City of Kenmore

City of Kenmore - 18120 68th Avenue NE - P.O. Box 82607 - Kenmore, WA 98028
Phone: 425-398-8900 - Fax: 425-481-3236 - E-mail: cityhall@kenmorewa.gov

City of Kenmore
Planning Commission Meeting Agenda

Tuesday, February 26, 2019 @ 7:00 p.m.
Kenmore City Hall
18120 68th Ave. NE, Kenmore, WA 98028

If you have any questions or to confirm agenda items prior to the meeting, or if you require special accommodations, please call Bridgit Baker at 425-398-8900. You may also stop by City Hall at 18120 68th Avenue NE, Kenmore. Planning Commission agendas are also available on our website at www.kenmorewa.gov.

1. **CALL TO ORDER**

2. **CITIZEN COMMENTS**

3. **APPROVAL OF MINUTES**

   January 15, 2019 Planning Commission Minutes
   January 29, 2019 Planning Commission Minutes

4. **AGENDA ITEMS**

   Critical Areas & Shoreline Master Program Amendments Memo
   Attachment 1 - Follow up information
   Attachment 2a - Flood Hazards Regulations
   Attachment 2b - Flood Hazards Regulations
   Attachment 3 - Revised PAUE code section
   Attachment 4 - PAUE Best Available Science (BAS) paper
   Attachment 5 - Ecology Response to the BAS paper

5. **ADJOURNMENT**

6. **UPCOMING MEETINGS:**
   March 5, 2019, 7:00 p.m.
   March 19, 2019, 6:15 p.m. (Planning Short Course)
   March 26, 2019, 7:00 p.m. (public hearing?)

City of Kenmore
Planning Commission Meeting
January 15, 2019 @ 7:00 p.m.

Planning Commission Members – In Attendance

Mark Ohrenschall, Chair
Mike Mulcare – Vice Chair
Carol Baker
Suzanne Greathouse
Nathan Loutsis
Dennis Olson
Mike Vanderlinde

Consultants & Staff

Debbie Bent, Community Development Director
Lauri Anderson, Principal Planner
Bridgit Baker, Admin. Assistant
Amy Summe, Shannon & Wilson

1. CALL TO ORDER

The meeting was called to order by Chair Ohrenschall at 7:01 p.m.

2. INTRODUCTION OF NEW COMMISSIONERS

The two new Planning Commissioners, Suzanne Greathouse and Nathan Loutsis, were introduced and they each gave a brief background about themselves**.** A photograph of the new Planning Commission was taken.

3. ELECTION OF OFFICERS

Commissioner Vanderlinde nominated Commissioner Ohrenschall to serve as the Planning Commission Chair which was seconded by Commissioner Mulcare. The nomination passed 7-0 with no abstentions. Commissioner Ohrenschall nominated Commissioner Mulcare to serve as the Planning Commission Vice-Chair which was seconded by Commissioner Vanderlinde. The nomination passed 6-0 as Commissioner Mulcare chose to recuse his vote.

4. CITIZEN COMMENTS

Elizabeth Mooney, 5934 NE 201st St, Kenmore, WA. She gave a brief background about herself. She cares about the Shoreline Master Plan and what it becomes. She recently met with Lauri Anderson and would like the Planning Commission to consider that the north side of Squire's Landing stay natural. She stated that she would like to preserve the rare habitat and once it is gone, you can't get it back.

5. APPROVAL OF MINUTES

Commissioner Baker motioned to approve the December 4, 2018 minutes which was seconded by Commissioner Olson. The motion passed 7-0 with no abstentions. Commissioner Mulcare motioned to approve the December 18, 2018 minutes which was seconded by Commissioner Greathouse. The motion passed 6-0; Commissioner Mulcare recused himself.

6. AGENDA ITEMS

The Planning Commission continued the discussion of the shoreline master plan and comprehensive plan amendments. Staff began by reviewing the follow-up information, including changes to the shoreline environmental designations. One of the most significant recommendations was the creation of a new shoreline designation call Swamp Creek Commercial in the Kenmore Square area. There are changes to the description, the use table and shoreline modification section that have new rules for this. Two other significant recommendations were new dimensional standards and light transmission grating for docks.

The Planning Commission began the discussion by exception on the first section related to Swamp Creek Commercial (clarifying retail bulk sales and no stand-alone parking use), new dimensional dock standards, hazardous waste remediation and floating on-water residences. Lauri Anderson will follow up and verify when the width of the ramp and the walkway are different sizes and on the policy of hazardous waste remediation. The Planning Commission agreed with these changes.

The next section relating to shoreline environment designations and where the new Swamp Creek Commercial area is to be located was discussed. Amy Summe presented areas proposed to be changed from Urban Conservancy to Shoreline Residential (area by Bothell border), Natural to Urban Conservancy (North Side of Squire's Landing), Shoreline Residential to Urban Conservancy (Wildcliffe Shores critical area tract) and Urban Conservancy to Swamp Creek Commercial (Kenmore Square area). The Planning Commission agreed with these changes. Lauri Anderson is going to research one parcel that is listed as Natural and not Urban Conservancy as the surrounding properties are.

The Planning Commission will meet on January 29th to review the third set of proposed changes. It was determined that there will be a quorum for the proposed February 29th meeting date.

7. ADJOURNMENT

Chair Ohrenschall adjourned the meeting at 8:26 p.m.

_____
Planning Commission
Approved by Planning Commission on: _____

City of Kenmore
Planning Commission Meeting
January 29, 2019 @ 7:00 p.m.

Planning Commission Members – In Attendance

Mark Ohrenschall, Chair
Mike Mulcare – Vice Chair
Carol Baker
Suzanne Greathouse
Nathan Loutsis
Dennis Olson
Mike Vanderlinde

Consultants & Staff

Debbie Bent, Community Development Director
Lauri Anderson, Principal Planner
Bridgit Baker, Admin. Assistant
Amy Summe, Shannon & Wilson

1. CALL TO ORDER

The meeting was called to order by Chair Ohrenschall at 7:00 p.m.

2. CITIZEN COMMENTS

Dominic Andrilla, 18549 60th Ave NE, Kenmore, WA. He is excited for the changes taking place, however, he did not see in the recommendations the specifics for the tie-breaker as to when and why this clause would come into effect. Additionally, when the City would deem a report to be insufficient and would require a review from a third party Geotech. Two important reasons for these specifications are it limits the homeowner's risk and it allows the homeowner to hold the Geotech accountable.

