

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5680

AN ORDINANCE amending the Bellevue Land Use Code to update critical areas regulations considering best available science, local policies and Growth Management Act requirements; repealing Part 20.25H of the Bellevue Land Use Code and Resolution 5712; and creating a new Part 20.25H of the Bellevue Land Use Code; and establishing an effective date.

WHEREAS, the City of Bellevue is a designated urban growth area under the state's Growth Management Act (GMA); and

WHEREAS, as an urban growth area, the City of Bellevue plans for and accepts its portion of the forecasted growth and development expected in King County; and

WHEREAS, the state Growth Management Act (GMA) requires local jurisdictions to designate and protect critical areas; and

WHEREAS, GMA requires local jurisdictions to include the best available science (BAS) in developing policies and regulations to protect critical area functions and values, and to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries; and

WHEREAS, the City of Bellevue has a long history of protecting environmentally sensitive critical areas, with its first protective regulations adopted in 1987; and

WHEREAS, the City of Bellevue has a long history of developing and protecting exceptional neighborhoods and commercial areas, which contribute to economic development and to citizens' quality of life; and

WHEREAS, the City of Bellevue initiated its Critical Areas Update process in order to review existing regulations and policies protecting critical areas in 2001; and

WHEREAS, following substantial work by the Critical Areas Citizens Advisory Committee and the Planning Commission, the City Council adopted updated critical areas policies into the Environmental Element of the Comprehensive Plan, in November, 2004; and

WHEREAS, the Comprehensive Plan policies directs a regulatory and non-regulatory approach to protecting critical area functions and values; and

WHEREAS, the City of Bellevue protects critical areas with a variety of non-regulatory measures, including acquisition of critical areas, rehabilitation projects, education programs, and best management practices in city operations and management of city property and rights of way; and

WHEREAS, the proposed amendments to the Land Use Code updating the City's critical areas regulations, together with other regulations, including the City's clearing and

grading regulations and stormwater regulations, and together with non-regulatory measures and incentives, provide protection of critical area functions and values; and

WHEREAS, the amendments to Part 20.25H of the Land Use Code include regulations requiring development to avoid impacts to critical areas through the use of buffers, require development in compliance with performance standards that minimize impacts to critical areas where development is required, and require mitigation of impacts that cannot be avoided; and

WHEREAS, the amendments to Part 20.25H of the Land Use Code also significantly increase flexibility and incentives for property owners; and

WHEREAS, the amendments to Part 20.25H of the Land Use Code recognize and accommodate existing legally-established development in and near critical areas; and

WHEREAS, in adopting this ordinance the City Council recognizes that several Bellevue neighborhoods have covenants that protect views from being blocked by trees or other vegetation; and

WHEREAS, the Coal Mine Hazard regulations adopted in 1993 by Resolution 5712 represent the best available information and techniques for development within identified coal mine hazards areas, and should be included in the Land Use Code; and

WHEREAS, development of the proposed amendments included BAS, with BAS sources set forth completely in the Planning Commission Transmittal dated September 7, 2005, as updated in the City Council Agenda Memorandum dated June 26, 2006; and

WHEREAS, the City prepared a risk analysis of the proposed amendments, entitled "*City of Bellevue's Critical Areas Update – Risk Analysis of Regulatory, City Programs, and Best Available Science Alternatives for Improving Critical Area Protection*," dated June 16, 2005 and updated on May 9, 2006, which discloses any departure from best available science and the risks associated with such departures; and

WHEREAS, the Planning Commission held a public hearing on July 6, 2005 with regard to such proposed Land Use Code amendment; and

WHEREAS, the Planning Commission finds that the Land Use Code amendment satisfies the criteria of LUC 20.30J.135 and therefore recommends that the City Council approve such proposed amendment; and

WHEREAS, the City Council held a public hearing on May 15, 2006 with regard to the proposed Land Use Code amendments, as modified by the City Council; and

WHEREAS, the City Council concurs in the analysis of the Land Use Code amendment criteria as set forth in the Planning Commission Transmittal dated September 7, 2005 and finds that the Land Use Code amendment, as modified pursuant to Council direction, satisfies the criteria of LUC 20.30J.135; and

WHEREAS, the City Council adopts the analysis and discussion of GMA and BAS obligations as set forth in the Planning Commission Transmittal dated September 7, 2005, as updated in the City Council Agenda Memorandum dated June 26, 2006; 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, BCC 22.02, including preparation of the Draft Environmental Impact Statement dated June 15, 2005 and the Final Environmental Impact Statement dated May 9, 2006; now, therefore,

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

Section 1. Resolution 5712 is hereby repealed.

Section 2. Part 20.25H of the Bellevue Land Use Code is hereby repealed.

Section 3. A new Part 20.25H of the Bellevue Land Use Code is hereby adopted as follows:

Critical Areas Overlay District

Part 20.25H

I. SCOPE AND PURPOSE

20.25H.005 Scope.

