability or increase erosion risk. Where stability is at risk, no buffer modification is allowed.
2. Buffer Modification. Modifications to the stream critical area buffer may be approved pursuant to this section:
- a. Buffer Averaging. Buffer averaging may be allowed if all the following criteria are satisfied. Proposals to average the stream critical area buffer under this subsection shall require a Critical Areas Land Use Permit; provided, that a mitigation or restoration plan is not required for buffer averaging.
    - i. Buffer averaging may be approved only if the applicant demonstrates that a modification to non-critical area setbacks pursuant to LUC 20.25H.040 would not accommodate the proposed development in a manner consistent with its intended use and function.
    - ii. Through buffer averaging, the ecological structure and function of the resulting buffer is equivalent to or greater than the structure and function before averaging;
    - iii. The total buffer area is not reduced;
    - iv. The buffer area is contiguous;
    - v. Averaging does not result in any impact to slope stability and does not increase the likelihood of erosion or landslide hazard;

- vi. Averaging does not result in a significant adverse impact to habitat associated with species of local importance; and
  - vii. At no point is the critical area buffer width less than 75 percent of the required buffer dimension.
- b. Interrupted Buffer. Where a legally established right-of-way, railroad right-of-way, other similar infrastructure, or significant development such as homes or commercial structures blocks the protective measures provided by a buffer, then the edge of the significant development or infrastructure shall be the extent of the buffer, provided:
- i. The part of the critical area buffer on the other side of the significant development or infrastructure provides insignificant biological or hydrological function as determined through a critical area report in relation to the portion of the buffer adjacent to the stream; and
  - ii. Vegetative buffer standards under LUC 20.25H.075.C.1.a.ii are met.

**D. Setbacks.**

1. Structure Setback. A critical area structure setback is required in accordance with LUC 20.25H.035.
2. Piped Stream Setback. LUC 20.25H.035.B does not apply to piped stream segments. Instead, piped stream segments require a 65-foot critical area structure setback from the pipe centerline. The intent is to preserve the opportunity to daylight watercourses that were previously piped, to provide incentives to property owners to daylight, and enhance streams. Where a legally established right-of-way, railroad right-of-way, other similar infrastructure, or significant development crosses a piped stream critical area structure setback, the setback may be modified consistent with interrupted buffer provision LUC 20.25H.075.C.2.b.

**20.25H.080 Performance standards.**

**A. General.**

Development on sites with a stream or associated critical area buffer shall incorporate the following performance standards in design of the development, as applicable:

1. Lights shall be directed away from the stream. Use only lighting where necessary for public safety and keep lights off when not needed. This may include the use of motion-activated lights, full cut-off filters to cover light bulbs and direct light only where needed, and lower-intensity lighting.

2. Activity that generates noise such as parking lots, generators, and residential uses shall be located away from the stream or any noise shall be minimized through use of design and insulation techniques.
3. Toxic runoff from new impervious area shall be routed away from the stream.
4. Treated water may be allowed to enter the critical area buffer if discharged as far from the associated critical area as possible and all the City's adopted Stormwater Design Manual standards are met. Low Impact Design (LID) stormwater facilities must be considered where feasible.
5. For plats, short plats, or a development proposal modifying or altering a stream buffer, the outer edge of the stream critical area buffer shall be planted with dense vegetation and a split rail fence and signage shall be installed to limit pet and human use.
6. Use of pesticides, insecticides, and fertilizers within 150 feet of the edge of the stream critical area buffer shall be in accordance with the City of Bellevue's "Environmental Best Management Practices," now or as hereafter amended.
7. All applicable standards of Chapter 24.06 BCC, Storm and Surface Water Utility Code, are met.

**B. Modification of Stream Channel.**

1. When Allowed. A stream channel shall not be modified by relocating the open channel, unless allowed under an approved stream restoration permitted by LUC 20.25H.080.D, or by closing the channel through pipes or culverts unless in connection with the following uses allowed under LUC 20.25H.055:
  - a. A new or expanded utility facility or system;
  - b. A new or expanded essential public facility;
  - c. Public flood control measures;
  - d. In-stream structures;
  - e. New or expanded public right-of-way, private roads, access easements or driveways;
  - f. Habitat improvement project; or
  - g. Reasonable use exception; provided, that a modification may be allowed under this section for a reasonable use exception only where the applicant demonstrates that no other alternative exists to achieve the allowed development.

A critical areas report may not be used to modify the uses set forth in this subsection B.1.

2. Critical Areas Report Required. Any proposal to modify a stream channel under this section shall be documented through a critical areas report and may be approved via the underlying permit process, as applicable.
  3. Relocation of Closed Stream Channel. Any proposal to relocate an existing closed stream channel shall be documented through a critical areas report and may be approved via the underlying permit process, as applicable.
- C. Stream Daylighting. The City encourages opening a stream that is 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.
1. The Director may approve removal of a stream from a culvert based on a critical area report pursuant to Article XII of Part 20.25H LUC and an approved stream daylighting plan prepared by a qualified critical area professional approved by the City.
  2. Stream daylighting plan shall include the following:
    - a. Detailed site plan of existing improvements and utilities in relationship to the daylighting, topography, daylighted stream course, hydrologic flow before and after daylighting and where the daylighted stream will connect once the culvert is removed;
    - b. Demonstrate the design achieves:
      - i. Creation of natural meander patterns;
      - ii. 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;
      - iii. Native vegetation normally associated with streams, emphasizing native plants with high food and cover value for fish and wildlife and approved by the City; and
      - iv. Restoration of water flow characteristics compatible with fish habitat areas.
    - c. All daylighting proposals shall include long-term maintenance and monitoring per LUC 20.25H.030.B and consistent with restoration best practices.

D. Stream restoration. The City encourages restoring degraded stream segments to restore the stream channel to a more natural meandering condition and restoring associated riparian functions. Degraded stream segments are commonly straightened and/or armored channels. The purpose of restoration is to improve the values and functions of the stream and riparian buffer.

1. Stream restoration plans must adhere to design criteria under LUC 20.25H.080.C.2.b and provide long-term maintenance and monitoring per LUC 20.25H.030.B.

E. Incentives for Stream Daylighting and Restoration. When a property owner voluntarily daylighting or restores a stream segment, the following incentives may be applied:

1. Buffer Standards for daylighted and restored stream segments. Standard buffers may be reduced to 50-feet when demonstrated through a critical area report that the proposed restoration will result in a net ecological gain.
2. Buffer Modification. For daylighting and stream restoration projects, modifications to the stream critical area buffer may be approved pursuant to this section.
  - a. Buffer averaging. The stream buffer may be averaged pursuant to stream buffer averaging criteria under LUC 20.25H.075.C.2.a.i through iv. The maximum reduction at any given point is twenty-five percent (25%).
  - b. Buffer Reduction. For projects that can demonstrate that meeting all of the buffer averaging criteria under LUC 20.25H.075.C.2.a.i through iv is infeasible, a reduction in the required 50 foot stream buffer width, up to twenty-five percent (25%), may be allowed where daylighting results in a net gain in ecological function, as demonstrated through a critical areas report and the following standards are met:
    - i. The applicant must demonstrate water quality will be maintained through low impact development techniques, stormwater pre-treatment or equivalent measures;
    - ii. The adjacent riparian buffer is planted and restored in accordance with city restoration standards; and
    - iii. The resulting buffer is contiguous and net ecological gain in function is demonstrated.
    - iv. For projects that daylight more than 100 linear feet of stream, the Director may allow for expedited permit review.

F. Stream Daylighting Off-site Buffer Waiver

1. The buffer standard requirements for adjacent properties shall not increase due to the deliberate change in the daylighting of a stream;
2. The City shall record the buffer waiver on the title of those affected properties with King County Recorder's Office. The City shall contact any affected property owners in writing to notify them of the buffer waiver notice and the applicable survey, and to determine if the property owner chooses to opt out of having the notice and survey recorded on their property title;
3. The applicant shall pay for the fees to record the buffer waiver notice and the survey; and
4. There is no waiver to the existing buffer requirement prior to the change in the adjacent stream, or to any future change to the City's buffer standards.

#### **20.25H.085 Mitigation and monitoring – Additional provisions.**

In addition to the provisions of LUC 20.25H.210, mitigation plans designed to mitigate impacts to streams and stream critical area buffers shall meet the requirements of this section.

##### **A. Mitigation Preference.**

1. Mitigation for Impacted Stream Critical Area Buffer. Mitigation plans for streams and stream critical area buffers shall provide mitigation for impacts to critical area functions and values in the following order of preference:
  - a. On-site, through replacement of lost critical area buffer;
  - b. On-site, through enhancement of the functions and values of remaining critical area buffer;
  - c. Off-site, through replacement or enhancement, in the same sub-drainage basin;
  - d. Off-site, through replacement or enhancement, out of the sub-drainage basin but in the same drainage basin.

##### **B. Type and Location of Mitigation for Stream Buffer.**

Compensatory mitigation for stream functions and values shall be either in-kind and on-site, or in-kind and within the same drainage sub-basin. When considering mitigation off-site, preference should be given to using mitigation banking or an in-lieu fee program. Mitigation actions may be conducted off-site and outside of the drainage sub-basin when all of the following are demonstrated through a critical areas report:

1. There are no reasonable on-site or in-sub-drainage basin opportunities or on-site and in-sub-drainage basin opportunities do not have a high likelihood of

success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated stream mitigation replacement ratios, buffer conditions and proposed widths, proposed flood storage capacity, and potential to mitigate stream fish and wildlife impacts (such as connectivity);

2. Off-site mitigation has a greater likelihood of providing equal or improved stream functions than the impacted stream; and
3. Off-site locations shall be in the WRIA 8 Lake Washington/Cedar/Sammamish Watershed with a preference for the same impacted sub- basin unless established watershed goals for water quality, flood or conveyance, habitat, or other stream functions have been established and strongly justify location of mitigation at another site.

**C. Buffer Mitigation Ratio.**

Critical area buffer disturbed or impacted under this part shall be replaced at a ratio of one-to-one. A higher replacement ratio may be required where necessary to ensure no net loss of ecological function, consistent with the provisions of LUC 20.25H.210.

## **V. WETLANDS**

### **20.25H.095 Designation of critical area and buffers.**

**A. Definition of a Wetland.**

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

**B. Delineation of Wetland.**

Wetland boundaries shall be delineated consistent with the standards and methods described in the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual, as amended, and the 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region, as amended.



### **C. Designation of Critical Area.**

The following wetlands are hereby designated as critical areas subject to the requirements of this part. Wetlands are classified into category I, category II, category III and category IV wetlands based on the adopted Washington State Wetland Rating System for Western Washington, Washington State Department of Ecology Publication Number 23-06-009, as amended.

1. **Category I Wetlands.** Category I wetlands are those that (a) represent a unique or rare wetland type; or (b) are more sensitive to disturbance than most wetlands; or (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions. Category I wetlands in western Washington include: wetlands scoring between 23 and 27 points (out of 27) on the questions related to the functions present.
2. **Category II Wetlands.** Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than category I wetlands, but still need a relatively high level of protection. Category II wetlands in western Washington include: wetlands scoring between 20 and 22 points (out of 27) on the questions related to the functions present. Wetlands scoring 20 to 22 points were judged to perform most functions relatively well, or performed one group of functions very well and the other two moderately well.
3. **Category III Wetlands.** Category III wetlands are wetlands with a moderate level of functions (score between 16 and 19 points). Wetlands scoring between 16 and 19 points generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than category II wetlands.
4. **Category IV Wetlands.** Category IV wetlands have the lowest levels of functions (score less than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and also need to be protected.