3. AGENDA ITEMS

Lauri Anderson identified what Staff felt were the most important changes and recommendations; updating mitigation banking provisions (pg 2 #3), only public agencies should be an exception to the rule (pg 4 #5), new buffers for Swamp Creek Commercial (pg 5 #7), state law that provides relief for some properties (pg 5 #10), items relating to over water structures (pg 9 #14-16), who can prepare a landscape plan in shoreline areas and outdoor storage (pg 10 #19 & 20) and walkway lifts and buffers on the Sammamish River (pg 14 -15). The Planning Commission agreed to discuss the recommendations by exception.

Lauri Anderson also addressed Mr. Andrilla's comment and replied that the City tries to recover the cost of having professionals review the material if that is required when the City feels that the original material submitted is deficient.

The Planning Commission agreed to the need to make the priorities and hierarchy clear for in lieu fee vs mitigation bank vs mitigation onsite. The first preference is always onsite mitigation in the city. Then the next choice would be in lieu fee followed by mitigation bank. Additionally, the Planning Commission agreed for the need of some other language for "neat and orderly" as it pertains to outdoor storage.

Commissioner Baker motioned to cancel the February 5, 2019 meeting which was seconded by Commissioner Vanderlinde. The motion passed 7-0 with no abstentions. The regularly scheduled meeting for February 19, 2019 has already been cancelled and rescheduled for February 26, 2019. It was also determined that there would be a quorum for the March 26, 2019 meeting.

Lauri Anderson relayed the items on the finalized docket that the City Council approved. The approved docket items are as follows: Complete Shoreline Master Plan and Critical Areas, Parks Plan, ADUs and incentives for office space. Additionally, there is an alternative docket item which is to amend the Capital Facilities Plan.

4. ADJOURNMENT

Chair Ohrenschall adjourned the meeting at 8:01 p.m.

_____
Planning Commission

Approved by Planning Commission on: _____

18120 68TH AVENUE NE
KENMORE, WASHINGTON 98028

MEMO

TO: Planning Commission

FROM: Debbie Bent, Community Development Director DB
Lauri Anderson, Principal Planner LWA

DATE: February 21, 2019

SUBJECT: Critical Areas and Shoreline Master Program Amendments

The agenda for your February 26 discussion is to consider the final set of changes to the critical area and Shoreline Master Program amendments. Attachment 1 is the last compilation of questions, issues and revised recommendations resulting from discussions with the Department of Ecology (Ecology), other staff and the consultants. Staff suggests that, as in the past, you review the amendments and discuss concerns "by exception."

Attachment 2 is the newly revised code section on frequently flooded areas. As you know, staff has combined two existing code sections (one in the Zoning Code and one in Title 16) into a single section in Chapter 18.55. The Federal Emergency Management Agency (FEMA) has reviewed these changes for consistency with their flood insurance program and staff has responded to their requests. Given the many changes to this code section, we have provided a clean copy of the proposed revisions for your review.

Attachment 3 contains the revised code sections addressing the Public Agency and Utility Exception (PAUE). Using suggestions from the Department of Ecology, staff is recommending that only expansions of existing public agency facilities be eligible for consideration under the PAUE (along with new or expanded utility or transportation projects). New public agency projects would be considered through the variance or reasonable use exception (RUE) processes. As criteria for these processes do not currently address public agencies, staff has developed revised criteria.

Attachment 4 is the PAUE Best Available Science Paper prepared by the consultants for review by the Department of Ecology. Attachment 5 is Ecology's response to that paper—the foundation for staff's recommended amendments.

At your meeting on March 5, we will provide the complete final set of preliminary amendments to be considered at the public hearing for your review. The public hearing is scheduled for March 26. (As you recall, your regular second meeting in March is the Planning Short Course.)

Please don't hesitate to contact us if you have any questions in advance of the meeting.

Attachments
Attachment 1: Follow-up information and revised recommendations
Attachments 2a and 2b: Flood hazard area regulations
Attachment 3: Revised PAUE code section
Attachment 4: PAUE Best Available Science (BAS) Paper
Attachment 5: Ecology's response to the BAS Paper

Following are some of the questions/concerns raised by Department of Ecology (Ecology), staff, and the consultants, along with the staff responses and, if appropriate, staff's revised amendment recommendations.

SHORELINE REGULATIONS

1. Add a new section, following the use allowance table, about commercial and light manufacturing uses.

Staff response: This change evolved from in-person discussions with Ecology in early January and is intended to supplement the use table footnotes. Staff recommends that footnote 16.50.030.B.2 be amended as follows and that a new section addressing commercial and light manufacturing uses be added:

B. Shoreline Use Criteria (Footnotes to Shoreline Use Table in Subsection A of This Section).

2. *Water-dependent* and *water-related uses* shall be permitted. *Public access* improvements consistent with this chapter are required for all uses, unless precluded by public safety considerations. Non-*water-dependent* and non-*water-related uses* shall be permitted only if the use meets the standards of subsections (a), (b), (c) and (d) below:

a. The development is:

(1) Part of a mixed use development that includes a *water-dependent use* and in which at least 50 percent of the land area within the shoreline jurisdiction on the project site is in a *water-dependent use* or *water-related use* (including uses accessory to a *water-dependent use* that are fully incidental and subordinate to the *water-dependent use*), dedicated *public access*, or substantial shoreline habitat enhancement consistent with KMC 16.60.010; or

(2) A new or expanding development in a commercial zone along the Swamp Creek shoreline north of Northeast Bothell Way, where the existing development does not conform with current stream buffer provisions of KMC Chapter 18.55 and where the proposed development would substantially increase the width and enhance the habitat quality of the buffer along Swamp Creek; or

(3) on a site physically separated from the shoreline by another property or public right of way; or

(4) at a shoreline location where navigability is severely limited and the use provides a significant public benefit per "c" below.

b. The *non-water-oriented uses* are located on land unless otherwise authorized in 16.50.075; and

c. The development provides a significant public benefit to help achieve any of the following shoreline element goals:

(1) Economic development for uses that are *water-dependent*;

(2) *Public access*;

(3) *Water-oriented* recreation;

(4) Multimodal, *water-dependent* transportation circulation;

(5) Conservation or *restoration* of *critical areas*, scenic vistas, or fish and wildlife habitat; or

(6) Preservation of historic properties;

Existing non-*water-dependent uses* may be expanded, provided the expansion complies with all development standards and the project includes ecological enhancement consistent with KMC 16.60.010.