This Part 20.25H establishes standards and procedures that apply to development within the "Critical Areas Overlay District," which includes any site that is in whole or in part designated 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. The Critical Areas Overlay District does not apply to the 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 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.

The Critical Areas Overlay District consists of two parts: that part of a site that is not contained within a critical area, critical area buffer, or critical area structure setback, and that part of a site that is within a critical area, critical area buffer, or critical area structure setback.

- A. If a proposal avoids all disturbance or modification of the critical area, critical area buffer, and critical area structure setback, the proposal is subject to the provisions of this Part 20.25H through the review process for the underlying permit or approval required for the development, and a decision on such application may be appealed according to the appeal process for the underlying permit or approval.

- B. If a proposal involves disturbance to or modification of the critical area, critical area buffer, or critical area structure setback, 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, LUC Part 20.30P, except where otherwise indicated in this Part.

20.25H.020 Submittal Requirements.

- A. The Director shall specify the submittal requirements, including type, detail and number of copies, for a use or development application to be deemed complete and accepted for filing.
- B. The Director may waive specific submittal requirements determined to be unnecessary for review of an application.

II. DESIGNATION OF CRITICAL AREAS AND DIMENSIONAL STANDARDS

20.25H.025. Designation of Critical Areas.

The following areas are hereby designated as critical areas. For additional information about identifying each critical area, see the specific sections noted.

Critical Area Category or Type	Additional Information Identifying Critical Area
Streams	
Type S Water	LUC 20.25H.075
Type F Water	LUC 20.25H.075
Type N Water	LUC 20.25H.075
Type O Water	LUC 20.25H.075
Closed segment, regardless of type; Kelsey Creek drainage basin	LUC 20.25H.075
Closed segment, regardless of type; all other drainage basins	LUC 20.25H.075
Wetlands	
Category I	LUC 20.25H.095
Category II	LUC 20.25H.095
Category III	LUC 20.25H.095
Category IV over 2500 square feet	LUC 20.25H.095
Shorelines	
Shorelines	LUC 20.25E.017.D
Geologic Hazard Areas	
Landslide Hazards	LUC 20.25H.120
Steep Slopes	LUC 20.25H.120
Coal Mine Hazard Areas	LUC 20.25H.120
Habitat Associated with Species of Local Importance	
Habitat associated with species of local importance	LUC 20.25H.150
Areas of Special Flood Hazard	
Areas of Special Flood Hazard	LUC 20.25H.175

20.25H.030 Identification of Critical Area.

A. Determining Presence of Critical Area. A determination of whether a site contains a critical area, critical area buffer, or critical area structure setback 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, critical area buffers, and critical area structure setbacks 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 20.25H shall record a site plan or other instrument clearly delineating the critical area, critical area buffer, and critical area structure setback with the King County Division of Records and Elections. The site plans must include a statement that the provisions of this Part 20.25H as now or hereafter amended control use and development of the subject property. Single lot residential development in single-family residential land use districts is exempt from this recording requirement, except where explicitly required in this Part 20.25H or where required as part of a voluntary compliance agreement or corrective action for a violation of this Part, pursuant to BCC Ch. 1.18.
2. Native Growth Protection Area/Easement. The Director may also require recording of the delineation of, and restrictions of, Native Growth Protection Areas (NGPA) or Native Growth Protection Easements (NGPE) 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 or NGPE shall contain at minimum:
 - a. An assurance that the NGPA or NGPE 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.070; 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 or NGPE 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 or NGPE designating future management responsibility.

20.25H.035 Critical Area Buffers and Structure Setbacks.

- A. Critical Area Buffer.** The following critical area buffers and structure setbacks 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		Structure Setback		Modification of Buffer or Setback
Streams					
	<u>Undeveloped Site¹</u>	<u>Developed Site¹</u>	<u>Undeveloped Site¹</u>	<u>Developed Site¹</u>	
Type S Water	100 ft	50 ft	20 ft	50 ft	LUC 20.25H.075 LUC 20.25H.230
Type F Water	100 ft	50 ft	20 ft	50 ft	LUC 20.25H.075 LUC 20.25H.230
Type N Water	50 ft	25 ft	15 ft	25 ft	LUC 20.25H.075 LUC 20.25H.230
Type O Water	25 ft	25 ft	10 ft	None	LUC 20.25H.075 LUC 20.25H.230
Closed segment, regardless of type; Kelsey Creek drainage basin	None	None	50 ft or combined buffer and structure setback required for stream type, whichever is less	50 ft or combined buffer and structure setback required for stream type, whichever is less	LUC 20.25H.075 LUC 20.25H.230
Closed segment, regardless of type; all other drainage basins	None	None	10 ft	10 ft	LUC 20.25H.075 LUC 20.25H.230
Wetlands					
	<u>Undeveloped Site²</u>	<u>Developed Site²</u>	<u>Undeveloped Site²</u>	<u>Developed Site²</u>	
Category I			20 ft	20 ft from edge of previously approved and recorded NGPA or NGPE	LUC 20.25H.095 LUC 20.25H.230
Natural Heritage wetland	190 ft	As established through previously approved and recorded NGPA or NGPE for wetland			
Bogs	190 ft				
Forested wetland	Based on score for habitat or water quality				
Habitat score of 29 to 36	225 ft				
Habitat score of 20 to 28	110 ft				
Water quality score of 24 to 32 and habitat score of less than 20	75 ft				
All others	75 ft				
Category II			20 ft	20 ft from edge of previously approved and recorded NGPA or NGPE	LUC 20.25H.095 LUC 20.25H.230
Habitat score of 29 to 36	225 ft	As established through previously approved and recorded NGPA or NGPE for wetland			
Habitat score of 20 to 28	110 ft				
Water quality score of 24 to 32 and habitat score of less than 20	75 ft				
All others	75 ft				
Category III			15 ft	15 ft from edge of previously approved and recorded NGPA or NGPE	LUC 20.25H.095 LUC 20.25H.230
Habitat score of 20 to 28 points	110 ft	As established through previously approved and recorded NGPA or NGPE for			
All others	60 ft				