### **D. Designation of Wetland Critical Area Buffer.**

The following critical area buffers are hereby established:

1. **Wetland Critical Area Buffer.**
  - a. **General.**
    - i. Wetlands on all sites shall have the following critical area buffers, measured from the wetland boundary:

Category	Wetland Characteristic	Standard Buffer <sup>1</sup>	Increased Buffer <sup>2</sup>
I	Natural heritage wetlands and bogs – Habitat score 8 – 9	225 feet	300 feet
	Natural heritage wetlands and bogs – All others	190 feet	250 feet
	Forested	Based on score for habitat	Based on score for habitat
	Habitat score of 8 – 9	225 feet	300 feet
	Habitat score of 6 – 7	110 feet	150 feet
	Habitat score of 3 – 5	75 feet	100 feet
II	Habitat score of 8 – 9	225 feet	300 feet
	Habitat score of 6 – 7	110 feet	150 feet
	Habitat score of 3 – 5	75 feet	100 feet
III	Habitat score of 8 – 9	225 feet	300 feet
	Habitat score of 6 – 7	110 feet	150 feet
	Habitat score of 3 – 5	60 feet	80 feet
IV	All	40 feet	50 feet

**(1)** The standard buffer widths apply so long as both the vegetated buffer standards outlined in subsection D.1.a.ii of this section and the habitat corridor standards outlined in subsection D.1.a.iii of this section, if applicable, are satisfied.

**(2)** The increased buffer widths apply when neither the vegetated buffer standards outlined in subsection D.1.a.ii of this section nor the habitat corridor

standards outlined in subsection D.1.a.iii of this section, if applicable, are satisfied.

- ii. Vegetated buffer standards. All wetland buffer widths presume the buffer is densely vegetated with a native plant community appropriate for the ecoregion, consisting of an average of 80% native cover comprised of trees, shrubs and groundcover plants. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer must either be enhanced through an approved mitigation plan or widened to ensure the buffer provides adequate functions.
- iii. Habitat Corridor. For wetlands that score 6 points or more for habitat functions, the following requirements apply along with the standard buffer widths above.
  - (1) A relatively undisturbed vegetated corridor at least 100 feet wide between the wetland and the areas listed below when present:
    - a. A legally protected, relatively undisturbed and vegetated area (e.g., Priority Habitats, compensatory mitigation sites, wildlife areas/refuges, national, county, and state parks where they have management plans with identified areas designated as Natural, Natural Forest, or Natural Area Preserve, or
    - b. An area that is the site of a Watershed Project identified within, and fully consistent with, a Watershed Plan as defined by RCW 89-08-460, or
    - c. An area where development is prohibited according to the provisions of the local shoreline master program, or
    - d. An area with equivalent habitat quality that has conservation status in perpetuity, in consultation with WDFW.
  - (2) The corridor is permanently protected for the entire distance between the wetland and the shoreline or legally protected area by a conservation easement, deed restriction, or other legal site protection mechanism. Potential or lack of potential to create a protected corridor must be determined by a qualified professional on a site-specific basis.
  - (3) Presence or absence of the shoreline or priority habitat must be confirmed by a qualified biologist or shoreline administrator.
  - (4) Performance standards under LUC 20.25H.100 are applied.
  - (5) If the area required to be protected as a habitat corridor by operation of this subsection is not under common ownership, then

the requirements of this subsection shall only be applied to the portion of the required habitat corridor required to be located on real property that is owned or controlled by the applicant. The habitat corridor shall then be completed, at a later date, by a future applicant upon development of the real property not under common ownership.

- iv. For wetlands that score 5 or fewer habitat points, a habitat corridor is not required.
- b. Shoreline Lake-Fringe Wetlands. Category III lake-fringe wetlands 2,500 square feet or less with habitat scores of 5 or less that are adjacent to a shoreline are exempt from a wetland buffer. Shoreline vegetation conservation standards per Part 20.25E LUC apply.
- c. Buffer Requirements for Wetlands Adjacent to Steep Slopes. When a wetland buffer includes a steep slope or landslide hazard area, the following minimum wetland buffers must be the greater of:
  - i. The minimum wetland buffer required by this section; or
  - ii. Twenty-five feet beyond the top of the hazard area;
  - iii. Wetland buffer modifications are allowed through review of a geotechnical report confirming the buffer modification will not reduce slope stability or increase erosion risk. Where stability is at risk, no buffer modification is allowed.
- 2. Small Wetland Exemptions. Wetlands that meet the following criteria are not subject to the avoidance and minimization requirements of the mitigation sequence (LUC 20.25H.215) in accordance with the following provisions, and they may be filled if the impacts are fully mitigated. Impacts should be mitigated through the purchase of credits from a mitigation bank or in-lieu fee program. In order to verify whether the following criteria are met, a critical areas report is required per LUC 20.25H.230.
  - a. All Category IV wetlands less than 4,000 square feet that:
    - i. Are not associated with riparian areas or their buffers;
    - ii. Are not associated with shorelines of the state or their associated buffers;
    - iii. Are not part of a wetland mosaic;
    - iv. Do not score 6 or more points for habitat function based on the Washington State Wetland Rating System for Western Washington per LUC 20.25H.095.C;

- v. Do not contain priority habitat or species identified by the Washington Department of Fish and Wildlife and do not contain state or federally listed species or their critical habitat or species of local importance identified in LUC 20.25H.150.
  - b. Wetlands less than 1,000 square feet that meet the above criteria are exempt from the buffer provisions contained in this Chapter.
3. Buffer Modification. Modifications to the wetland critical area buffer may be approved pursuant to this section.
- a. Buffer Averaging. Buffer averaging may be allowed if all the following criteria are satisfied. Proposals to average the wetland critical area buffer under this subsection shall require a Critical Areas Land Use Permit; provided, that a mitigation or restoration plan is not required for buffer averaging.
    - i. Buffer averaging may be approved only if the applicant demonstrates that a modification to non-critical area setbacks pursuant to LUC 20.25H.040 would not accommodate the proposed development in a manner consistent with its intended use and function;
    - ii. Through buffer averaging, the ecological structure and function of the resulting buffer is equivalent to or greater than the structure and function before averaging;
    - iii. The total buffer area is not reduced;
    - iv. The buffer area is contiguous;
    - v. Averaging does not result in any impact to slope stability and does not increase the likelihood of erosion or landslide hazard;
    - vi. Averaging does not result in a significant adverse impact to habitat associated with species of local importance;
    - vii. At no point is the critical area buffer width less than 75 percent of the required buffer dimension; and
    - viii. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a qualified professional through the critical areas report process and a mitigation plan as applicable.
  - b. Interrupted Buffer. Where a legally established right-of-way, railroad right-of-way, other similar infrastructure or significant development such as homes or commercial structures blocks the protective measures provided by a buffer, the edge of the significant development shall be the extent of the buffer, provided:

- i. The part of the critical area buffer on the other side of the significant development provides insignificant biological or hydrological function as determined through a critical area report in relation to the portion of the buffer adjacent to the wetland; and
- ii. Vegetative buffer standards under LUC 20.25H.095.D.1.a.ii are met.

**B. Structure Setbacks.**

A critical area structure setback is required in accordance with LUC 20.25H.035.

**20.25H.100 Performance standards.**

Development on sites with a wetland or wetland critical area buffer shall incorporate the following performance standards in design of the development, as applicable:

- A. Lights shall be directed away from the wetland. Use only lighting where necessary for public safety and keep lights off when not needed. This may include the use of motion-activated lights, full cut-off filters to cover light bulbs and direct light only where needed, and lower-intensity lighting.
- B. Activity that generates noise such as parking lots, generators, and residential uses shall be located away from the wetland, or any noise shall be minimized through use of design and insulation techniques.
- C. Toxic runoff from new impervious area shall be routed away from the wetlands.
- D. Treated water may be allowed to enter the wetland critical area buffer if discharged as far from the associated critical area as possible and all the City's adopted Stormwater Design Manual standards are met. Low Impact Design (LID) stormwater facilities must be considered where feasible.
- E. When buffer enhancement is applied, planting should be concentrated in the outer twenty-five percent (25%) of the wetland critical area buffer to limit pet or human use.
- F. Use of pesticides, insecticides and fertilizers within 150 feet of the edge of the wetland buffer shall be in accordance with the City of Bellevue's "Environmental Best Management Practices," now or as hereafter amended.

**20.25H.105 Mitigation and monitoring – Additional provisions.**

In addition to the provisions of LUC 20.25H.210, mitigation plans designed to mitigate impacts to wetlands and wetland critical area buffers shall meet the requirements of this section.

**A. Preference of Mitigation Actions.**

1. Mitigation for Impacted Wetland Critical Area. Mitigation actions that require compensation of impacted wetland critical area shall occur in the following order of preference, subject to the location requirements of subsection B of this section:
  - a. Restoring wetlands on upland sites that were formerly wetlands.
  - b. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
  - c. Preservation to remove a threat to, or prevent the decline of, wetlands through implementation of appropriate legal and physical mechanisms.
  - d. Enhancing significantly degraded wetlands.
2. Mitigation for Impacted Wetland Critical Area Buffer. Mitigation actions that require compensation of impacted critical area buffer shall occur in the following order of preference and in the following locations:
  - a. On-site, through replacement of lost critical area buffer;
  - b. On-site, through enhancement of the functions and values of remaining critical area buffer;
  - c. Off-site, through replacement or enhancement, in the same sub-drainage basin;
  - d. Off-site, through replacement or enhancement, out of the sub-drainage basin but in the same drainage basin or within the service area for a mitigation bank or fee in-lieu program.

#### **B. Type and Location of Mitigation for Wetland Critical Area.**

Compensatory mitigation for critical areas functions and values shall be either in-kind and on-site, or in-kind and within the same drainage sub-basin. When considering mitigation off-site, preference should be given to using mitigation banking or an in-lieu fee program. Mitigation actions may be conducted off-site and outside of the drainage sub-basin when all of the following are demonstrated through a critical areas report:

1. There are no reasonable on-site or in-sub-drainage basin opportunities or on-site and in-sub-drainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity,

and potential to mitigate stream fish and wildlife impacts (such as connectivity);

2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
3. Off-site locations shall be in WRIA 8, Lake Washington/Cedar/Sammamish Watershed, with a preference for the same subbasin where the impact occurred unless established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site.

#### C. Mitigation Timing.

Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

#### D. Mitigation Ratios.

1. Wetland Acreage Replacement Ratios. The following ratios shall apply to wetland mitigation that is in-kind, is the same category of wetland, is timed prior to or concurrent with alteration, and has a high probability of success. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Wetland Category	Re-establishment or Creation	Rehabilitation	Enhancement	Preservation
Category I Forested	6:1	12:1	24:1	24:1
Bogs	N/A	N/A	24:1	N/A
Wetlands of High Conservation Value	Consult with WA DNR	Consult with WA DNR	24:1	Consults with WA DNR
Category I	4:1	8:1	16:1	16:1
Category II	3:1	6:1	12:1	12:1



Category III	2:1	4:1	8:1	8:1
Category IV	1.5:1	3:1	6:1	6:1

2. Increased Replacement Ratio. The Director may increase the ratios where:
  - a. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
  - b. Impacts are not mitigated in a timely manner; or
  - c. The impact was an unauthorized impact.
3. Critical Area Buffer Mitigation Ratio. Critical area buffer disturbed or impacted under this Part shall be replaced at a minimum ratio of one to one, based on the functions and values of the impacted buffer area. A higher replacement ratio may be required where necessary to maintain or enhance overall critical area functions. Mitigation must ensure no net loss of ecological function, consistent with the provisions of LUC 20.25H.210.