16.50.075 Commercial and light manufacturing uses.

A. *Water-dependent* and *water-related* commercial and light manufacturing uses are permitted subject to the applicable requirements and conditions of KMC 16.50.030.A and B.

B. Non-*water-dependent and non-water-related* uses may be allowed if incorporated with *water-dependent* uses, if the site is separated from the shoreline, in areas of limited navigability, or if the proposed *development* provides public access, a significant ecological benefit, or another specified public benefit. (See KMC 16.50.030.B.2.)

C. Commercial or light manufacturing development proposals shall be designed or conditioned to ensure no net loss of shoreline ecological functions, and no significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

D. Non-*water-dependent* commercial or light manufacturing uses should not be allowed over water except in existing structures or in the limited instances where they are accessory to and necessary in support of *water-dependent* uses.

2. **Consider standards for float plane lifts and storage.**

Staff response: The City presently allows one seaplane per single-family lot if certain standards are met. However, there are no standards related to floatplane lifts or storage that could have significant impacts on waterfront views. After reviewing standards from several jurisdictions, staff recommends the following:

KEY **P –** Permitted Modification **C –** Shoreline Conditional Use Required **X** – Prohibited Modification **U** – Same modification allowances as in adjacent upland Environment **NA –** Not applicable *Shoreline modifications* are allowed only if the underlying zoning allows the modification	**DOWNTOWN WATERFRONT**	**SWAMP CREEK COMMERCIAL**	**SHORELINE RESIDENTIAL**	**URBAN CONSERVANCY**	**NATURAL**	**AQUATIC**
Water access structures[4]. See also KMC Section 16.55.050.						
Floatplane lifts	C	X	C	C	X	U

Element	Overwater Structure Dimensional and Design Standards	
	Lake Washington	Sammamish River
Floatplane lifts	• One platform lift serving a floatplane is allowed per lot. • The deck of the lift shall be fully grated and shall be the minimum size necessary. • Floatplanes may not be stored in the shoreline buffer.	• Prohibited

3. **Add buffers for water-oriented parks on Lake Washington.**

Staff response: At your last meeting, in response to a request from Ecology, staff added buffers for parks on the Sammamish River. Following are recommendations for water-oriented parks on Lake Washington:

	DOWNTOWN WATERFRONT	SWAMP CREEK COMMERCIAL	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
	Standards					
	Shoreline Buffers from OHWM on Lake Washington					
Residential development[1]						
Single-family	NA	NA	25 ft	115 ft	150 ft	--
Other	50 ft	NA	75 ft	115 ft	NA	
Water-oriented parks and outdoor recreational facilities	20 ft (3)	NA	25 ft (3)	75 ft (3)	150 ft (3)	--
Non-*water-oriented* parks and outdoor recreational facilities	50 ft (1)	NA	75 ft	100 ft	150 ft	--
Other *water-oriented uses*	20 ft	NA	100 ft	150 ft	150 ft	--
All other non-*water-oriented uses*	50 ft (1)	NA	150 ft	150 ft	150	--

4. Broaden disability protection language to include other rules (not related to access to a dwelling unit).

Staff response: This request was made by a staff person, concerned that rules beyond Federal Fair Housing should be addressed. Example Ecology language in the Periodic Review Checklist is based on the precise language in the Shoreline Management Act and staff recommends being consistent with that:

16.75.025 Permits – Reasonable accommodation.

The Federal Fair Housing Act and the Americans With Disabilities Act (ADA) requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped people equal opportunity to use and enjoy a dwelling or structure. The *city manager* is therefore authorized to make accommodations in the provisions of this title ~~as applied to dwellings occupied or to be occupied by handicapped persons as defined in the Federal Fair Housing Act~~, when the *city manager* determines that such accommodations reasonably may be necessary in order to comply with such Acts.

CRITICAL AREA REGULATIONS

5. Adjust stream definition.

Staff response: The Zoning Code currently contains a definition of "stream" as follows:

18.20.2900 "Stream" means water contained within a channel, either perennial or intermittent, and classified according to WAC 222-16-030 or 222-16-031. Streams also include natural watercourses modified by man. Streams do not include irrigation ditches, wasteways, drains, outfalls, operational spillways, channels, stormwater runoff facilities or other wholly artificial watercourses, except those that directly result from the modification to a natural watercourse. Artificial drainage features with documented fish usage are regulated as streams.

Staff recommends that the City use the definition found in a 2016 Ecology publication and make revisions as follows:

18.20.2900 "Stream" means an area where open surface water produces a definedwater contained within a channel or bed, either perennial or intermittent, and classified according to WAC 222-16-030 or 222-16-031. Streams also include natural watercourses modified by man. Streams do not includenot including irrigation ditches, canals, wasteways, drains, outfalls, operational spillways, channels, storm or surfacewater runoff facilities or other wholly artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. except those that directly result from the modification to a natural watercourse. Artificial drainage features with documented fish usage are regulated as streams.A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

THIS SECTION HAS BEEN COMPLETELY REWRITTEN

Chapter 18.55
CRITICAL AREAS

Sections:

Article XIX. Flood Hazard Areas

18.55.700 Purpose.
18.55.705 Definitions
18.55.707 Lands to which this article applies.
18.55.710 Basis for establishing flood hazard areas.
18.55.715 Permits.
18.55.720 Final certification by engineer or surveyor.
18.55.723 Designation and responsibilities of the local administrator.
18.55.725 Information to be obtained and maintained by the City.
18.55.730 Development standards applicable to all flood hazard areas.
18.55.740 Development standards for specific uses in flood hazard areas.
18.55.750 Development in the floodway.
18.55.760 Habitat assessment.
18.55.770 Warnings and disclaimer of liability.
18.55.780 Variances in flood hazard areas.
18.55.790 Penalties for noncompliance.
18.55.795 Abrogation and greater restrictions.

Article XIX. Flood Hazard Areas

18.55.700 Purpose.

The Washington State Legislature has delegated the responsibility to each community to adopt floodplain management regulations consistent with the National Flood Insurance Program designed to promote the public health, safety and general welfare of its citizenry. The State Legislature has also established that floodplains and other areas subject to flooding perform important hydrologic functions, and as such they must also be regulated as a critical area under the Growth Management Act (GMA). This article addresses both mandates as an integrated set of regulations.

The flood hazard areas of the City of Kenmore, which encompass the FEMA-designated special flood hazard areas, are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for *flood* protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These *flood* losses may be caused by the cumulative effect of *development* in areas of *flood* hazard which increase *flood* heights and velocities.