Critical Area Category or Type	Critical Area Buffer Width		Structure Setback		Modification of Buffer or Setback
		wetland			
Category IV over 2500 square feet		As established through previously approved and recorded NGPA or NGPE for wetland	None	None	LUC 20.25H.095 LUC 20.25H.230
All	40 ft				
Shorelines					
	<u>Undeveloped Site³</u>	<u>Developed Site³</u>	<u>Undeveloped Site³</u>	<u>Developed Site³</u>	
All shorelines	50 ft	25 ft	None	25 ft	LUC 20.25H.115 LUC 20.25H.230
Geologic Hazard Areas					
Landslide Hazards	Toe-of-slope: None		Toe-of-slope: 75 ft		LUC 20.25H.120 LUC 20.25H.230
	Top-of-slope: 50 ft		Top-of-slope: None		
Steep Slopes	Toe-of-slope: None		Toe-of-slope: 75 ft		LUC 20.25H.120 LUC 20.25H.230
	Top-of-slope: 50 ft		Top-of-slope: None		
Coal Mine Hazard Areas	See LUC 20.25H.130		See LUC 20.25.130		LUC 20.25H.120 LUC 20.25H.230
Habitat Associated with Species of Local Importance					
Habitat associated with species of local importance	Only if required for known species on site		None		N/A
Naturally occurring ponds with no other critical area designation	35 ft		None		LUC 20.25H.230
Areas of Special Flood Hazard					
Areas of Special Flood Hazard	None		None		N/A

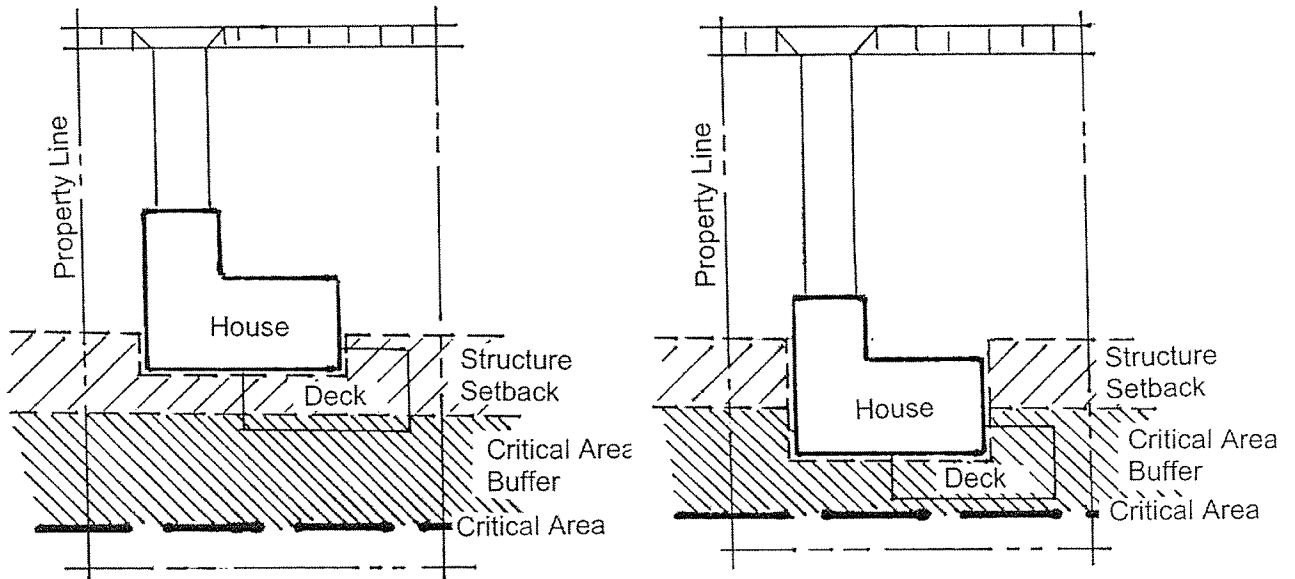
¹For a definition of "undeveloped site" and "developed site" for sites with streams, see LUC 20.25H.075.C.1.a.