#### **E. Wetlands Enhancement as Mitigation.**

Impacts to wetland critical area functions may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical areas report meeting the requirements of LUC 20.25H.110 and 20.25H.230 that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

#### **20.25H.110 Critical areas report – Additional provisions.**

##### **A. Limitation on Modification.**

A critical areas report may not be used to fill a wetland critical area, except where filling is required to allow a use set forth in LUC 20.25H.055 and LUC 20.25H.095.D.2.

##### **B. Additional Content.**

In addition to the general requirements of LUC 20.25H.250, a critical areas report for wetlands shall include a written assessment and accompanying maps of the wetlands and buffers within 300 feet of the project area, including the following information at a minimum:

1. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
2. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.
3. Functional evaluation for the wetland and adjacent buffer using the Washington State Wetland Rating System for Western Washington 2014 Update Version 2.0 (23-06-009, published in July 2023, as amended) and including the reference of the method and all data sheets.
4. A discussion of the potential impacts to the wetland(s) associated with any anticipated hydroperiod alterations from the project.
5. Site plan including stormwater management facilities and outlets for the development, including estimated areas of intrusion into wetland buffers.

## **VI. CRITICAL AQUIFER RECHARGE AREAS (CARAs)**

### **20.25H.112 Designation of CARAs.**

- A. CARAs are classified pursuant to WAC 365-190-100, which are designated as areas with a critical recharging effect on aquifers used for potable water. The only areas designated as CARAs in Bellevue are wellhead protection areas pursuant to the Federal Safe Drinking Water Act.
- B. CARA Classification
  1. CARA I: Areas located within a 1,000-foot radius of a Group A public water supply well. These are considered the highest-risk zones for potential groundwater contamination and are subject to the most protective standards.
  2. CARA II: Areas located between 1,000 feet and 2,500-foot from a Group A public water supply well.

### **20.25H.115 Development standards of CARAs**

- A. Prohibited Uses. The following land uses and activities are prohibited within CARA I unless otherwise approved through a hydrogeologic assessment demonstrating no adverse impact:
  1. Gas stations
  2. Dry cleaners
  3. Landfills or transfer stations
  4. Underground fuel or chemical storage tanks

5. Wood treatment facilities
6. Hazardous waste treatment and storage facilities, both on-site and off-site.

#### **B. Performance Standards**

1. All uses within CARAs shall implement best management practices (BMPs) for groundwater protection, consistent with Chapter 24.06 BCC.
2. Stormwater infiltration shall comply with Chapter 24.06 BCC and the 2019 Stormwater Management Manual for Western Washington, as amended.

#### **20.25H.117 Definitions.**

The following definitions are specific to the regulations for the critical aquifer recharge areas in the Land Use Code and shall have the following meanings:

“Critical aquifer recharge area” (CARA) means areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge (WAC 365-190-030).

“Domestic water system” means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

“Wellhead protection area” (WHPA) means protective areas associated with public drinking water sources established by water systems and approved or assigned by the state Department of Health (WAC 365-190-030).

### **VII. GEOLOGIC HAZARD AREAS**

#### **20.25H.120 Designation of critical area and buffers.**

##### **A. Designation of Critical Areas.**

The City’s GIS mapping layers relating to this chapter are entitled “Steep Slopes” and “Liquefaction Prone Area.” 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 currently be present. The provisions of this chapter and the findings of a critical area report and review of the report by the City take precedence over the City’s mapping in regard to identification and mitigation of potential geologic hazards. Site specific geologic hazard studies shall be conducted prior to approval of development, clearing and grading, utility installation, or other activities to evaluate if a geologic hazard area actually exists, and to assess suitable options for hazard mitigation, if appropriate.

The following geologic hazard areas are hereby designated critical areas subject to the regulations of this part:

1. Landslide Hazards. Areas of slopes of 15 percent or more with more than 10 feet of rise, which also display any of the following characteristics:
  - a. Areas of historic failures, including those areas designated as quaternary slumps, earthflows, mudflows, or landslides.
  - b. Areas that have shown movement during the Holocene Epoch (past 13,500 years) or that are underlain by landslide deposits.
  - c. Slopes that are parallel or subparallel to planes of weakness in subsurface materials.
  - d. Slopes exhibiting geomorphological features indicative of past failures, such as hummocky ground and back-rotated benches on slopes.
  - e. Areas with seeps indicating a shallow ground water table on or adjacent to the slope face.
  - f. Areas of potential instability because of rapid stream incision, stream bank erosion, and undercutting by wave action.
2. Steep Slopes. Slopes of 40 percent or more that have a rise of at least 10 feet and exceed 1,000 square feet in area.
3. Coal Mine Hazards. Areas designated on the Coal Mine Area Maps or in the City's coal mine area regulations, LUC 20.25H.130, as potentially affected by abandoned coal mines; provided, that compliance with the coal mine area regulations shall constitute compliance with the requirements of this chapter in regard to coal mines.
4. Seismic Hazards. Areas of known faults or Holocene displacement, based on the most up-to-date information, or areas mapped areas of "moderate to high" or "high" hazard liquefaction susceptibility by the Washington Department of Natural Resources Liquefaction Susceptibility Map of King County, Washington, 2004, as amended.
5. Erosion Hazards. Areas underlain by soils identified by the Natural Resources Conservation Service (NRCS) as having severe to very severe erosion potential, or areas that have been identified through site-specific analysis as susceptible to erosion due to slope, soil type, vegetation cover, hydrology, or other factors. Specifically, areas on slopes over 15 percent over a distance of more than 30 feet or with more than 10 vertical feet of relief and occurring over an area of 1,000 square feet or more that will be disturbed during the construction process are considered erosion hazards.

#### **B. Geologic Hazard Area Buffers.**

The following critical area buffers are established and shall be measured from the edges of the geologic hazard areas below as delineated in the critical areas report:

1. General Geologic Hazard Critical Area Buffers.
  - a. Landslide hazards: 50 feet.
  - b. Steep slopes: 50 feet.
2. Exception to Geologic Hazard Critical Area Buffer. An exemption may be requested for any General Geologic Hazard Area, created through previous, legal grading activities, to allow the hazard to be altered as part of a development proposal. Any portion of the previously created hazard that remains following site development will be subject to the protection mechanisms of this section, including buffer requirements.
  - A. Exemptions are reviewed through the appropriate land use permitting process and based on City review and acceptance of a soils report, prepared by a licensed geologist or licensed geotechnical engineer, that addresses the proposed exemption and demonstrates that the required static and seismic factors of safety for the slope are achieved.
3. Buffer Modification. Proposed modifications to the geologic hazard critical area buffer shall be documented through a critical areas report, LUC 20.25H.230 and may be approved via the underlying permit process, as applicable. Additional requirements outlined in LUC 20.25H.120 shall also be adhered to.
  - A. Within the critical areas report minimum buffers for landslide hazard areas and steep slopes, may be reduced to 15 feet if a geotechnical engineer or geologist assesses the critical area and determines that the risks for instability are minimal or that the structure, neighboring properties, or waterways will not be adversely affected buffer reduction for the critical area.
  - b. If reduction of the buffer to less than 15 feet or construction on the landslide hazard or steep slope hazard is requested then the critical area study must also include the following:
    - i. Exploration(s) that provide strength data such as soil Standard Penetration Tests (SPT) or other industry accepted methods. For construction above a landslide hazard or steep slope hazard area at least one exploration must be conducted near the top of the slope or above the proposed construction area and extend at least to the elevation of the base of the landslide hazard. For sites where structures are planned at the base of a landslide hazard area at least one exploration is required to be conducted near the top of the slope or

the property boundary if the hazard extends off of the property. Another exploration should be performed near the base of the landslide hazard or if the landslide hazard extends off the property the exploration should be placed near the property boundary where the hazard exists.

- ii. A comprehensive study of slope stability including an analysis of proposed cuts, fills, and other site grading and construction effects where the overall minimum factor of safety for slope stability is 1.5 for static conditions and 1.1 for seismic conditions as based on current building code seismic design conditions for the post construction conditions. Additionally, a slope stability analysis of the worst case conditions during construction must also be evaluated for static conditions and show a factor of safety of 1.5 or greater. These analyses must be included in a report including soil parameters and loading conditions utilized for the analysis.
- iii. Critical areas report shall be signed and stamped by both an geotechnical engineer and geologist, or an individual with both licenses.

#### **20.25H.125 Performance standards – Landslide hazards and steep slopes.**

In addition to generally applicable performance standards set forth in LUC 20.25H.055 and 20.25H.065, development within a landslide hazard or steep slope critical area or the critical area buffers of such hazards shall incorporate the following additional performance standards in design of the development, as applicable. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function.

- A. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;
- B. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
- C. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;
- D. The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes where graded slopes would result in increased disturbance as compared to use of retaining wall;
- E. Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer;
- F. Where change in grade outside the building footprint is necessary, the site retention system should be stepped and regrading should be designed to

minimize topographic modification. On slopes in excess of 40 percent, grading for yard area may be disallowed where inconsistent with this criteria;

- G. Building foundation walls shall be utilized as retaining walls rather than rockeries or retaining structures built separately and away from the building wherever feasible. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation;
- H. On slopes in excess of 40 percent, use of pole-type construction which conforms to the existing topography is required where feasible. If pole-type construction is not technically feasible, the structure must be tiered to conform to the existing topography and to minimize topographic modification;
- I. On slopes in excess of 40 percent, piled deck support structures are required where technically feasible for parking or garages over fill-based construction types;
- J. Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored to a pre-disturbed condition or greater, and areas that are replanted require a mitigation and restoration plan meeting the requirements of LUC 20.25H.210;
- K. An exemption may be requested for any Landslide or Steep Slope Hazard Area, created through previous, legal grading activities, to allow the hazard to be altered as part of a development proposal. Any portion of the previously created hazard that remains following site development will be subject to the protection mechanisms of this section, including buffer requirements. Exemptions are reviewed through the appropriate land use permitting process and based on City review and acceptance of a soils report, prepared by a licensed geologist or licensed geotechnical engineer, that addresses the proposed exemption and demonstrates that the required static and seismic factors of safety for the slope are achieved; and
- L. An exemption may be requested for "Minor Work" in the landslide hazard areas. Minor work is considered pruning of above grade portions of vegetation or removal of dead trees and vegetation, replacement of existing equipment with a disturbance area of less than 10 square feet or repairs to structures that will utilize existing foundation elements, or having a footprint of less than 100 square feet and require no soil or below grade vegetation disturbance.

**20.25H.135 Mitigation and monitoring – Additional provisions for landslide hazards, steep slopes, and erosion hazards.**

In addition to the general mitigation and restoration plan requirements of LUC 20.25H.210, each mitigation or restoration plan for geologic hazard critical areas shall include:

#### **A Erosion and Sediment Control Plan.**

The erosion and sediment control plan shall be prepared in compliance with requirements set forth in Chapter 23.76 BCC, now or as hereafter amended. Such plans shall also include, if not otherwise addressed in Chapter 23.76 BCC, the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability;

#### **B. Monitoring Surface Waters.**

If the Director determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the applicant must submit the following in the technical information:

1. Surface Water Monitoring Plan, including:
  - a. Scheduled visual inspection;
  - b. Sampling protocol if trigger occur such as measure turbidity, total suspended solids (TSS), pH, flow rate; and
  - c. Contingency actions such as adjusting BMP's, installing additional silt fencing, or halting work until measures are in place.
2. Monitoring timeline.
3. Reporting requirements, including:
  - a. Submit contemporaneous log with inspection dates, findings, sample results, BMP adjustments; and
  - b. Formal report within 30 days of project completion, summarizing outcomes and any corrective actions taken.
4. All monitoring, data analysis, and contingency recommendations to be conducted or certified by a qualified professional (e.g., erosion control specialist, geologist, or hydrologist).
5. The Director may increase monitoring frequency or add parameters (e.g., if project nears unstable slopes or sensitive habitat).