Uses that are inadequately floodproofed, elevated, anchored, or otherwise protected from *flood* damage contribute to *flood* losses and may cause damage in other areas. The purpose of this chapter is to establish minimum standards for *developments* located within or adjacent to *flood* hazard areas, including areas of special flood hazard. The following statements describe the purpose of this Chapter:

A. Protect human life and health;

B. Minimize expenditure of public money and costly *flood* control projects;

C. Minimize the need for rescue and relief efforts associated with *flooding*;

D. Minimize prolonged business interruptions;

E. Minimize damage to public infrastructure, facilities and utilities;

F. Minimize damage to critical fish and wildlife habitat areas;

G. Protect frequently flooded areas that provide natural and beneficial ecological functions, including providing vital habitat to support salmon and other fish and wildlife species;

H. Ensure that potential buyers are notified that property is in a *flood* hazard area;

I. Ensure that those who occupy *flood* hazard areas assume responsibility for their actions; and

J. Qualify for participation in the National Flood Insurance Program, thereby providing owners located within the mapped *special flood hazard area* the opportunity to purchase *flood* insurance.

18.55.705 Definitions.

Most of the terms used in this Article are defined in Chapter 18.20 KMC. However, there are some terms used in this code that are required to have unique meanings separate from those in Chapter 18.20 KMC. Those terms listed below are defined in 44CFR 59.1 and supersede those provided in Chapter 18.20

KMC for purposes of administering this Article. Any undefined terms used in these definitions will also be based on 44CFR 59.1.

A. Development.

B. Existing manufactured home park.

C. Manufactured home.

D. New construction.

E. Recreational vehicle.

F. Structure.

G. Substantial improvement.

H. Variance.

18.55.707 Lands to which this Article applies.

This Article shall apply to all *flood hazard areas* within the jurisdiction of the City of Kenmore, including *areas of special flood hazards* as mapped by FEMA and shown on the FIRM.

18.55.710 Basis for establishing Flood Hazard Area.

A. The *City* shall determine the *flood hazard area* after obtaining, reviewing and utilizing *base flood elevations* and available floodway data for a *flood* having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year *flood*." The *base flood* is determined for existing conditions, unless a basin plan including projected flows under future developed conditions has been completed and adopted by the *City*, in which case these future flow projections shall be used.

B. The areas of *special flood hazard* identified by the Federal Insurance Administrator (FIA) in a scientific and engineering report entitled "The Flood Insurance Study of King County, Washington and Incorporated Areas," dated April 19, 2005, with an accompanying effective *flood insurance rate map (FIRM)*, dated November 8, 1999, and any revisions thereto, are hereby adopted by reference and declared to be a part of this Article. The *flood insurance study* is on file at Kenmore City Hall. In areas where the *flood insurance study* for the *City* includes detailed *base flood elevation* calculations, those calculations will be used until projections of future flows are completed and approved by the *City and FEMA*.

C. The *City* may use other sources of *flood* hazard data to determine *floodplain* boundaries, floodway boundaries, *base flood elevations* or cross sections when identifying a flood hazard area if the data from sources listed below is more restrictive than the effective data:

1. Preliminary Flood Insurance Rate Maps;

2. Preliminary Flood Insurance Studies;

3. Draft *flood* boundary work maps and associated technical reports;

4. *Critical area* reports prepared in accordance with FEMA standards contained in 44 C.F.R. Part 65 and consistent with the King County Surface Water Design Manual provisions for *floodplain* analysis;

5. Approved Letter of map amendments;

6. Approved Letter of map revisions;

7. Channel migration zone maps and studies;

8. Historical *flood* hazard information;

9. Wind and wave data provided by the United States Army Corps of Engineers; and

10. Any other available data that accurately classifies and delineates the *flood* hazard area or *base flood elevation*.

D. Where elevation data is not available either through the *flood insurance study* or from the *FIRM*, or another authoritative source for the City to administer the floodplain development requirements, applications for building permits shall be reviewed to ensure that proposed construction will be reasonably safe from *flooding*. The test of reasonableness is a federal, state or local source; historical data; documented high water marks; photographs of past *flooding*; or additional modeling studies, etc., where available. Structures shall be elevated two feet above the highest adjacent grade in these zones.

E. Where *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 at least 50 lots or five acres (whichever is less).

18.55.715 Permits.

A. Development Permit Required. A *development* permit shall be obtained before construction or *development* begins within any *flood hazard area*. The permit shall be for all *structures*, including *manufactured homes* as defined in KMC 18.55.705, and for all *development* as defined in KMC 18.55.705.

B. Application for Development Permit. Application for a *development* permit shall be made on forms furnished by the City of Kenmore and may include but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed *structures*, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level and the effective flood study *base flood elevation* survey datum of the lowest floor (including *basement*) of all *structures*;

2. Elevation in relation to mean sea level and the effective flood study *base flood elevation* survey datum to which any *structure* has been floodproofed;

3. Map depicting existing conditions, wetlands, streams, waterbodies, designated fish and wildlife habitats of importance, the boundary of the *flood* hazard area and floodway, and the location of grading and *structures* in the proposed *development*.

4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed *development*; and

5. Certification by a registered professional engineer or architect that the *floodproofing* methods for any nonresidential *structure* meet the *floodproofing*.

C. All elevated construction shall be designed and certified by a professional structural engineer licensed by the State of Washington and shall be approved by the *City* prior to construction.

D. Prior to approving any permit, the *City* shall determine that all permits required by State or federal law have been obtained.

E. A notice on title shall be recorded consistent with KMC 18.55.250.

18.55.720 Final certification by engineer or surveyor.

A. For all new *structures* or *substantial improvements* in a *flood hazard area*, the *applicant* shall provide certification by a professional civil engineer or land surveyor licensed by the State of Washington of:

1. The actual as-built elevation of the *lowest floor*, including *basement*; and

2. The actual as-built elevation to which the *structure* is floodproofed, if applicable.

B. The engineer or surveyor shall indicate if the *structure* has a *basement*.

18.55.723 Designation and responsibilities of the local administrator.
The *city manager* is hereby appointed to administer and implement this Article by granting or denying *development* permit applications in accordance with its provisions. Duties of the *city manager* shall include, but not be limited to:

A. Review of the *flood* hazard area maps, and other source documents, for any *development proposal* to determine whether the proposed project area for a regulated activity falls within a potential *flood* hazard area;

B. Review of proposed *development* located within a *flood* hazard area to ensure compliance with the *flood* hazard area standards set forth in this chapter; and.