²For a definition of "undeveloped site" and "developed site" for sites with wetlands, see LUC 20.25H.095.C.1.a.

³For a definition of "undeveloped site" and "developed site" for sites with shorelines, see LUC 20.25H.115.B.1.a.

B. Buffer and Setback on Sites with Existing Primary Structure(s).

Where a primary structure legally established on a site prior to August 1, 2006 encroaches into the critical area buffer or structure setback established in subsection A, the critical area buffer and/or structure setback shall be modified to exclude the footprint of the existing primary structure. Expansion of any existing structure into the critical area buffer or critical area structure setback shall be allowed only pursuant to the provisions of LUC 20.25H.055 (single family primary structures) or LUC 20.25H.230 (all other primary structures).



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

A. When Applicable. Certain provisions of this Part 20.25H allow disturbance within a critical area or critical area buffer. This section applies when, pursuant to another section of this Part 20.25H, the applicant must demonstrate that non-critical area setbacks have been modified to the maximum extent allowed under this section. The provisions of this Section 20.25H.040 may not be modified through a critical areas report.

B. Allowed Modifications to General Dimensional Chart. The required dimensions of 20.20.010 for 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 20.20.010 shall apply, including the applicable footnotes from the general dimensional chart.

Land Use District	R-1	R-1.8	R-2.5	R-3.5 R-4 R-5 R-7.5*	R-10; R-15; R-20	R-30
Front Yard (ft) (1)	25	20	10	10	10	10
Rear Yard (ft)	20	20	20	15	20	20
Side Yard (ft)	5	5	5	5	5	5(2)
2 Side Yards (ft)	15	10	10	10	10	10

Not effective within the jurisdiction of the East Bellevue Community Council.

Notes:

1. Any garage or other structure shall be set back the minimum necessary to allow on-site parking on any driveway without blocking a sidewalk, for proposals without garages, there shall be sufficient area on the site to allow for required on-site parking without blocking a sidewalk.
2. A side yard setback in R-30 Districts increases to 20 feet on any side yard where the structure exceeds 30 feet above average finished grade.

C. Allowed Modifications to Transition Area Requirements. The minimum structure setback established in 20.25B.040.B.1 may not be modified under this section 20.25H.040. The minimum separation between structures established in LUC 20.25B.040.B.2 may be reduced to no less than six feet between structures provided that the modification shall be the minimum necessary to allow avoidance of the critical area and critical area buffer.

20.25H.045 Development Density/Intensity.

A. General. For development in the Critical Areas Overlay District, the number of dwelling units per acre and the maximum floor area ratio for office space is determined pursuant to this section. The provisions of this Section 20.25H.045 may not be modified through a critical areas report.

B. Dwelling Units per Acre. The maximum density allowed for a site in the Critical Areas Overlay District is equal to the number of dwelling units per acre as specified in LUC 20.20.010, times the buildable area in acres, plus the dwelling units per acre times the total area of critical area and critical area buffer in acres times the Development Factor derived from subsection D below:

$$[(DU/acre)(Buildable Area in acres) + (DU/acre)(Total critical area and critical area buffer in acres)](Development Factor) = \text{Maximum dwelling unit potential}$$

C. Floor Area Ratio for Office Space.

- a. The maximum allowable office floor area for a site which contains a critical area or critical area buffer is equal to 0.5 times the buildable area in square feet plus 0.5 times the total area in critical area and critical area buffer in square feet times the Development Factor derived from subsection D below:

$$[(0.5)(\text{Buildable Area in sq. ft.}) + (0.5)(\text{total critical area and critical area buffer in sq. ft.})(\text{Development Factor})]=\text{Maximum Office Development Potential}$$

- b. A property within the Critical Areas Overlay District is exempt from the sliding scale FAR requirement of LUC 20.20.010, Note 8. The applicable maximum floor area ratio to the buildable area is 0.5 regardless of building square footage.

D. Development Factor. The development factor is a percent credit to be used in computing the number of allowed dwelling units or the maximum allowed office floor area for a site within the Critical Areas Overlay District. The development factor is determined by figuring the percentage of the total site that is buildable area, divided by 100. The result should be rounded to the nearest hundredth. The following table illustrates the Development Factor:

Total Site (as %)	Critical area and critical area buffer total (as % of total site)	Buildable Area (as % of total site)	Development Factor (% BA/100)
100	10	90	.9
100	35	65	.65
100	50	50	.5
100	75	25	.25
100	90	10	.1

III. USE AND DEVELOPMENT IN THE CRITICAL AREAS OVERLAY DISTRICT

20.25H.050 Uses and Development in the Critical Areas Overlay District.

A. Uses.

1. **General.** The uses established by LUC 20.10.440 for the applicable land use district may be undertaken in the Critical Areas Overlay District as allowed for in the underlying land use district. All development associated with the use shall comply with the provisions of this Part 20.25H.
2. **Shorelines.** Where the Critical Areas Overlay District and Shorelines 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 Shorelines Overlay District are set forth in LUC 20.25E.080. The applicable permitting process to establish the allowed uses within the Shorelines Overlay District is set forth in 20.25E.070. All development associated with the use shall comply with the provisions of this Part 20.25H and Part 20.25E.