#### **20.25H.140 Critical areas report – Additional provisions for geologic hazard areas.**

In addition to the provisions of LUC 20.25H.230, any proposal to modify a geologic hazard critical area or associated critical area buffer shall document compliance with



the requirements of this section through a critical areas report, and may be approved via the underlying permit process, as applicable.

**A. Limitation on Modification.**

The provisions for coal mine hazard areas in LUC 20.25H.130 may not be modified through a critical areas report.

**B. Area Addressed in Critical Area Report.**

In addition to the general requirements of LUC 20.25H.230, the following areas shall be addressed in a critical areas report for geologically hazardous areas:

1. Site and Construction Plans. The report shall include a copy of the site plans for the proposal and a topographic survey;
2. Conduct a subsurface exploration appropriate to the site conditions and proposed development to characterize the geologic units, identify any potential failure surfaces, and determine groundwater elevations. Monitoring shall be conducted for a duration sufficient to identify the seasonal high groundwater elevation and evaluate geohydrologic conditions;
3. Assessment of Geological Characteristics. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region;
4. Analysis of Proposal. The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties; and
5. Minimum Critical Area Buffer. The report shall make a recommendation for a minimum geologic hazard critical area buffer, if any, from any geologic hazard based upon the geotechnical analysis. Minimum buffer must account for the absence of a structure setback requirement for geologic hazard areas.

**20.25H.145 Critical areas report – Criteria.**

Proposed modifications to geologic hazard critical areas and critical area buffers may be approved via the underlying permit process, as applicable, if the Director determines that the critical areas report documents that the modification:

- A. Will not increase the threat of the geological hazard to adjacent properties over conditions that would exist if the provisions of this part were not modified;
- B. Will not adversely impact other critical areas;

- C. Is designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than would exist if the provisions of this part were not modified;
- D. Is certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington;
- E. The applicant provides a geotechnical report prepared by a qualified professional demonstrating that modification of the critical area or critical area buffer will have no adverse impacts on stability of any adjacent slopes, and will not impact stability of any existing structures. Geotechnical reporting standards shall comply with requirements developed by the Director in City of Bellevue Submittal Requirements Sheet 25, Geotechnical Report and Stability Analysis Requirements, now or as hereafter amended;
- F. Any modification complies with recommendations of the geotechnical support with respect to best management practices, construction techniques or other recommendations; and
- G. The proposed modification to the critical area or critical area buffer with any associated mitigation does not significantly impact habitat associated with a regulated stream, wetland, fish and wildlife habitat conservation area or frequently flooded area.

## **VIII. FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

### **20.25H.150 Designation of critical area.**

Fish and wildlife habitat conservation areas (FWHCA) are those areas essential for the preservation of critical habitat and species. All areas within the City of Bellevue meeting one or more of the following criteria are designated FWHCA.

- A. Species of local importance as identified in WDFW Priority Habitat and Species (PHS) map or identified through LUC 20.25H.170.
- B. State or federally designated endangered, threatened, and sensitive species that have a primary association with a habitat area that is located in the City.
- C. State priority habitats and habitats with which State priority species have a primary association that are located in the City. The City shall defer to Washington State Department of Fish and Wildlife (WDFW) in regards to classification, mapping and interpretation of priority habitats and species using the WDFW Priority Habitats and Species List, current or as amended.
- D. Habitat (other than the critical areas and critical area buffers otherwise designated in LUC 20.25H.025) associated with species of local importance is hereby designated a critical area; provided, that compliance with these species of local importance regulations, LUC 20.25H.150 through LUC 20.25H.170 inclusive, shall constitute compliance with the requirements of this part where such habitat is located outside of other critical areas designated in this part.

- E. Waters of the State. Waters of the State include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses, including wetlands, within the jurisdiction of the State of Washington, as classified in WAC 222-16-031.
- F. Areas of Rare Plant Species and High-Quality Ecosystems. Areas of rare plant species and high-quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program.
- G. Land useful or essential for preserving connections between habitat blocks and open spaces including:
  - 1. Riparian areas and stream buffers; or
  - 2. Biodiversity corridors as determined by WDFW PHS maps.
- H. Naturally occurring ponds of under 20 acres (see LUC 20.50.036) are hereby designated critical areas. Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from upland areas for mitigation purposes. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as detention facilities, wastewater treatment facilities, temporary construction ponds, and landscape amenities. To distinguish between ponds and wetlands, refer to current State or Federal definitions and guidance.
  - 1. Evidence showing the pond was artificially created include design plans, as-builts, or historically mapped upland soils and/or aerial photographs.
  - 2. Landscape amenities that are immediately upstream of a fish-bearing stream and have a free and open connection to that stream with no barriers to fish passage are subject to FWHCA rules.
  - 2. The borders of an artificial pond may be subject to FWHCA rules if it has been unmaintained for long enough to contain wetland vegetation and hydric soils along the edges.

**I. Designation of Critical Area Buffer for Naturally Occurring Ponds.**

The following critical area buffer is hereby established for naturally occurring ponds that are not classified as a stream or wetland:

Naturally occurring ponds where no other critical area designation applies: 50 feet.

**20.25H.155 Uses in Fish and Wildlife Habitat Conservation Areas.**

The uses allowed in the underlying land use district are allowed within FWHCAs, so long as the development complies with the performance standards of LUC 20.25H.160; provided, that fish habitat protection is presumed through compliance

with performance standards contained in Part 20.25E LUC. This section does not allow modification of other critical areas or critical area buffers.

#### **20.25H.160 Performance standards.**

If habitat associated with FWHCAs will be impacted by a proposal, the proposal shall implement the wildlife management recommendations developed by the Department of Fish and Wildlife for such species. Where the habitat does not include any other critical area or critical area buffer, compliance with any state or federal documentation and management planning shall constitute compliance with this part.

#### **20.25H.165 Critical areas report – Additional provisions.**

In addition to the general critical areas report requirements of LUC 20.25H.250, critical areas reports used to document modification of the performance standards for FWHCAs must meet the requirements of this section and may be approved via the underlying permit process, as applicable.

##### **A. Habitat Assessment.**

A habitat assessment is an investigation of the site to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical areas report for FWHCAs shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:

1. Detailed description of vegetation on and adjacent to the site and assessment of any proposed vegetation disturbance; complete the City of Bellevue Urban Wildlife Habitat Functional Assessment or equivalent to evaluate habitat functions on and adjacent to the site;
2. Identification of any species that have a primary association with habitat on or adjacent to the site, and assessment of potential project impacts to the use of the site by the species;
3. 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 species or habitats located on or adjacent to the site;
4. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to habitat features and water quality;
5. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed use or activity and to be conducted in accordance with the mitigation sequence set forth in LUC 20.25H.215; and

6. A discussion of ongoing management practices that will protect habitat after the site has been developed, including proposed monitoring and maintenance programs.

#### **20.25H.170 Process to identify additional species of local importance.**

##### **A. Designation Process.**

Additional species of local importance may be designated pursuant to the Land Use Code amendment process, Part 20.30J LUC.

##### **B. Additional Decision Criteria.**

In addition to the decision criteria of LUC 20.30J.135, a species may be designated a species of local importance only if it demonstrates the following characteristics:

1. Local populations of native species are in danger of extirpation based on existing trends:
  - a. Local populations of native species that are likely to become endangered;  
or
  - b. Local populations of native species that are vulnerable or declining;
2. The species or habitat has recreation, commercial, game, tribal, or other special value;
3. Long-term persistence of a species is dependent on the protection of the species through the provisions of this part;
4. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and
5. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

##### **C. Effect of Designation.**

Designation of a species of local importance under this section shall not impact projects or proposals with a vested application or approved permit.

## **IX. FREQUENTLY FLOODED AREAS**

#### **20.25H.175 Designation of a critical area.**

##### **A. Designation of Critical Area.**

All development within special flood hazard areas in the City of Bellevue is subject to the terms of this section and other applicable regulations. Frequently flooded areas shall be the greatest area identified in this subsection. In no case shall the extent or flood depths of a frequently flooded area be less than those identified on the current Flood Insurance Rate Maps.

Frequently flooded areas shall include:

1. Land Subject to One-Hundred-Year Flood. The land in the floodplain subject to the flood having a one percent chance or greater of being equaled or exceeded in any given year as determined by customary methods of statistical analysis defined in the City of Bellevue Storm and Surface Water Engineering Standards, now or as hereafter amended. Also referred to as the 100-year flood.
2. Areas Identified on the Flood Insurance Rate Map(s). Those areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for King County, Washington, and Incorporated Areas," dated August 19, 2020, with an accompanying Flood Insurance Rate Map(s) (FIRM(s)), dated August 19, 2020, and any revisions thereto. The FIS and accompanying FIRM(s) are hereby adopted by reference, declared part of this Part 20.25H LUC, and are available for public review at the City of Bellevue. The best available information for flood hazard area identification as outlined in subsection A.6 of this section shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under subsection A.6 of this section.
3. Additional Areas. Other areas designated by the Director pursuant to this section shall be considered frequently flooded areas.
4. Designation of Areas of Special Flood Hazard. Flood Insurance Rate Maps are to be used as a guide for the City of Bellevue, project applicants, and/or property owners to identify areas of special flood hazard. Flood Insurance Rate Maps may be continuously updated as areas are reexamined or new areas are identified. Newer and more restrictive information for flood hazard area identification shall be the basis for regulation.
5. Use of Additional Information. The Director may use additional flood information that is more restrictive or detailed than that provided in the Flood Insurance Study to designate frequently flooded areas, including data on channel migration, historical data, high water marks, photographs of past flooding, location of restrictive floodways, maps showing future build-out conditions, maps that show stream habitat areas, or similar information.
6. Flood Elevation Data. When base flood elevation data is not available (A and V zones), the Director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer provisions for the frequently flooded areas. In

areas of special flood hazard where the BFE has increased due to remapping efforts, the new BFE will establish the regulatory limit.

#### **20.25H.177 Definitions.**

The following definitions are specific to the regulations for the frequently flooded areas in the Land Use Code and shall have the following meanings:

“Alteration of watercourse” means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

“Area of special flood hazard” means the land in the floodplain within the City subject to a one percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, or AR (V, VO, V1-30, VE). “Special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the 100-year flood.

“Base flood elevation (BFE)” means the elevation to which floodwater is anticipated to rise during the base flood.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Development” means any manmade change to improved or unimproved real estate in the frequently flooded areas, including, but not limited to, building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Encroachment” means any alteration or development within the regulatory floodway that would result in any increase in the flood levels during the occurrence of the base flood discharge.

“Flood” or “flooding” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland waters; or
  - b. The unusual and rapid accumulation or runoff of surface waters from any source; or
  - c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subsection 1.b of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when

earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection 1.a of this definition.

“Flood elevation study” means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as a Flood Insurance Study (FIS).

“Flood Insurance Rate Map (FIRM)” means the official map delineating both special flood hazard areas and the risk premium zones applicable to the City that was prepared by the Federal Insurance Administrator for the City or as subsequently revised by the Federal Emergency Management Agency. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

“Floodplain or flood prone area” means any land area susceptible to being inundated by water from any source. Floodplains are usually defined geographically on the basis of that area flooded by the most intense storm occurring during a certain period of years. Although floodwaters usually drain rapidly after precipitation has ceased, when floodwaters flow into wetland areas, they may be impounded for some time, due to the poor drainage characteristics of wetlands. See “Flood or flooding.”