C. Interpretation of flood hazard area boundaries. The *city manager* shall make interpretations, where needed, as to exact location of the boundaries of the *flood hazard area,* including the FEMA-mapped *special flood hazard areas* (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation to the *hearing examiner* as provided in KMC Chapter 19.30.

18.55.725. Information to Be Obtained and Maintained by the City.
A. The *City* shall obtain, verify and record the actual elevation (in relation to mean sea level and the *base flood elevation* datum) of the *lowest floor* (including *basement*) of all new or substantially improved *structures*, and whether or not the *structure* contains a *basement*.

B. For all new or substantially improved floodproofed *structures*, the *City* shall maintain the *floodproofing* certifications required in this chapter.

C. Alteration of Watercourses. The *City* shall:

1. Notify adjacent communities and the Department of Ecology, or federal resource agencies where required, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means.

2. Require that the flood carrying capacity of the altered or relocation portion of said watercourse is maintained.

3. Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the city manager shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

4. Notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

D. The *City* shall maintain for public inspection all records pertaining to the provisions of this chapter.

18.55.730 Development standards applicable to all flood hazard areas.

Development proposals on *sites* within *flood hazard areas, including the special flood hazard area,* shall meet the following requirements:

A. Buffers. No *critical area buffer* is required for a *flood* hazard area.

B. Anchoring.

1. All new construction and *substantial improvements* shall be anchored to prevent flotation, collapse, or lateral movement of the *structure* resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and

2. All *manufactured homes* must likewise 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 (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

C. Construction Materials and Methods.

1. All new construction and *substantial improvements* shall be constructed with materials and utility equipment resistant to *flood* damage.

2. All new construction and *substantial improvements* shall be constructed using methods and practices that minimize *flood* damage.

3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other utility and service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of *flooding*.

4. Adequate drainage paths shall be provided around *structures* on slopes to guide floodwaters around and away from proposed *structures*.

D. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during *flooding*. They shall be, to the extent possible, located outside of the *flood hazard area.* The installation of a new on-site sewage disposal system in the *flood hazard area* may be allowed if no feasible alternative *site* is available.

4. Above-ground utility transmission lines, other than electric transmission lines, shall only be allowed for the transport of nonhazardous substances; and

5. Buried utility transmission lines transporting *hazardous substances* shall be buried at a minimum depth of four feet below the maximum depth of scour for the *base flood*, as predicted by a professional civil engineer licensed by the State of Washington, and shall achieve sufficient negative buoyancy so that any potential for flotation or upward migration is eliminated.

E. Encroachments.

The cumulative effect of any proposed *development*, where combined with all other existing and anticipated *development*, shall not increase the water surface elevation of the *base flood* more than one foot at any point within the City.

18.55.740 Development standards for specific uses in flood hazard areas.

A. Residential Construction.

1. New construction and *substantial improvement* of any residential *structure* shall have the *lowest floor*, including *basement*, elevated one foot above the *base flood elevation*. In any flood hazard area where the *base flood elevation* has not been determined on the FIRM, the *base flood elevation* is determined by the city manager consistent with KMC 18.55.710.

2. Fully enclosed areas below the *lowest floor* that are subject to *flooding* are prohibited unless used solely for parking, access or storage. These areas shall be designed to automatically equalize hydrostatic *flood* forces on exterior walls by allowing for the entry and exit of floodwaters. 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:

    a. A minimum of two openings on opposite walls having a total open area of not less than one square inch for every square foot of enclosed area subject to *flooding* shall be provided;

    b. The bottom of all openings shall be no higher than one foot above grade; and

    c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

B. Manufactured Homes.

1. Except as noted in B.2, all *manufactured homes* to be placed or substantially improved within any flood hazard area shall be elevated on a permanent foundation such that the *lowest floor* of the *manufactured home* is elevated one foot above the *base flood elevation* and shall be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement. In any flood hazard area where the *base flood elevation* has not been determined on the FIRM, the *base flood elevation* is determined by the city manager consistent with KMC 18.55.710.

2. *Manufactured homes* to be placed or substantially improved on sites in an existing *manufactured home* park or subdivision within a flood hazard area that have not incurred substantial damage as the result of a flood shall be elevated so that either:

    a. The *lowest floor* of the *manufactured home* is elevated one foot above the *base flood elevation*; or

    b. The *manufactured home* chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade

and is securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

C. Nonresidential Construction. New construction and *substantial improvement* of any commercial, industrial or other nonresidential *structure* shall either have the *lowest floor*, including *basement*, elevated one foot above the *base flood elevation*; or, together with attendant utility and sanitary facilities, shall:

1. Be floodproofed so that below one foot above the *base flood* level the *structure* is watertight with walls substantially impermeable to the passage of water;

2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

3. Be certified by a professional civil or structural engineer licensed by the State of Washington that the *floodproofing* methods are adequate to withstand the *flood* depths, pressures, velocities, impacts, uplift forces and other factors associated with the *base flood*. After construction, the engineer shall certify that the permitted work conforms with the approved plans and specifications;

4. Nonresidential *structures* that are elevated, not floodproofed, must meet the same standards for space below the *lowest floor* as described in subsection (A)(2) of this section;

5. Approved building permits for floodproofed nonresidential *structures* shall contain a statement notifying *applicants* that flood insurance premiums shall be based upon rates for *structures* which are one foot below the floodproofed level (e.g., a building floodproofed to the *base flood* level will be rated as one foot below);

6. Sewage and agricultural waste storage facilities shall be floodproofed to the *flood protection elevation*.

D. Recreational Vehicles. *Recreational vehicles* placed on sites within flood hazard areas on the community's FIRM shall either:

1. Be on the site for fewer than 180 consecutive days;

2. Be fully licensed and ready for highway use, on their wheels or jacking systems, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

3. Meet the requirements of subsection B of this section, including the elevation and anchoring requirements.

E. *Critical facility*. Construction of new *critical facilities* shall be, to the extent possible, located outside the limits of *Flood Hazard Areas*, including the *Special Flood Hazard Area*. Construction of new *critical facilities* shall be permissible within the *Flood Hazard Area*. if no feasible alternative site is available and if the proposal is evaluated through the conditional use permit process. *Critical facilities* constructed within the *Flood Hazard Area* shall have the *lowest floor* elevated three feet or more above the level of the *base flood elevation* (100-year) at the site. *Floodproofing* and sealing measures shall be taken to ensure that hazardous substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the *base flood elevation* shall be provided to all *critical facilities* from the nearest maintained public *street* or roadway.