B. Development.

1. Coal Mine Hazard Areas and Habitat Associated with Species of Local Importance. The coal mine hazard areas and habitat associated with species of local importance designated as critical areas by this Part 20.25H do not include absolute restrictions on development or activity. Instead, uses allowed under section A above may be undertaken in such critical areas, so long as the performance standards of LUC 20.25H.130 (coal mine hazard areas) or LUC 20.25H.160 (habitat associated with species of local importance) are satisfied.

2. Other Critical Areas. Except as set forth in subsection 1 above, 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 such use or development is allowed pursuant to the following:

- a. Uses and development allowed within critical area or critical area buffer, see 20.25H.055;
- b. Critical area buffer modifications for the following critical areas:
 - i. Streams , see 20.25H.075;
 - ii. Wetlands, see 20.25H.095;
 - iii. Shorelines, see 20.25H.115;
 - iv. Geologic Hazards, see 20.25H.120.
- c. Uses and Development in the Area of Special Flood Hazard, see 20.25H.180
- d. Modifications where allowed through a critical areas report, see 20.25H.230;
- e. Reasonable use exceptions, see 20.25H.190;
- f. Variances, see Part 20.30G and 20.30H; or
- g. Shoreline specific uses and development, where allowed within the shorelines critical area or critical area buffer, see Part 20.25E.

C. No Modification. The critical areas report may not be used to modify the uses allowed in the Critical Areas Overlay District as set forth in 20.10.440 or in the Shorelines Overlay District as set forth in Part 20.25E; nor the provisions of this Section 20.25H.050.

20.25H.055 Uses and Development allowed within Critical Areas; Performance Standards. The uses and/or development described in section B may be undertaken in a critical area or critical area buffer if all of the requirements of the referenced sections are met. A critical areas land use permit shall be required unless otherwise noted.

A. Hierarchy of Alteration. Where a use 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. Uses and Development allowed within Critical Areas. The following chart lists uses and development that may be allowed in a critical area, critical area buffer, or critical area structure setback. The sections noted in the chart for each use or activity and critical area refer to the applicable performance standards that must be met.

		Type of Critical Area				
		Streams	Wetlands	Shorelines	Geologic Hazard Areas ⁷	Areas of Special Flood Hazard
Allowed Use or Development	Repair and maintenance of parks and parks facilities, including trails ^{1,2}	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	20.25H.055.C.1 20.25E.080.B 20.25E.080.P	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C 20.25H.180.D.2
	Repair and maintenance of utility facilities, utility systems, stormwater facilities and essential public facilities ^{1,2}	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	20.25H.055.C.1 20.25E.080.B 20.25E.080.U	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Repair and maintenance of public rights of way, private roads, access easements, surface parking areas, and driveways ^{1,2}	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	20.25H.055.C.1 20.25E.080.B 20.25E.080.H 20.25E.080.R	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Repair and maintenance of bridges and culverts ^{1,2}	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	20.25H.055.C.1 20.25E.080.B 20.25E.080.R	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Construction Staging ^{1, 2, 11}	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	20.25H.055.C.1 20.25E.080.B 20.25E.080.H	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Existing agricultural activities ²	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.080.A	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.100	20.25H.055.C.1 20.25H.055.C.3.a 20.25E.080.B 20.25E.080.C	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.125	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.180.C
	Emergency Actions	20.25H.055.C.3.b	20.25H.055.C.3.b	20.25H.055.C.3.b	20.25H.055.C.3.b	20.25H.055.C.3.b

New or expanded utility facilities, utility systems, stormwater facilities ³	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2
	20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C	
	20.25H.080.B		20.25E.080.U			
New or expanded essential public facilities	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2
	20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C	
	20.25H.080.B					20.25H.180.D.3
Public flood protection measures ⁴	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2
	20.25H.055.C.3.c	20.25H.055.C.3.c	20.25H.055.C.3.c	20.25H.055.C.3.c	20.25H.055.C.3.c	20.25H.055.C.3.c
	20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C	
	20.25H.080.B					20.25H.180.D.5
Instream structures ⁵	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2
	20.25H.055.C.3.d	20.25H.055.C.3.d	20.25H.055.C.3.d	20.25H.055.C.3.d	20.25H.055.C.3.d	20.25H.055.C.3.d
	20.25H.080.A	20.25H.100	20.25E.080.B		20.25H.180.C	
	20.25H.080.B					
New or expanded public rights of way, private roads, access easements and driveways	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2
	20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C	
	20.25H.080.B		20.25E.080.R		20.25H.180.D.4	
New or expanded bridges and culverts	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2
	20.25H.055.C.3.e	20.25H.055.C.3.e	20.25H.055.C.3.e	20.25H.055.C.3.e	20.25H.055.C.3.e	20.25H.055.C.3.e
	20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C	
			20.25E.080.R			
New or expanded private non-motorized trails	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2	20.25H.055.C.2
	20.25H.055.C.3.f	20.25H.055.C.3.f	20.25H.055.C.3.f	20.25H.055.C.3.f	20.25H.055.C.3.f	20.25H.055.C.3.f
	20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C	
			20.25E.080.G			