“Floodplain Administrator” means the Director of the Development Services Department, Utilities Department Director, or the designee thereof, responsible for administering and enforcing the floodplain management regulations, and granting or denying development permits on the basis thereof.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents. Floodproofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as “Regulatory Floodway.”



“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior, or
  - b. Directly by the Secretary of the Interior in states without approved programs.

“Hyporheic zone” means the saturated zone located beneath and adjacent to streams that contains some portion of surface waters, serves as a filter for nutrients and maintains water quality.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this part found in LUC 20.25H.180.C.1.a.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include “recreational vehicle.”

“Mean sea level” means, for purposes of the National Flood Insurance Program, the vertical datum to which Base Flood Elevations shown on the City’s Flood Insurance Rate Map are referenced.

“New construction” means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after December 1, 1978, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after December 1, 1978, and includes any subsequent improvements to such structures.

One-Hundred-Year Flood. See “Base flood elevation (BFE).”

“Pre-FIRM building” means a building constructed prior to December 1, 1978.

“Recreational vehicle” means a vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory floodway” means the floodway delineated on the Flood Insurance Rate Map (FIRM).

“Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

“Substantial damage” means damage of any origin sustained by a structure where the cost of restoring the structure to its before damage condition would

equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” includes the following: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct previously identified existing violations of state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or (2) any alteration of a “historic structure”; provided, that the alteration will not preclude the structure’s continued designation as a “historic structure.”

“Variance” means a grant of relief by the City from the terms of a floodplain management regulation.

#### **20.25H.178 Administration.**

##### **A. Designation of the Floodplain Administrator.**

The Director is appointed to administer, implement, and enforce the provisions of this chapter by granting or denying development permits in accordance with its provisions.

##### **B. Enforcement and Penalty.**

The enforcement of the frequently flooded areas provisions shall be in conformance with LUC 20.40.450 and the penalty provisions of LUC 20.40.460.

##### **C. Information to Be Obtained and Maintained.**

1. Where base flood elevation data is provided through the FIS, FIRM, or as required by LUC 20.25H.175.A.6, the applicant shall obtain a record of the actual as-built elevation, in relation to mean sea level of the lowest floor, including basement, of all new or substantially improved structures, and whether or not the structure contains a basement. The Director shall maintain a record of this elevation.
2. For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIS, FIRM, or as required by LUC 20.25H.175.A.6, the applicant shall:
  - a. Obtain and maintain a record of the elevation, in relation to mean sea level, to which the structure was floodproofed.
  - b. Maintain the floodproofing certification required by this chapter.

3. Certification is required for floodway encroachments.
4. Records of all variance actions, including justification for their issuance, are required.
5. Improvement and damage calculations are required.
6. The applicant shall maintain for public inspection all records pertaining to the provisions of this chapter.

**20.25H.179 Development in the area of special flood hazard – Additional submittal requirements.**

The Director may waive specific submittal requirements determined to be unnecessary for review of an application. In addition to the provisions of LUC 20.25H.020, any application for development in frequently flooded areas may be required to include, but not be limited to, the following:

- A. Elevation prepared by a surveyor licensed in the State of Washington in relation to mean sea level of the lowest floor, including basement, of all structures;
- B. Elevation prepared by a surveyor licensed in the State of Washington in relation to mean sea level to which any structure has been or will be floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in LUC 20.25H.180.B and C;
- D. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development;
- E. Where development is proposed in a floodway, an engineering analysis indicating no rise of the BFE; and
- F. Any other such information that may be reasonably required by the Director to review the application.

**20.25H.180 Development in the area of special flood hazard.**

Floodplain development approval required. No use, structure, development, vegetation clearing or activity may occur in frequently flooded areas except as specifically allowed by this part. All use, development or activity which is allowed is subject to the performance standards of this section and shall not result in a rise in the BFE. The requirements of this section may only be modified through a Variance.

**A. Review of Proposed Development – Applicable Process.**

1. Critical Areas Land Use Permit. Proposals for development in frequently flooded areas shall require a Critical Areas Land Use Permit, Part 20.30P

LUC. The Director shall determine that the requirements of this chapter have been satisfied; all necessary permits have been obtained from federal, state, or local agencies prior to approval; the site is reasonably safe from flooding, and the proposed development is not located in the floodway, or if located in the floodway, the development complies with the provisions of this chapter. The Director shall notify FEMA when annexations occur in frequently flooded areas.

2. Variance to the Frequently Flooded Areas Provisions.

- a. Applications to modify the requirements of this section shall require a Variance Permit, Part 20.30G. The Director may approve or approve with modifications an application for a Variance from the requirements of this section as set forth in LUC 20.30G.140.
- b. All Variance records, including justification for approvals, shall be maintained in accordance with the City of Bellevue record retention policy. Upon approval of a Variance, the Director shall notify the applicant in writing the following:
  - i. That the issuance of a Variance to construct below the base flood elevation (BFE) will result in increased premium rates for flood insurance up to amounts as high as \$25.00 per \$100.00 of insurance coverage; and
  - ii. That such construction below the BFE increases risks to life and property.

3. Review of Development. Where elevation data is not available, either through the FIS, FIRM, or as provided in LUC 20.25H.175, applications for development in frequently flooded areas shall be reviewed to assure that development will be reasonably safe from flooding. The test of reasonableness is a local judgement, which includes, but is not limited to, the use of historical data, high water marks, and photographs of past flooding where available.

**B. General Performance Standards.**

Where use or development is allowed pursuant to LUC 20.25H.055, the following general performance standards apply, in addition to the applicable performance standards in subsection C of this section:

1. Intrusion over Frequently Flooded Areas Allowed. Any structure may intrude over frequently flooded areas if:
  - a. The intrusion is located at least one foot above the BFE and does not alter the configuration of the frequently flooded area;

- b. The intrusion is at an elevation and orientation which maintains the existing vegetation of the frequently flooded area in a healthy condition. Solar access to vegetation must be maintained at least 50 percent of daylight hours during the normal growing season; and
- c. The intrusion does not encroach into the regulated floodway except in compliance with subsection B.5 of this section.
- d. A floodplain habitat assessment prepared by a qualified professional evaluating the impacts of the project on Federal, State or locally protected species and habitat, pursuant to the Endangered Species Act (ESA) as required by federal or state agencies. If required, the assessment shall evaluate potential impacts to endangered, threatened, and sensitive species and shall identify measures to avoid, minimize, and mitigate adverse effects.

Development not meeting the requirements of subsection B.1 of this section may be allowed pursuant to LUC 20.25H.055 and only in accordance with the requirements set forth in the remainder of subsection B of this section.

- 2. Elevation Certificate Following Construction. Following construction of a structure within a frequently flooded area, where the base flood elevation is provided, the applicant shall obtain an elevation certificate. The elevation certificate shall be completed by a surveyor licensed in the State of Washington and shall be submitted to City of Bellevue, Utilities Department. The Director shall obtain and transmit to the Director of the Utilities Department the elevation in relation to North American vertical datum (NAVD 88) of the lowest floor, including basement, and attendant utilities of a new or substantially improved structure permitted by this part. All records shall be maintained for public inspection in accordance with 44 C.F.R. 60.3(b)(5)(iii).
- 3. Construction Materials and Methods.
  - a. Site Design. All structures, utilities, and other improvements shall be located on the buildable portion of the site out of the frequently flooded area unless there is no buildable site out of the frequently flooded area. For sites with no buildable area out of the frequently flooded area, structures, utilities, and other improvements shall be placed on the highest land on the site, outside of the floodway, oriented parallel to flow rather than perpendicular, and sited as far from the stream and other critical areas as possible. If the Director detects any evidence of active hyporheic exchange on a site, the development shall be located to minimize disruption of such exchange.
  - b. Methods That Minimize Flood Damage.

- i. All new construction and substantial improvements shall be constructed using flood-resistant materials and using methods and practices that minimize or eliminate flood damage.
    - ii. Building Mechanical Equipment. Unless otherwise specified in subsection C of this section, mechanical equipment, including but not limited to electrical, heating, ventilation, plumbing, air conditioning, and other service facilities, shall be dry floodproofed or elevated one foot or more above the BFE.
  - c. Utility Protection. Water wells shall be located on high ground that is not in the floodway; new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
  - d. Anchoring.
    - i. All new construction and substantial improvements, including those related to manufactured homes, shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
    - ii. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
  - e. Enclosed Area Below the Lowest Floor. When buildings, including manufactured homes, are constructed or substantially improved with fully enclosed areas below the lowest floor, the areas shall be used solely for parking of vehicles, building access, or storage.
4. No Rise in the Base Flood Elevation (BFE). Any allowed use or development shall not result in a rise in the BFE.
- a. Post and Pile. Post and piling techniques are preferred and are presumed to produce no increase in the BFE so long as only posts or piles are located below the BFE. Demonstration of no net rise in the BFE through calculation is not required.
  - b. Compensatory Storage. Proposals using compensatory storage techniques to assure no rise in the BFE shall demonstrate no net rise in the BFE through the calculation by accepted engineering practice or methods established in the Utilities Storm and Surface Water Engineering

Standards, Section D4-05.5, Floodplain/Floodway Analysis, whichever is more restrictive, now or as hereafter amended.

5. Development in the Regulatory Floodway.

- a. Encroachment into Regulatory Floodway Prohibited. A residential structure located partially within the regulatory floodway will be considered as totally within the regulatory floodway and must comply with this subsection B.5. Encroachments, including but not limited to fill, new construction, substantial improvements, and other development, are prohibited, unless a registered professional engineer certifies that the proposed encroachment into the regulatory floodway shall not result in any rise in the BFE using hydrological and hydraulic analysis performed in accordance with accepted engineering practice or City of Bellevue Storm and Surface Water Engineering Standards, whichever is more restrictive and provided they comply with the NFIP minimum requirements and do not adversely affect floodplain storage, conveyance, or habitat functions through a habitat assessment. All new construction and substantial improvements shall comply with this section.
- b. Residential Structures. Construction or reconstruction of residential structures is prohibited within the regulatory floodway, except when:
  - i. Repairs, reconstruction, or improvements to a structure do not increase the footprint; and
  - ii. Repairs, reconstruction, or improvements to a structure, the cost of which do not exceed 50 percent of the market value of the structure either (1) before the repair, reconstruction, or improvement is begun, or (2) if the structure has been damaged, and is being restored, before the damage occurred. Work done to comply with state or local health, sanitary, or safety codes identified by the Building Official and which are the minimum necessary to assure safe living conditions or any alteration of a Historic Structure shall not be included in the 50 percent market value determination.
- c. Substantially Damaged Residential Structures.
  - i. The Director may request the Washington State Department of Ecology to assess the risk of harm to life and property posed by the specific conditions of the regulatory floodway, and provide the City with a recommendation on repair or replacement of a substantially damaged residential structure consistent with WAC 173-158-076, now or as hereafter amended and FEMA NFIP standards. Property owners shall be responsible for submitting to the City any information necessary to complete the assessment when such information is not otherwise available. No repair or replacement of a substantially



damaged residential structure located in the regulatory floodway is allowed without a recommendation from the Department of Ecology.

- ii. Before the repair, replacement, or reconstruction is started, all requirements of this section must be satisfied. In addition, the following conditions shall be met:

- (1) There is no potential safe building location for the replacement residential structure on the same property outside the regulatory floodway;
- (2) A replacement residential structure is a residential structure built as a substitute for a previously existing residential structure of equivalent use and size;
- (3) Repairs or reconstruction or replacement of a residential structure shall not increase the total square footage of floodway encroachment;
- (4) The elevation of the lowest floor of the substantially damaged or replacement residential structure is a minimum of one foot higher than the base flood elevation;
- (5) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood water into the system;
- (6) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and
- (7) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

- d. All utility and infrastructure design shall consider projected changes in flood frequency, magnitude, and extent due to climate change and shall be constructed to maintain function during projected future flood conditions.