F. Subdivisions, short subdivisions and binding site plans shall meet the following requirements:

1. New building *lots* shall contain 5,000 square feet or more of buildable land outside the *Flood Hazard Area*, and building *setback* areas shall be shown on the face of the plat to restrict permanent *structures* to this buildable area;

2. All utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed consistent with KMC 18.55.730;

3. *Base flood* data and *flood* hazard notes shall be shown on the face of the recorded subdivision, short subdivision or binding site plan including, but not limited to, the *base flood elevation*, required *flood protection elevations* and the boundaries of the *Flood Hazard Area* and the *floodway*, if determined; and

4. The following notice shall also be shown on the face of the recorded subdivision, short subdivision or binding site plan for all affected lots:

NOTICE

Lots and *structures* located within *flood* hazard areas may be inaccessible by emergency vehicles during *flood* events. Residents and property owners should take appropriate advance precautions.

18.55.750 Development in the floodway.

The requirements which apply to the *all flood hazard areas* (KMC 18.55.730 and .740), including the *special flood hazard area,* shall also apply to the f*loodway*. The more restrictive requirements shall apply where there is a conflict.

A. Encroachments. Encroachments, including fill, new construction, *substantial improvements*, and other *development*, are prohibited unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in *flood* levels during the occurrence of the *base flood* discharge.

B. A *development proposal* including, but not limited to, new or reconstructed *structures* shall not cause any increase in the *base flood elevation* unless the following requirements are met:

1. Amendments to the *flood insurance rate map* are adopted by FEMA, in accordance with all requirements of 44CFR 65.7, to incorporate the increase in the *base flood elevation*; and

2. Appropriate legal documents are prepared in which all property owners affected by the increased *flood* elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

C. New residential *structures* or any *structure* accessory to a residential *use* shall meet the following requirements:

1. The *structures* shall be outside the f*loodway*; and

2. The *structures* shall be on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the floodway.

D. The following modifications to existing residential *structures* are permitted:

1. Repairs are not substantial. Damage to 50% or greater of the structure is considered substantially damaged and the structure must meet the requirements of new construction.

2. Repairs, reconstruction, or improvements to a *structure* which do not increase the ground floor area.

3. Repairs, reconstruction or improvements to a *structure*, the cost of which does not exceed 50 percent of the market value of the *structure* either:

    a. Before the repair or reconstruction is started; or

b. If the *structure* has been damaged, and is being restored, costs to repair the structure to the previous condition before the damage occurred.

Work done on *structures* to comply with existing health, sanitary, or safety codes cited prior to the work being proposed shall not be included in the 50 percent. For structures identified as historic places, repair, reconstruction or improvements must not preclude its continued designation as a historic structure to be counted towards the repair costs.

Substantial improvements shall meet the requirements of new structures and provide the information required in Section C.

E. The following are presumed to produce no increase in *base flood elevation* and shall not require a special study to establish this fact:

1. New residential *structures* outside the *floodway* on *lots* in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the *floodway* and which have a total building footprint of all proposed *structures* on the lot of less than 2,000 square feet; or

2. *Substantial improvements* of existing residential *structures* outside the *floodway*, where the footprint is not increased.

F. Post or piling construction techniques which permit water flow beneath a *structure* shall be used.

G. All temporary *structures* or substances hazardous to public health, safety and welfare, except for *hazardous household substances* or consumer products containing *hazardous substances*, shall be removed from the f*loodway* during the *flood* season from September 30th to May 1st.

H. Livestock manure storage facilities and associated nonpoint source water pollution facilities designed, constructed and maintained to the standards of and approved in a conservation plan by the *City* may be allowed if the *City* reviews and approves the location and design of the facilities, and if they meet the requirements for floodway development.

I. *Structures* and installations which are dependent upon the *floodway* may be located in the *floodway* if the *development proposal* is approved by all agencies with jurisdiction and meets the requirements for floodway development. Such *structures* include, but are not limited to:

1. Dams or diversions for water supply, *flood* control, hydroelectric production, irrigation or fisheries enhancement;

2. *Flood* damage reduction facilities, such as levees and pumping stations;

3. Stream bank stabilization *structures* where no feasible alternative exists for protecting public or private property;

4. Stormwater conveyance facilities subject to the development standards for *streams* and *wetlands* and the surface water design manual;

5. *Boat launches* and related recreation *structures*;

6. Bridge piers and abutments; and

7. Other fisheries enhancement or stream restoration projects.

J. Utilities may be allowed within the *floodway* if the *City* determines that no feasible alternative *site* is available, subject to the following requirements:

1. Installation of new on-site sewage disposal systems shall be prohibited unless a waiver is granted by Seattle/King County public health; and
2. Meets the requirements for *floodway* development.

K. The project applicant shall submit a hydraulic engineering a study, by a registered professional engineer in the State of Washington, certifying that the *development proposal* meets no-rise.

18.55.760 Habitat assessment

To comply with Federal Endangered Species Act requirements, the applicant shall provide an assessment of impacts to federal, state or locally listed species, habitat, water quality and aquatic riparian habitat impacts, for any proposal lying within a mapped special *flood* hazard area. See KMC Chapter 18.55, Article XIV.

18.55.770 Warnings and disclaimer of liability.

The degree of *flood* protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. *Floods* larger than the regulatory *base flood* can and will occur. *Flooding* and *flood* hazards may occur in unmapped areas. *Flood* heights may be increased by manmade or natural causes. This chapter does not imply that land outside *flood* hazard areas or uses permitted within such areas will be free from *flooding* or *flood* damages. This chapter shall not create liability on the part of the City of Kenmore, any officer or employee thereof, or the Federal Emergency Management Agency for any *flood* damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

18.55.780 Variances in flood hazard areas.

A. Conditions for Variances.

1. Generally, the only condition under which a *variance* from the elevation standard may be issued is for new construction and *substantial improvements* to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing *structures* constructed below the *base flood* level, providing subsections (B)(1) through (B)(11) of this section have been fully considered. As the lot size increases the technical justification required for issuing the *variance* increases.

2. *Variances* may be issued for the repair or rehabilitation of historic *structures* or the *City's* local landmarks, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

3. *Variances* shall not be issued within a designated floodway if any increase in *flood* levels during the *base flood* discharge would result.

4. *Variances* shall only be issued upon a determination that the *variance* is the minimum necessary, considering the *flood* hazard, to afford relief.