	New or expanded city and public parks	20.25H.055.C.3.g	20.25H.055.C.3.g	20.25H.055.C.3.g	20.25H.055.C.3.g	20.25H.055.C.3.g
		20.25H.080.A	20.25H.100	20.25E.080.B 20.25E.080.P	20.25H.125	20.25H.180.C 20.25H.180.D.2
	Existing landscape maintenance ²	20.25H.055.C.3.h	20.25H.055.C.3.h	20.25H.055.C.3.h	20.25H.055.C.3.h	20.25H.055.C.3.h
		20.25H.080.A	20.25H.100	20.25E.080.B 20.25E.080.G	20.25H.125	20.25H.180.C
	Vegetation Management ⁶	20.25H.055.C.3.i	20.25H.055.C.3.i	20.25H.055.C.3.i	20.25H.055.C.3.i	20.25H.055.C.3.i
		20.25H.080.A	20.25H.100	20.25E.080.B 20.25E.080.G	20.25H.125	20.25H.180.C
	Habitat Improvement Projects	20.25H.055.C.3.j	20.25H.055.C.3.j	20.25H.055.C.3.j	20.25H.055.C.3.j	20.25H.055.C.3.j
		20.25H.080.A	20.25H.100	20.25E.080.B 20.25E.080.G	20.25H.125	20.25H.180.C
	Forest Practices	20.25H.055.C.3.k	20.25H.055.C.3.k	20.25H.055.C.3.k	20.25H.055.C.3.k	20.25H.055.C.3.k
		20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C
	Aquaculture	20.25H.055.C.3.l	20.25H.055.C.3.l	20.25H.055.C.3.l	20.25H.055.C.3.l	20.25H.055.C.3.l
		20.25H.080.A	20.25H.100	20.25E.080.B 20.25E.080.D		20.25H.180.C
	Stabilization Measures	20.25H.055.C.3.m	20.25H.055.C.3.m	20.25E.080.B	20.25H.055.C.3.m	20.25H.055.C.3.m
		20.25H.080.A	20.25H.100	20.25E.080.E	20.25H.125	20.25E.080.E
	Expansion of Existing Single-family Primary Structures	20.25H.055.C.3.n	20.25H.055.C.3.n	20.25H.055.C.3.n	20.25H.055.C.3.n	20.25H.055.C.3.n
		20.25H.080.A	20.25H.100	20.25E.080.B 20.25E.080.Q	20.25H.125	20.25H.180.C ⁹ 20.25H.180.D.1 20.25H.180.D.7
	Reasonable Use Exception ⁸	20.25H.080.A	20.25H.100	20.25E.080.B	20.25H.125	20.25H.180.C 20.25H.180.D.7

	Recreational Vehicle Storage ¹⁰					20.25H.180.C 20.25H.180.D.6
	Additional Shoreline-specific uses or development			Part 20.25E		

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 20.25H shall be applied through the review process applicable to the underlying use or activity.
3. In the event of a conflict between this section and the utilities code, the utilities code shall prevail.
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 LUC 20.25H.055.C.3.i.
7. For Geologic Hazards other than Coal Mine Hazard areas. Uses and performance standards for Coal Mine Hazard areas set forth in LUC 20.25H.050.
8. Development authorized pursuant to a reasonable use exception, LUC 20.25H.190, shall incorporate the required performance standards to the maximum extent feasible.
9. Authorized only pursuant to a reasonable use exception, LUC 20.25H.190.
10. Such storage is not allowed in critical areas or critical area buffers except within the area of special flood hazard 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.

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

1. Repair and Maintenance and/or Construction Staging.
 - a. Work shall be consistent with all applicable City of Bellevue codes and standards;
 - b. Removal of 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 section B:
 - 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 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 to 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. Existing 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 24.06.060K, now or as hereafter amended;
 - iii. All development shall be consistent with the City of Bellevue's "Environmental Best 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 20.25H, 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 (1) working day following commencement of the emergency activity. Within ten (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 thirty (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 BCC Chapter 1.18. 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 sixty (60) days following the director's determination.

- 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 "Design of Road Culverts for Fish Passage" now or as hereafter amended. Culvert expansions shall be considered new culverts and be required to be designed in accordance with "Design of Road Culverts for Fish Passage" 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 Non-motorized Trails. New non-motorized trails within the critical area or critical area buffer are limited to those serving nonresidential uses, multifamily residential uses and more than one single-family lot. Private non-motorized trails shall comply with the performance standards for trails in subsection g below. Nothing in this section prohibits the creation of a soft surface non-motorized trail in a critical area buffer on a single-family lot for use of the residents of that lot. Such trail shall not exceed 4 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 closer than a distance of 25 feet. 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 non-motorized 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 compliment 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 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 above.