- 6. Modification of Stream Channel. Alteration of open stream channels shall be avoided, if feasible. If unavoidable, the following provisions shall apply to the alteration:

- a. Modifications shall only be allowed in accordance with the habitat improvement projects.
- b. Modification projects shall not result in blockage of side channels.

- c. The City of Bellevue shall notify adjacent communities, the state departments of Ecology and Fish and Wildlife, and the Federal Insurance Administration about the proposed modification at least 30 days prior to permit issuance.
  - d. The applicant shall maintain the altered or relocated portion of the stream channel to ensure that the flood-carrying capacity is not diminished. Maintenance shall be bonded for a period of five years, and be in accordance with an approved maintenance program.
7. Compensatory Storage. Development proposals must not reduce the effective base flood storage volume of the area of special flood hazard. Grading or other activity that would reduce the effective storage volume must be mitigated by creating compensatory storage on the site. The compensatory storage must:
- a. Provide equivalent elevations to that being displaced;
  - b. Be hydraulically connected to the source of flooding;
  - c. Be provided in the same construction season and before the flood season begins on September 30th;
  - d. Occur on site or off site if legal arrangements can be made to assure that the effective compensatory storage volume will be preserved over time;
  - e. Be supported by a detailed hydraulic analysis that:
    - i. Is prepared by a licensed engineer;
    - ii. Demonstrates that the proposed compensatory storage does not adversely affect the BFE; and
  - f. Meet all other critical areas rules subject to this part. If modification to a critical area or critical area buffer is required to complete the compensatory storage requirement, such modification shall be mitigated pursuant to an approved mitigation and restoration plan, LUC 20.25H.210.
8. Floodplain Ecological Functions. The use or development shall meet National Flood Insurance Program requirements for the protection of floodplain ecological functions in accordance with guidelines established by the Director. Floodplain ecological functions include, but are not limited to, stormwater quality, floodwater storage and conveyance capacity, and habitat. Any development in a floodplain requires a FEMA habitat assessment to demonstrate compliance with the Endangered Species Act consistent with the 2008 National Marine Fisheries Service (NMFS) Biological Opinion.
9. Development Containing 50 Lots or 5 Acres. Where detailed base flood elevation data has not been provided or is not available from another

authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain either 50 lots or involve 5 acres, regardless of the number of lots.

### **C. Specific Performance Standards.**

In all areas of special flood hazards where BFE data has been provided as set forth in LUC 20.25H.175.A and where use or development is allowed pursuant to LUC 20.25H.055, the following specific performance standards apply:

1. New Residential Construction, Modification of Existing Development, and Existing Nonconforming Development. New construction, lateral additions, and substantial improvements to existing development and existing nonconforming development is allowed only through a reasonable use exception, LUC [20.25H.190](#).
  - a. Residential construction (single-family and multifamily dwellings), including new construction, substantial improvements, or reconstruction due to substantial damage. New Construction, Substantial Improvements, and reconstruction due to substantial damage of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation (BFE). Mechanical equipment and utilities, including but not limited to electrical, heating, ventilation, plumbing, air-conditioning, and other service facilities, shall be elevated one foot or more above the BFE. In an unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the structure shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade. Fully enclosed areas below the BFE that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
    - i. A minimum of two openings having a total net area of not less than one square inch for every one square foot of enclosed area subject to flooding shall be provided.
    - ii. The bottom of all openings shall be no higher than one foot above grade.
    - iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters.

- iv. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of flood waters.
  - b. Pre-FIRM Buildings. Pre-FIRM buildings that qualify as a substantial improvement (including lateral additions) must meet the elevation standards of new construction.
2. Repair and Maintenance of Existing Parks and Park Facilities – New or Expanded City and Public Parks. Substantial improvement of any structure in frequently flooded areas must comply with the nonresidential performance standards found in this section.
  3. New or Expanded Essential Public Facilities.
    - a. The facility must be constructed in conformance with the residential and nonresidential construction standards of this subsection and be elevated to at least one foot above the BFE or in compliance with ASCE 24, whichever is more restrictive.
    - b. Dry floodproofing and sealing measures must be taken to ensure that hazardous or toxic substances will not be displaced by or released into flood waters.
  4. New or Expanded Public Rights-of-Way, Private Roads, Access Easements and Driveways.
    - a. The low chord on the bridge structure will be no less than the elevation of the BFE.
    - b. Access to essential public facilities must be elevated to or above the BFE to the nearest maintained public street or roadway.
  5. Changes to the Frequently Flooded Areas. If a project will alter the BFE or boundaries of the Special Flood Hazard Area (SFHA), then the project proponent shall provide the City with engineering documentation and analysis regarding the proposed change. If the change to the BFE or boundaries of the SFHA would normally require a Letter of Map Change, then the project proponent shall provide a Conditional Letter of Map Revision (CLOMR) to FEMA and provide proof of application to the City. The project shall not commence construction within the affected floodplain area until CLOMR approval is received. The project shall be constructed in a manner consistent with the approved CLOMR.

If a CLOMR application is made, then the project proponent shall submit the full CLOMR documentation package, including all required property owner notifications, to the City for attachment to the development permit. Prior to certificate of occupation, the applicant shall obtain a Letter of Map Revision (LOMR) to the City in accordance with FEMA requirements.

6. Recreational Vehicles. Recreational vehicles are required to either:
  - a. Be on the site for fewer than 180 consecutive days; and
  - b. Be fully licensed and ready for highway use on its wheels or jacking system, be attached to the site only by quick-disconnect-type utilities and security devices, and have no permanently attached additions; or
  - c. Obtain a development permit and meet the requirements, including elevation and anchoring, for manufactured homes.
7. Manufactured Homes. All manufactured homes to be placed or substantially improved or reconstructed due to substantial damage on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the BFE. Mechanical equipment and utilities, including but not limited to electrical, heating, ventilation, plumbing, air-conditioning, and other service facilities, shall be elevated one foot or more above the BFE. All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
8. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall meet the requirements of either subsection C.8.a or C.8.b of this section.
  - a. In AE and A1-30 zones or other A-zoned areas where the BFE has been determined or can be reasonably obtained new construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall:
    - i. Have the lowest floor, including basement, elevated one foot or more above the BFE, or elevated as required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or elevated one foot or more above the BFE, or as required by ASCE 24, whichever is greater; and
    - ii. If located in an unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the structure shall be reasonably safe from flooding, but in all cases the lowest floor shall be two feet above the Highest Adjacent Grade.
  - b. If the requirements of subsection [C.8.a](#) of this section are not met, new construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall:
    - i. Be dry floodproofed so that below one foot or more above the BFE the structure is watertight with walls substantially impermeable to the

passage of water or dry floodproofed to the elevation required by ASCE 24, whichever is greater;

- ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - iii. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. Such certification shall be provided to the Development Services Department. Following construction of the structure, elevation certificates shall be submitted to the City that record the actual (as-built) elevation to which the structure was floodproofed. The City shall notify the applicant that insurance premiums will be based on rates that are one foot below the floodproofed level, and floodproofing the building an additional foot will reduce insurance premiums.
- c. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or fully enclosed areas below the BFE that are not floodproofed shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:
- i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - ii. The bottom of all openings shall be no higher than one foot above grade;
  - iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters; and
  - iv. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of flood waters.
- d. Lateral Additions. Lateral additions to structures that qualify as a substantial improvement must meet the elevation standards of new nonresidential construction. If the common wall between the lateral addition and the existing structure is demolished as part of the project, then the entire structure must meet the standards of new, nonresidential construction.

- e. Pre-FIRM Buildings. Pre-FIRM buildings that qualify as a substantial improvement (including lateral additions) must meet the elevation standards of new construction.

## **X. REASONABLE USE EXCEPTION**

### **20.25H.190 Reasonable use exception – Purpose.**

#### **A. Purpose.**

The purpose of the reasonable use exception is to:

1. 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 result in a severe economic impact at such a level that a property owner's constitutional rights may be at risk;
2. Establish guidelines and standards for the exercise of this authority adjusted to the specific conditions of each subject property; and
3. Protect the public health, welfare and safety of the residents of Bellevue.

### **20.25H.195 Reasonable use exception – Process.**

A request for a reasonable use exception shall be processed as a Critical Areas Land Use Permit, Part 20.30P LUC.

### **20.25H.200 Reasonable use exception – Applicability.**

#### **A. Reasonable Use Standards.**

The standards and regulations of this chapter are not intended, and shall not be construed or applied in a manner, to deny all reasonable economic use of private property.

An applicant who is unable to comply with the specific standards of this chapter without forfeiting all economically viable use of the property may seek approval of a "reasonable use" exception for development under this section.

#### **B. Determination.**

1. In circumstances where a reasonable use exception is allowed under this chapter, the Director may grant a reasonable use exception if the applicant can demonstrate facts supporting a determination of severe economic impact at such a level that a property owner's constitutional rights may be at risk. Specifically, to qualify for a reasonable use exception, the Director must find that the proposal meets all of the following criteria:
  - a. The strict application of this chapter will either:

- i. Create a severe economic impact by depriving a property owner of all economically beneficial use of the property; or
    - ii. Create severe economic impact, not reaching deprivation of all economically beneficial use, but reaching the level of an undue burden that should not be borne by the property owner.
  - 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, or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the critical area and buffer;
  - c. The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property.
  - d. The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter.
  - e. The proposed development is on a lot meeting the criteria of LUC 20.20.060, legally created lot.
  - f. 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 20.45A or 20.45B LUC that results in an undevelopable condition.
  - g. 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.
  - h. The proposed development activity meets all other requirements of this title, does not otherwise constitute a nuisance, or pose a threat to public health, safety, and welfare on or off the site.
  - i. The inability to derive reasonable use of the subject property is not the result of prior actions taken in violation of this title or any other local, state, or federal law or regulation.
2. In determining whether there is a severe economic impact for the purposes of subsection B.1.a of this section, the Director may weigh the following nonexclusive factors:
- a. The severity of the economic impact caused by the application of the requirements of this chapter;
  - b. The degree to which the requirements of this chapter were or could have been anticipated;



- c. The extent to which alternative uses of the property or configurations of the proposed development would alleviate the need for the requested reasonable use exception;
- d. The extent to which any economic impact was due to decisions by the applicant or property owner; and
- e. Other factors relevant to whether the burden should be borne by the property owner.

### **C. When Allowed.**

A reasonable use exception may be granted under this section when no other reasonable use of property exists by the application of the regulations of this part. A reasonable use exception will only be applicable to sites that do not have an area of 4000 square feet or more available for development outside the standard buffer. Where disturbance of a critical area or critical area buffer is allowed under this section, development is subject to the performance standards of LUC 20.25H.205 below. Allowed uses, maximum disturbance limits, and submittal requirements under a reasonable use exception are as follows:

1. The following land uses may be proposed with a reasonable use exception:
  - a. Residential Land Uses:
    - i. One Detached Dwelling Unit; or
    - ii. Attached Dwelling Units.
      - (A) Two dwelling units sharing a common wall within the primary structure; or
      - (B) One detached dwelling unit and an attached accessory dwelling unit.
  - b. Mixed-Use and Nonresidential Land Uses. Mixed-use projects are also subject to the residential unit limitations in LUC 20.25H.200.C.1.a:
    - i. An office use, except veterinary offices with outdoor facilities; and
    - ii. 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. To limit disturbance and impacts to the critical area and buffer these uses shall:
      - (A) Locate parking on the opposite side of the building from the critical area; and
      - (B) Limit hours of operation to between 8:00 a.m. and 11:00 p.m.