5. *Variances* shall only be issued upon:

   a. A showing of good and sufficient cause;

   b. A determination that failure to grant the *variance* would result in exceptional hardship to the applicant;

   c. A determination that the granting of a *variance* will not result in increased *flood* heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

6. *Variances* as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the *structure*, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, *variances* from the *flood* elevations should be quite rare.

7. *Variances* may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of *floodproofing* than watertight or dry *floodproofing*, where it can be determined that such

action will have low damage potential, complies with all other *variance* conditions except subsection (A)(1) of this section and otherwise complies with KMC 18.55.730(A) and (B).

8. Any applicant to whom a *variance* is granted shall be given written notice that the *structure* will be permitted to be built with a *lowest floor* elevation below the *base flood* elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced *lowest floor* elevation.

B. If a *variance* to the standards in this article is proposed, the decisionmaker shall consider, in addition to the conditions itemized in subsection A, above, and the standard *variance* criteria itemized in KMC 18.115.030:

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger to life and property due to *flooding* or erosion damage;

3. The susceptibility of the proposed facility and its contents to *flood* damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use which are not subject to *flooding* or erosion damage;

7. The compatibility of the proposed use with existing and anticipated *development*;

8. The relationship of the proposed use to the comprehensive plan and *floodplain* management program for that area;

9. The safety of access to the property in times of *flood* for ordinary and emergency vehicles;

10. The expected depths, heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11. The costs of providing governmental services during and after *flood* conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

C. The *city manager* shall report any *variances* to the Federal Emergency Management Agency upon request.

18.55.790 Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein contained shall prevent the City of Kenmore from taking such other lawful action as is necessary to prevent or remedy any violation.

18.55.795 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Definitions to be added to, or amended in, Chapter 18.20 related to flood hazard regulations

18.20.206 Area of shallow flooding

"Area of shallow flooding" means a designated AO, ~~or~~ AH, AR/AO, AR/AH, or VO Zone on ~~the~~ a community's flood insurance rate map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. ~~The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.~~ AO is characterized as sheet flow and AH indicates ponding.

18.20.206.1 Area of special flood hazard

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. ~~Designation on maps always includes the letter "A" or "V."~~The area may be designated as Zone A on the FIRM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

18.20.230 Base flood.

"Base flood" means ~~a~~the flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood." Designation on the FIRM always includes the letter "A" or "V."

18.20.240 Base flood elevation

"Base flood elevation" means the water surface elevation of the *base flood* ~~in relation to the National Geodetic Vertical Datum of 1929~~North American Vertical Datum 1988.

18.20.1057 Flood or flooding

"Flood" or "flooding" means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph A.2. 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.

B. 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 an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph A.2. of this definition.

18.20.105990 Flood ~~insurance~~ elevation study ~~for King County~~

"Flood ~~insurance~~ elevation study ~~for King County~~" ~~means the official report provided by the Federal Insurance Administration which includes flood profiles and the *flood insurance rate map*.~~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.

~~**18.20.1060 Flood fringe**~~

~~"Flood fringe" means that portion of the *floodplain area of special flood hazard* outside of the *zero-rise floodway* which is covered by floodwaters during the *base flood*, generally associated with standing water rather than rapidly flowing water.~~

18.20.1070 Flood hazard areas

"Flood hazard areas" means those areas in the *City* subject to inundation by the *base flood* (see "area of special flood hazard") and those areas subject to flood risks from *channel relocation or stream meander* including, but not limited to, *streams*, lakes, *wetlands* and closed depressions. The latter flood hazard areas may extend outside of the area of special flood hazard mapped by FEMA, but are defined and designated by the City.

18.20.1080 Flood insurance rate map (FIRM)

"Flood insurance rate map (FIRM)" means the official map on which the Federal ~~Insurance Administration~~Insurance Administrator has delineated ~~some~~both the special *flood hazard areas* and the risk premium zones applicable to the community. ~~both the areas of special flood hazards and the risk premium zones applicable to the community~~. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

18.20.1090 Flood insurance study (FIS)~~for King County~~

~~"Flood insurance study for King County" means the official report provided by the Federal Insurance Administration which includes flood profiles and the *flood insurance rate map*.~~See "Flood elevation study."

18.20.1110 Floodplain

"Floodplain" ~~means the total area subject to inundation by the *base flood*.~~means any land area susceptible to being inundated by water from any source (see definition of "flooding").

18.20.1120 Floodproofing

"Floodproofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents~~adaptations which will make a *structure* that is below the *flood protection elevation* substantially impermeable to the passage of water and resistant to hydrostatic and hydrodynamic loads including the impacts of buoyancy~~.

18.20.1~~0201~~125 ~~Federal Emergency Management Agency (FEMA)~~Ff~~loodway

"~~Federal Emergency Management Agency (FEMA)~~ Floodway" means the channel of ~~the *stream*~~ a river or other watercourse and ~~that portion of~~ the ~~adjoining~~ adjacent ~~*floodplain*~~ *land areas that must be reserved in order to* ~~which is necessary to contain and~~ discharge the *base flood* ~~flow~~ without cumulatively increasing the ~~*base flood*~~*water surface elevation* more than ~~one foot.~~a designated height. Also known as the "Regulatory Floodway" or "FEMA floodway."

~~**18.20.1130 Floodway, zero-rise**~~

~~"Zero-rise floodway" means the channel of a *stream* and that portion of the adjoining *floodplain* which is necessary to contain and discharge the *base flood* flow without any measurable increase in flood height. A measurable increase in *base flood* height means a calculated upward rise in the *base flood elevation*, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and changed conditions directly attributable to *development* in the *floodplain*. This definition is broader than that of the *FEMA floodway*, but always includes the *FEMA floodway*. The boundaries of the 100-year *floodplain*, as shown on the *flood insurance study for King County*, are considered the boundaries of the *zero-rise floodway* unless otherwise delineated by a *critical area* special study.~~

18.20.1340 Historic structure

"Historic structure" means any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. 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;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior or

2. Directly by the Secretary of the Interior in states without approved programs.

18.20.1673 Lowest floor

For purposes of flood hazard area regulations, “lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of 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 non-elevation design requirements of this chapter.

18.20.2875 Start of construction.

For purposes of flood hazard area regulations, “start of construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. 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 of the property or 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.