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 above, 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 above 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 include 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 a Vegetation Management Plan under subsection i below. Use of fertilizers, insecticides and pesticides is prohibited unless performed in accordance with the City of Bellevue's "Environmental Best Management Practices" now or as hereafter amended.
- i. Vegetation Management. Modification of vegetation in a critical area or critical area buffer that is not considered routine maintenance under subsection h above may be allowed if it meets the requirements of this section. Except where otherwise noted, a critical areas land use permit is required. The following activities may also require a clearing & grading permit, BCC Ch. 23.76 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. Noxious Species. The removal of the following vegetation with hand labor and hand-operated equipment from a critical area buffer, or from a geologic hazard critical area, is allowed without requiring a critical areas land use permit or a Vegetation Management Plan:
 - (A) Invasive and noxious weeds;
 - (B) English Ivy (*Hedera helix*);
 - (C) Himalayan blackberry (*Rubus discolor*, *R. procerus*); and
 - (D) Evergreen blackberry (*Rubus laciniatus*).
 - ii. Hazard Trees. The removal of trees from the critical area or critical area buffer that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to an existing structure, public or private road or sidewalk, or other permanent improvement, is allowed without requiring a critical areas land use permit or a Vegetation Management Plan, provided that:
 - (A) The applicant submits a report on a form provided by the director from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;

- (B) Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be converted to wildlife snags and completely removed only where no other option removes the identified hazard;
 - (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 or for disease or pest transmittal to other healthy vegetation;
 - (D) The landowner shall replace any trees that are removed pursuant to a restoration plan meeting the requirements of LUC 20.25H.210 ;
 - (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 or removal that will minimize impacts; and
 - (F) Hazard 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 20.25H, provided that the landowner makes reasonable efforts to notify the city, and within fourteen (14) days following such action, the landowner shall submit 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 on-going routine maintenance plan for utility, transportation, park and other public facility projects allowed pursuant to LUC 20.25H.055.B. 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 sensitive 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 vii below. The Vegetation Management Plan shall satisfy the requirements of subsection v.B above, except that the following replaces subsection (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 an Native Growth Protection Area (NGPA) or Native Growth Protection Area Easement (NGPE). A clearing and grading permit, BCC Ch. 23.76, 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 ordinance 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.

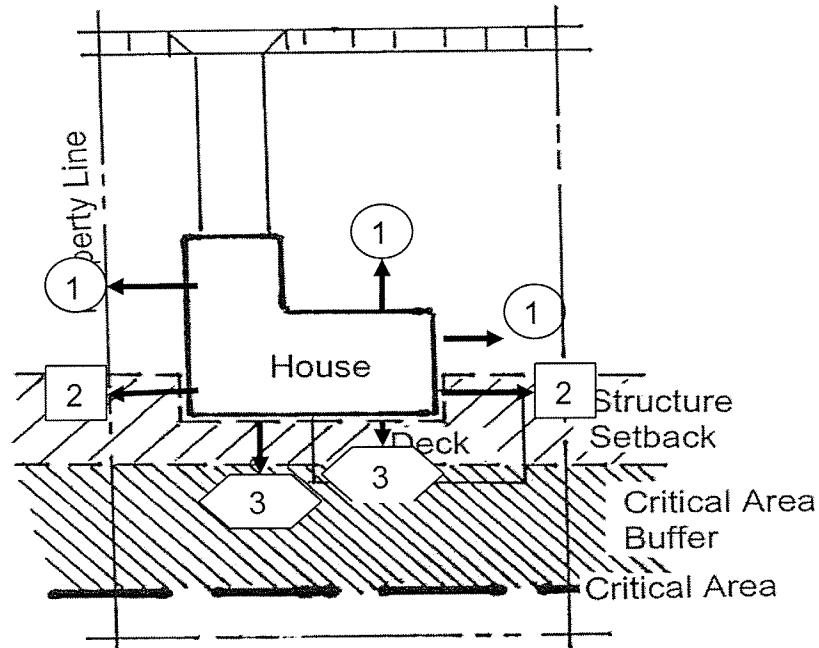
- j. Habitat Improvement Projects. Disturbance, clearing and grading is allowed in the critical area or critical area buffer for habitat improvement projects demonstrating an improvement to functions and values of a critical area or critical area buffer. Habitat improvement projects shall be:
 - i. sponsored or co-sponsored by a public agency or federally-recognized tribe and whose primary function is habitat restoration; or
 - ii. Approved by the director pursuant to LUC 20.25H.230.
- 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, Title 222 WAC, 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.
 - a. 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
 - b. Aquaculture must to the extent feasible use underwater structures for fish rearing facilities.
- m. Stabilization Measures. See LUC 20.25E.080.E for standards regulating shoreline 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.