2. Maximum Disturbance limits. 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. 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, including but not limited to land surface modification, utility installation, decks, driveways, paving, and landscaping, shall not exceed the following limits:
- a. If the subject property contains 6,000 square feet of area or less, no more than fifty percent (50%) of the site may be disturbed.
  - b. If the subject property contains more than 6,000 square feet but less than 30,000 square feet, no more than fifty percent (50%) or 4,000 square feet may be disturbed, whichever is less.
  - c. For properties containing 30,000 square feet or more, the maximum allowable site disturbance shall be between 4,000 square feet and ten percent (10%) of the lot area, whichever is less.
  - d. 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.
  - e. Public improvements within the right-of-way required by Chapter 14.60 BCC (for example, required curb, gutter and sidewalk improvements) are not counted in the maximum 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.
  - f. The portion of a driveway located within an improved right-of-way is not counted in the maximum allowable 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 up to 30 feet in length. The portion of the driveway exceeding 30 feet in length may be exempt from maximum allowable site disturbance area provided that the driveway length is the minimum necessary to provide access to the building.
  - g. On sites where the approved 4,000 or less square feet of developable area is not immediately adjacent to a public or private road and an extended driveway is required, the driveway area necessary to connect the developable area to the access point may be excluded from the maximum area of site disturbance. Extended driveways that result in critical area and/or buffer impacts are subject to mitigation sequencing.

- h. Through this reasonable use exception, minimum lot size and other dimensional requirements may be modified as necessary to accommodate the allowed reasonable development.
- 3. Submittal Requirements. As part of the reasonable use exception request, the applicant shall submit a critical area report pursuant to LUC 20.25.250, prepared by a qualified professional approved by the City, and also fund a technical review of this report by a consultant retained by the City. The report shall include the following:
  - a. For a wetland, the additional report information requirements specified in LUC 20.25H.110. For a stream, the additional report information requirements specified in LUC 20.25H.090;
  - b. An analysis of whether any other reasonable use with less impact on the critical area and critical area buffer is possible;
  - c. A description of the proposed maximum amount of disturbance area pursuant to the disturbance area limitations of subsection (2) of this section;
  - c. A description of the site design and construction staging of the proposal shall have the least impact to the critical area and critical area buffer;
  - e. A site plan showing:
    - i. The critical area, critical area buffer and structure setback required by this chapter;
    - ii. The proposed area of disturbance both on and off the subject property pursuant to the disturbance area limitations of subsection (2) of this section;
    - iii. All proposed structures and improvements meeting the conditions of subsection (2) of this section, including:
      - (A) Building footprints, including garages;
      - (B) 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;

- f. A description of protective measures that will be undertaken, such as siltation curtains, compost berms and other siltation prevention measures, and a schedule of the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;
  - g. An analysis of the impact that the proposed development would have on the critical area and the critical area buffer;
  - h. Demonstration that the proposal mitigates for impacts to the critical areas and buffers. All remaining buffer areas must be fully vegetated with suitable native vegetation for approval of a reasonable use exception;
  - i. Demonstration that the proposal minimizes to the greatest extent possible net loss of critical area functions; and
  - j. An analysis of whether the improvement is located away from the critical area and the critical area buffer to the greatest extent possible; and
  - k. Such other information or studies as the Director may reasonably require.
- D. Modifications and Conditions. The Director shall include any conditions and restrictions in the written decision that the Director 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 Director pursuant to a Critical Areas Land Use Permit under Part 20.30P LUC is authorized to approve modifications to non-critical area setbacks under the allowances described in LUC 20.25H.040.

**E. Complete Compliance Required.**

- 1. General. Except as specified in subsection (E)(2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this chapter to construct the improvements authorized by the approval.
- 2. Exception: Subsequent Modification. The Director 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 Critical Areas Land Use Permit pursuant to Part 20.30P LUC for a new reasonable use exception.

**20.25H.205 Reasonable use exception – Performance standards.**

Where disturbance of a critical area or critical area buffer is allowed under this section, development is subject to the following performance standards. Additional performance standards apply to development in streams (LUC 20.25H.080),

wetlands (LUC 20.25H.100), geologic hazard areas (LUC 20.25H.125), and frequently flooded areas (LUC 20.25H.180). Where a conflict exists with the performance standards of this section, the provisions providing the most protection to critical area functions and values apply.

- A. The structure shall be located on the site in order to minimize the impact on the critical area or critical area buffer, including modifying the non-critical area setbacks to the maximum extent allowed under LUC 20.25H.040;
- B. Ground floor access points on portions of the structure adjacent to undisturbed critical area or critical area buffer shall be limited to the minimum necessary to comply with the requirements of the International Building Code and International Fire Code, as adopted and amended by the City of Bellevue;
- C. Proposals for Attached Dwelling Units described in LUC 20.25H.200.C.1.a.ii above or proposals involving attached ADU's shall consolidate driveways, parking areas, and entryways to the maximum extent feasible to minimize the impact on the critical area or critical area buffer.
- D. Associated development, including access driveways and utility infrastructure, shall be located outside of the critical area or critical area buffer to the maximum extent technically feasible;
- E. Areas of disturbance for associated development, including access and utility infrastructure, shall be consolidated to the maximum extent technically feasible;
- F. All areas of temporary disturbance associated with utility installation, construction staging and other development shall be determined by the Director and delineated in the field prior to construction and temporary disturbance shall be restored pursuant to a restoration plan meeting the requirements of LUC 20.25H.210;
- G. Areas of permanent disturbance shall be mitigated to the maximum extent feasible on site pursuant to a mitigation plan meeting the requirements of LUC 20.25H.210. Where on-site mitigation is not feasible or sufficient to meaningfully offset impacts, alternative approaches such as off-site mitigation, in-lieu fee programs, or mitigation banks may be considered, consistent with applicable performance standards referenced elsewhere in this code; and
- H. Fencing, signage and/or additional buffer plantings should be incorporated into the site development in order to prevent long-term disturbance within the critical area or critical area buffer.
- I. The proposal shall utilize 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.

## **XI. GENERAL MITIGATION AND RESTORATION REQUIREMENTS**

#### **20.25H.210 Applicability.**

Where a mitigation or restoration plan is required under this part, the plan shall be developed in accordance with the standards of LUC 20.25H.210 through 20.25H.225 inclusive. Any mitigation or restoration plan shall be documented via a critical areas report and approved as part of the permit or approval required for the underlying activity.

#### **20.25H.215 Mitigation sequencing.**

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to the critical area and/or critical area buffer. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- C. Performing the following types of mitigation (listed in order of preference):
  - 1. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
  - 2. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or
  - 3. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
- D. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

#### **20.25H.220 Mitigation and restoration plan requirements.**

The applicant shall submit a mitigation or restoration plan for approval as part of the review of the underlying proposal. Where standard restoration requirements or templates have been approved by the Director for the proposal in question, those requirements or templates may be followed without need for submission of an individual mitigation or restoration plan. These general requirements shall be modified for areas of temporary disturbance included as part of an approved Critical Areas Land Use Permit or use or development allowed under LUC 20.25H.055, so long as the requirements of subsection H of this section are met.

##### **A. Plan Phases.**

Where an applicant is seeking modifications, the mitigation plan required for the proposal may be submitted in phases. A conceptual plan shall be submitted as part of the critical areas report and approved with the land use approval for the proposal. A detailed plan shall be approved prior to or with approval of the first permit or other approval required to perform work associated with the proposal.

#### **B. Restoration and Mitigation Project Details.**

The plan shall be prepared by a qualified professional and shall at minimum include the content identified in this section. Additional requirements may be found for specific critical areas in LUC 20.25H.085 (streams); 20.25H.105 (wetlands); 20.25H.115 (CARAs); and 20.25H.135 (geologic hazard areas). Additional detail about the contents of restoration and mitigation plans may be developed by the Director in submittal requirements. The Director may waive any of the plan requirements where, in the Director's discretion, the information is not necessary to develop a mitigation or restoration plan that addresses the impacts of the proposed action.

1. A written report identifying environmental goals and objectives of the restoration or compensation proposed, based on replacing or restoring the critical area and critical area buffer functions and values impacted by the proposal;
2. Measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation or restoration project have been successfully attained and whether or not the requirements of this part have been met; and
3. Written specifications and descriptions of the restoration or mitigation proposed.
  - a. When the mitigation plan is submitted as a single-phase, or for the detailed plan phase when submitted in two phases, these written specifications shall be accompanied by detailed site diagrams, scaled cross sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
  - b. When the mitigation plan is submitted in phases pursuant to subsection A of this section, the written specifications may be general in nature for the conceptual phase, including general identification of areas for work, planting species, size and number. The more precise details may be provided in the detailed plan phase.

#### **C. Timing of Work.**

Unless a different time period is established in another section of this part, or is established by the Director in the approval for a specific project, all work required in a mitigation or restoration plan shall be completed prior to final inspection or

issuance of a temporary certificate of occupancy or certificate of occupancy, as applicable, for the development.

#### **D. Monitoring Program.**

The plan shall include a program for monitoring construction of the mitigation project and for assessing a completed project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years. The required monitoring period for a plan involving restoration only shall be reduced to a period of not less than five years.

#### **E. Contingency Plan.**

The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met and such failure would result in significant impact on the critical area or buffer. A plan involving restoration only is not required to include a contingency plan.

#### **F. Assurance Devices.**

The Director may require assurance devices in compliance with LUC 20.40.490 to ensure that the approved mitigation, monitoring program, contingency plan and any conditions of approval are fully implemented. After the work or improvements covered by a performance assurance device have been completed to the satisfaction of the City and, at the end of the time covered by a maintenance assurance device, the applicant may request the City to release the device.

#### **G. Mitigation for City Park Projects.**

Through a critical areas report, impacts of City park projects on critical areas and critical area buffers may be mitigated through restoration or enhancement of critical areas on other City park sites. Such restoration or enhancement may include restoration or enhancement projects completed prior to the proposal for which mitigation is required, so long as the restoration or enhancement project was not performed as mitigation for any other public or private project. The critical areas report shall demonstrate that the proposed mitigation restores the impacted critical area functions and values at least as well as mitigation performed on-site and in-kind associated with the development proposal. The Director may require an NGPA be recorded for the mitigation area to ensure that it is maintained in perpetuity.

#### **H. Restoration for Areas of Temporary Disturbance.**

The Director may impose conditions for the restoration of areas of temporary disturbance included as part of an approved Critical Areas Land Use Permit or use or development allowed under LUC 20.25H.055, without requiring the restoration plan and other measures described in this section, so long as the following requirements are satisfied:



1. All areas of temporary disturbance shall be identified in the plans approved with the Critical Areas Land Use Permit or allowed use or development and shall be the minimum necessary to allow the completion of the approved use or development. For uses and development involving the repair or renovation of existing structures that can be accessed from non-critical area or critical area buffer, the minimum necessary area of temporary disturbance shall be no greater than 10 feet around the perimeter of the existing structure. Proposals involving areas of greater disturbance shall require a full restoration plan under this section. The Director may impose conditions requiring areas of temporary disturbance to be marked in the field through the use of markers, fencing, or other means;
2. The condition of the areas of temporary disturbance existing prior to undertaking any development activity shall be documented with the proposal. The Director may require photographic evidence, site plans showing the size, location and type of existing vegetation, or other materials to document existing conditions;
3. The Director shall impose a condition that the area be restored to existing conditions prior to final approval of the work performed, or within 30 days following completion of the work if no final approval is required; and
4. The Director shall impose a condition requiring monitoring of the restored area and additional restoration to achieve existing conditions, consistent with subsection [D](#) of this section; provided, that the Director may reduce the monitoring period to not less than one year from completion of the original restoration.