- 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 LUC 20.25H.055.B. 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 (D) below 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.
- n. Expansion of Existing Single-family Primary Structures into Critical Area Buffer and Critical Area Structure Setback. Expansion into the critical area buffer and critical area structure setback may be allowed, pursuant to a critical areas land use permit, where expansion outside of the critical area buffer and critical area structure setback is not feasible and where the purpose of the expansion is to serve a function that is an essential component of a single-family residence. Expansion into the critical area is prohibited. Any expansion must comply with all other applicable requirements of the Code, including LUC 20.20.010.
 - i. Where allowed, expansions into the critical area buffer and critical areas structure setback shall be limited as follows:
 - (A) The expansion shall be along the existing building line parallel to the edge of the critical area, unless such expansion is not feasible. Only when such expansion is not feasible may expansion encroach further into the critical area buffer and critical area structure setback.
 - (B) Expansions shall be the minimum necessary to achieve the intended functions of the expansion, but in no event may the footprint expansion within the critical area buffer and critical area structure setback exceed 500 square feet over the life of the structure. Expansions into stream critical area buffers allowed pursuant to the City's previous critical areas regulations (prior LUC Section 20.25H.085.B) shall be included in determining the allowed lifetime expansion; and
 - (C) Areas of new permanent disturbance and all areas of temporary disturbance within the critical area buffer shall be mitigated and/or restored pursuant to a mitigation and restoration plan meeting the requirements of LUC 20.25H.210.
 - ii. For purposes of this section, expansion outside of the critical area buffer and critical area structure setback shall be considered not feasible only when, considering the function to be served by the expansion and the existing structure's layout and infrastructure (including plumbing, drainage and electrical systems):
 - (A) expansion away from the critical area buffer and critical area structure setback within the buildable area of the site will not realize the intended functions of the expansion; and
 - (B) expansion away from the critical area buffer and critical area structure setback, including into non-critical area setbacks modified pursuant to LUC 20.25H.040, will not realize the intended functions of the expansion; and

(C) expansion upwards to the maximum building height of the underlying land use district, within the existing footprint, or together with expansions permitted under subsections (ii)(A) and (B) above, will not realize the intended functions of the expansion.



20.25H.065 Uses and Development within Critical Area Buffer or Critical Area Structure Setback not allowed pursuant to 20.25H.055.

This section applies to uses and development legally established within the critical area or critical area buffer prior to August 1, 2006 and which is not included as an allowed use or development in Section 20.25H.055 above. Section 20.25E.055 applies to uses and development within the shoreline critical area and shoreline critical area buffer. See performance standards at 20.25H.180 for provisions relating to the repair, remodeling, expansion or reconstruction of structures located in the Area of Special Flood Hazard. Any alterations to existing development allowed under this Section 20.25H.065 shall also comply with provisions for the Area of Special Flood Hazard. In the event of conflict, the provisions that result in most protection for the critical area or critical area buffer shall govern.

A. Existing primary structures. See 20.25H.035.B

B. Existing non-primary structures. A structure, other than a primary structure, legally established within a critical area, critical area buffer or critical area structure setback prior to August 1, 2006 shall be considered a nonconforming structure. If no modifications to a nonconforming structure are proposed, then the structure may continue without coming into compliance with the regulations of this Part 20.25H. Compliance may in whole or in part be required when changes to a structure are proposed, as follows:

1. Repair and remodeling of a nonconforming structure is limited to minor, non-structural repairs, and repairs of mechanical systems within or supporting the accessory structure. If repair or remodeling exceeds these limits, the structure shall

be brought into compliance with existing Land Use Code requirements, including requirements of Part 20.25H.

2. Expansion of existing nonconforming structures, other than as allowed under LUC 20.25H.055, into the critical area or critical area buffer is prohibited.
3. If an existing nonconforming structure is destroyed by fire, explosion or other unforeseen circumstance requiring repairs consistent with those allowed under subsection 1 above, it may be repaired within the footprint existing at the time of destruction; provided that such repair is commenced within one year of the date of destruction and diligently pursued. Areas of temporary disturbance resulting from the reconstruction shall be restored pursuant to a mitigation plan approved by the director under LUC 20.25H.210. If such a structure is destroyed and requires structural or other repairs more extensive than those allowed under subsection 1 above, then any reconstruction of such structure shall be in compliance with existing Land Use Code requirements, including requirements of Part 20.25H.

The critical areas report process may not be used to modify the provisions of this section B.

- C. Nonconforming Sites.** Non-structural development legally established within a critical area or critical area buffer prior to August 1, 2006 shall be considered a nonconforming site condition. A nonconforming site condition may not be changed unless the change conforms to the regulations of this Code.

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 hereby designated as critical areas subject to the regulations of this Part 20.25H.
1. **"Type S Water"** means all waters, other than shoreline critical areas designated under LUC 20.25E.017, 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.
 2. **"Type F Water"** means all segments of waters that are not Type S Waters, and that contain fish or fish habitat, including waters diverted for use by a federal, state, or tribal fish hatchery from the point of diversion for one thousand five hundred feet or the entire tributary if the tributary is highly significant for protection of downstream water quality.