#### **20.25H.225 Innovative mitigation.**

The Director may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science as compensation for impacts, including on-site and off-site mitigation that creates or enhances linkages between natural systems. Any mitigation or restoration plan shall be approved as part of a Critical Areas Land Use Permit or approval required for the underlying activity, subject to the review process requirements in LUC 20.25H.235. Where a project requires a critical areas report and a mitigation or restoration plan, the mitigation or restoration plan shall be included with the critical areas report.

- A. Applicability. Development sites that qualify for innovative mitigation approval are proposals to redevelop a previously developed site where existing legally established structures or impervious surface(s) encroach into required critical areas buffers. Redevelopment shall not expand further into the critical area or its buffer. The applicant must demonstrate compliance with mitigation sequencing per LUC 20.25H.215 and document how site encumbrances warrant an approach outside of standard code allowances in a critical areas report (LUC 20.25H.230). The Director may approve a reduced buffer consistent with the

limits of the legally established improvements, subject to the requirements in this section.

B. Innovative mitigation projects approved under this section, including innovative mitigation projects occurring outside city boundaries, shall demonstrate the following:

1. The mitigation occurs in WRIA 8, Lake Washington/Cedar/Sammamish Watershed, with a preference for the impacted subbasin;
2. The applicant will provide compensatory mitigation that provides functions and values equivalent to those that would have been provided through the implementation of the standard buffer and associated vegetation standards;
3. The project is consistent with the purpose of this overlay as described in LUC 20.25H.010; and
4. The approved project contributes to City and regional goals for critical areas restoration with an emphasis on salmonid habitat.

C. Innovative mitigation projects approved under this section may include projects with more than one applicant, or an organization where the capability to undertake a mitigation project successfully can be demonstrated under the following:

1. Applicants shall demonstrate the ability to act cooperatively fiscally and organizationally;
2. Applicants shall demonstrate the potential for success and the provision of long-term management of the habitat area; and
3. Mitigation projects developed and executed via a cooperative approach will result in better ecological improvement and protection of critical areas than there would be using traditional mitigation.

## **XII. CRITICAL AREAS REPORT**

### **20.25H.230 Critical areas report – Purpose.**

The critical areas report is required for any development proposal or proposed activity on a subject property located in the Critical Areas Overlay District. The critical areas report is intended to provide multiple functions. The critical areas report shall include an evaluation and delineation of the subject site and its existing conditions as well as detailing how a project conforms with the regulations within this Part. The critical areas report may also be utilized to document critical areas modifications as permitted by this Part in association with a Critical Areas Land Use Permit or other review process, as applicable. The scope and complexity of information required in a critical areas report will vary, depending on the scope, complexity, and magnitude of the proposed development. The critical areas report

must demonstrate that the proposal follows mitigation sequencing, as required by LUC 20.25H.215. If modifications are requested, as may be allowed under this Part, the critical areas report must demonstrate how the requested modifications lead to equivalent or better protection of critical area functions and values than would result from the application of the standard requirements. Where the proposal involves restoration of degraded conditions in exchange for a reduction in regulated critical area buffer on a site, the critical areas report must demonstrate a net increase in certain critical area functions

#### **20.25H.235 Critical areas report – Review process.**

The critical areas report may be reviewed under an exemption, the underlying development permit or permits, or a Critical Areas Land Use Permit, depending on the proposed activity and if modifications are requested. Where additional permits are required for the underlying use or activity, the permits may be merged.

#### **20.25H.240 Critical areas report – Limitation on modifications.**

The critical areas report may not be used to document modification of sections of the Land Use Code outside of this part unless otherwise expressly permitted. The critical areas report may not be used to document modifications to the definitions of critical areas or definitions of stream types or wetland categories, or any other provision of this part that expressly prohibits modification. The critical areas report may not be used to document modifications to streams or wetlands unless otherwise expressly permitted. Additional limitations on modifications for specific critical areas may be found in the sections of this part addressing that critical area.

#### **20.25H.245 Incorporation of best available science.**

The critical areas report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used, where applicable. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this part.

#### **20.25H.250 Critical areas report – Submittal requirements.**

##### **A. Specific Proposal Required.**

A critical areas report must be submitted as part of an application for a specific development proposal or activity. In addition to the requirements of this section, additional information may be required for the review or permit applicable to the development proposal or activity.

##### **B. Minimum Report Requirements.**

The critical areas report shall be prepared by a qualified professional and shall at minimum include the content identified in this section. The Director may waive any of the report requirements where, in the Director's discretion, the information

is not necessary to assess the impacts of the proposal and the level of protection of critical area function and value accomplished. At a minimum, the report shall contain the following:

1. Identification and classification of all critical areas and critical area buffers on the site;
2. Identification and characterization of all critical areas and critical area buffers on those properties immediately adjacent to the site;
3. Identification of each regulation or standard of this code that the proposal is either compliant with or proposed to be modified;
4. A habitat assessment consistent with the requirements of LUC 20.25H.165;
5. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
6. An analysis of the level of protection of critical area functions and values provided by the regulations or standards of this code, compared with the level of protection provided by the proposal. The analysis shall include:
  - a. A discussion of the functions and values currently provided by the critical area and critical area buffer on the site and their relative importance to the ecosystem in which they exist;
  - b. A discussion of the functions and values likely to be provided by the critical area and critical area buffer on the site through application of the regulations and standards of this Code over the anticipated life of the proposed development; and
  - c. A discussion of the functions and values likely to be provided by the critical area and critical area buffer on the site through the modifications and performance standards included in the proposal over the anticipated life of the proposed development;
7. A discussion of the performance standards applicable to the critical area and proposed activity pursuant to LUC 20.25H.160, and recommendation for additional or modified performance standards, if any;
8. A discussion of the mitigation requirements applicable to the proposal pursuant to LUC 20.25H.210, and a recommendation for additional or modified mitigation, if any; and
9. Any additional information required for the specific critical area as specified in the sections of this part addressing that critical area.

### **C. Additional Report Submittal Requirements.**

1. Unless otherwise provided, a critical areas report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Director.
2. Where a project requires a critical areas report and a mitigation or restoration plan, the mitigation or restoration plan shall be included with the critical areas report, and shall be considered in determining compliance with the applicable decision criteria, except as set forth in subsection C.4 of this section.
3. The applicant may consult with the Director prior to or during preparation of the critical areas report to obtain approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.
4. Proposals to obtain reductions in regulated critical area buffers below the standard buffers required by this part shall include the following information in addition to the minimum critical areas report contents described in subsection B of this section. The restoration proposed to improve existing function included in the proposal must be separate from any impact mitigation proposal:
  - a. The specific restoration actions proposed and the specific regulated buffer dimensions proposed.
  - b. The functions that will be enhanced by the restoration actions, addressing at minimum habitat, hydrology, water quality and (where applicable) stream process functions.
  - c. Functions that will be provided outside of the reduced regulated buffer dimension proposed by the project, if any (for example, stormwater quality and quantity controls or low impact development features).
  - d. The relative importance of the enhanced functions to the ecosystem in which they exist.
  - e. A description of the net gain in functions by the restoration actions in the reduced regulated buffer area and the proposal, compared to the functions that would be preserved under standard buffer provisions of the CAO without restoration.

#### **D. Incorporation of Previous Study.**

Where a valid critical areas report or report for another agency with jurisdiction over the proposal has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical areas report.

The applicant shall submit an assessment detailing any changed environmental conditions associated with the site.

#### **20.25H.255 Critical areas report – Criteria.**

##### **A. General.**

The applicant must demonstrate via the critical areas report that:

1. The performance standards included in the proposal lead to levels of protection of critical area functions and values at least as protective as application of the regulations and standards of this code;
2. Adequate resources to ensure completion of any required mitigation and monitoring efforts;
3. The performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site; and
4. The resulting development is compatible with other uses and development in the same land use district.

#### **20.25H.260 Critical areas report – Assurance devices.**

The Director may require assurance devices to ensure that any conditions of approval are fully implemented. Assurance devices shall be posted in accordance with LUC 20.40.490.

#### **20.25H.265 Critical areas report – City technical review.**

The City may require the applicant to pay for technical review of the critical areas report and related proposal by a consultant retained by the City to assist in determining compliance with the requirements for incorporating best available science, LUC 20.25H.245; compliance with submittal requirements, LUC 20.25H.250; and compliance with the applicable decision criteria, including LUC 20.25H.255 and LUC 20.30P.140.

#### **20.25H.270 Critical areas report – Independent third-party review.**

Regardless of whether the City conducts a technical review pursuant to LUC 20.25H.265, the applicant may request independent third-party review of the critical areas report and related proposal following the procedures of this section where disagreement exists between the City and the applicant on the critical areas report findings or technical recommendations contained in the critical areas report.

##### **A. Timing of Independent Third-Party Review.**

The applicant may request independent third-party review at any time during the applicable decision process. If the City and applicant agree, the review may be

conducted prior to issuance of any decision. If the City and applicant do not agree to pre-decision review, the review shall be conducted as part of the applicable appeal process. If conducted as part of the applicable appeal process, the timing of review and associated impact on the hearing date and the appeal schedule shall be determined during a pre-hearing conference held pursuant to the Hearing Examiner's rules of procedure.

#### **B. Qualified Reviewers.**

The independent third-party review shall be performed by a qualified professional who was not involved in preparing the critical areas report, and who was not engaged by the City to perform any technical review pursuant to LUC 20.25H.265.

#### **C. Selection of Qualified Professional.**

1. Pre-Decision Independent Third-Party Review. The qualified professional shall be chosen by mutual agreement between the City and the applicant. If the City and the applicant cannot agree on a qualified professional, the City shall issue its decision on the proposal pursuant to the applicable decision process. If the applicant appeals the decision and requests independent third-party review, the qualified professional shall be selected as set forth in subsection [C.2](#) of this section.
2. Independent Third-Party Review on Appeal. The Hearing Examiner shall select a qualified professional from among candidates submitted by the City and the applicant. The Hearing Examiner's selection shall be made during a pre-hearing conference held pursuant to the Hearing Examiner's rules of procedure.

#### **D. Impact on Required Project Timelines.**

1. Timelines Suspended During Third-Party Review Process. The applicant shall agree in writing that the time period between initiating the selection process for the qualified professional to conduct the independent third-party review through issuance of any written report of that qualified professional shall not count against any project timelines applicable to the decision or appeal process pursuant to City code or state law.
2. Timelines Suspended During Revisions. The applicant shall agree in writing that the time period during which the applicant prepares revisions to the proposal as a result of the independent third-party review shall not count against any project timelines applicable to the decision or appeal process pursuant to City code or state law.
3. Additional Time for City Review. The applicant shall agree in writing that any project timeline applicable to the decision or appeal process pursuant to City code or state law shall be extended by 30 days to allow for City or Hearing Examiner review of any written report of the qualified professional.

**E. Effect of Independent Third-Party Report.**

The report of the qualified professional shall not be binding, but shall be considered, together with all other reports and materials in the record, in determining compliance with the applicable decision criteria. The report of the qualified professional shall not be entitled to any more or less weight than other reports and materials in the record.

**F. Cost of Independent Third-Party Review.**

The applicant shall bear the cost of independent third-party review, unless the applicant is determined to be the prevailing party on issues associated with the critical areas report and associated conditions and recommendations.