18.20.2955 Substantial damage

For purposes of flood hazard area regulations, “substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

City of Kenmore
Draft amendments 2019 – Public agency or utility exception (PAUE)

18.55.160 Exception – Public agency ~~and~~or utility.

A. If ~~the~~strict application of this chapter would prohibit ~~a *development proposal* by a *public agency* or public utility~~the following:

1. expansion of an existing *public agency development*, or

2. expansion or extension of an existing *public agency* transportation facility, or

3. expansion or extension of a public utility, or

4. expansion or extension of a *private utility*

then the *public agency* or *private utility* may apply for relief from strict application of this chapter through an exception pursuant to this section, unless the project is located on lands regulated under the Kenmore shoreline master program. Existing *public agency development* as described under A.1 above means those facilities operated by *public agencies* that are site specific and non-linear, including but not limited to: school facilities, *fire or police facilities*, governmental offices, recreational facilities, parks facilities, or stormwater retention/detention facilities. New *public agency developments* that require adjustment of *critical area* standards are considered through the variance process if adjustments to buffers are required, or as a reasonable use exception. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC.

B. Exception Request and Review Process. An application for a *public agency* ~~and~~or *private utility* exception shall be made to the *city* and shall include a *critical areas* report, including *mitigation* plan, if necessary, and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (SEPA).

C. *City Manager* Review. The *city manager* shall review the application as a Type 2 land use decision under KMC 19.25.020. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's demonstrated ability to comply with all of the *public agency* and *private utility* exception criteria in subsection D of this section.

D. *Public Agency* and *Private Utility* Exception Review Criteria. The criteria for review and approval of a *public agency* ~~and~~or *private utility* exception~~s~~ are as follows:

1. There is no other feasible location for the proposed *development* with less adverse impact on the *critical area* or *buffer*;

2. There is no other *practical alternative* to the proposed *development* with less impact on the *critical area*~~s~~ or *buffer*. "*Practical alternatives*" include but are not limited to:

a. Location outside of the *critical area* and its buffer;

b. Pursuit and exhaustion of other administrative code modifications or exceptions including but not limited to: front yard setback modifications at KMC 18.30.190; modifications of minimum parking standards in KMC 18.40; and allowances for nonconforming uses in KMC 18.100;

~~2~~3. The application of this chapter would unreasonably restrict the ability to provide *public agency* or utility services to the public;

4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare;

5. The *development proposal* protects and mitigates impacts to the *critical area functions and values* consistent with *best available science*;

6. The *development proposal* achieves no net loss of *critical area functions and values*;

7. Mitigation sequencing through KMC 18.55.210 has been demonstrated in the *critical areas* report, along with a demonstration of the how the agency or utility will provide mitigation using a watershed approach;

8. Development activities involve the least intrusion into and disruption of the *critical area* necessary while fulfilling a public purpose and need;

9. The proposal is consistent with a *public agency* or *private utility* system plan, capital facilities plan, master plan, program, or policy that has been the subject of a public review process; and

10. The proposal is consistent with the general purpose and intent of the City's comprehensive plan and adopted development regulations.

E. Approval conditions. Conditions for approval of a *public agency* or *private utility* exception shall include, at a minimum:

1. Conformance with the development standards and mitigation plans identified in the approved *critical areas* report; and

2. Appropriate best management practices, as described in this chapter and in other science-based documents, including but not limited to the Washington State Department of Commerce Critical Areas Guidebook, as amended, sources of science by State agencies with expertise, and standard

conditions of approval published by federal agencies.

18.20.2102 Practical alternative.

"Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration effectiveness, engineering feasibility, cost, safety, existing technology, and logistics in light of overall project needs, purposes and objectives, and has less impacts to *critical areas*. For example, a practical alternative to a proposal to place a sidewalk through a *wetland* might be to place an elevated boardwalk through the *wetland*.

18.20.2125 Private utility.

"Private utility" means an entity, such as a telecommunications company, delivering utility services to the general public.

Amended Zoning and Parking Provisions for flexibility.

18.30.190 Setbacks – Modifications.

The following *setback* modifications are permitted:

A. When the common property line of two *lots* is covered by a *building(s)*, the *setbacks* required by this chapter shall not apply along the common property line; and

B. When a *lot* is located between *lots* having nonconforming *street setbacks*, the required *street setback* for such *lot* may be the average of the two nonconforming *setbacks* or 60 percent of the required *street setback*, whichever results in the greater *street setback*.

C. The *city manager* may reduce *setbacks* in Residential zones regulated by KMC 18.21 to 10 feet, and *setbacks* in other zones to 5 feet in order to maximize the protection of a *critical area* or buffer and avoid exceptions or variances.

18.40.030 Computation of required off-street parking spaces.

***

B. An *applicant* may request a modification of the minimum required number of *parking spaces* by providing a parking demand analysis demonstrating that parking demand can be met with a reduced

parking requirement. In such cases, the *city manager* may approve a reduction of up to 50 percent of the minimum required number of spaces.

***

D. Where other provisions of this code stipulate maximum parking allowed or reduced minimum parking requirements, those provisions shall apply.

***

H. Tree Retention – DC and DR Zones. Where an applicant proposes retention of *trees* in accordance with KMC 18.35.100(G) in the DC and DR zones, the *city manager* may reduce parking requirements by one *parking space* for every two *significant trees* that are saved in excess of the significant tree ordinance requirements.

I. *Critical Area* or Buffer Protection. When unavoidable, the *city manager* may reduce minimum parking requirements in order to maximize the protection of a *critical area* or its buffer. The reduction in the number of parking stalls or alternative stall or drive aisle dimensional requirements shall be in proportion to the area to be retained in the buffer or critical area.

Amended Critical Area Variance

18.55.170 Variances.

A. *Variances* from the *buffer* width and building *setback* standards of this chapter may be authorized by the *City* in accordance with the procedures set forth in the *City's* zoning code, unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75KMC.

B. No *variance* is allowed in order to create additional *lots*.

C. The *City* may grant a *variance*; provided, that the *applicant* demonstrates that all of the following criteria are met:

1. Special circumstances

   a. Private development proposals: There are special circumstances applicable to the subject property or to the intended *use* such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a *variance* from the buffer width requirements;

b. New *public agency development* proposals: There is no other *practical alternative* that allows the *public agency* to meet its public service obligations pursuant to applicable laws, rules, or adopted plans. "*Practical alternatives"* include but are not limited to:

i. Location out of the critical area buffer;

ii. Pursuit and exhaustion of other code modifications or exceptions; ~~and~~

2. Necessary for rights or use:

a. Private development proposals: Such *variance* is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question;

b. New *public agency development* proposals: Such *variance* is necessary for a public agency proposal to fulfil a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital facilities plan, system plan, or other master plan that has been subject to an alternative site evaluation and public review process; ~~and~~

3. The granting of such buffer width *variance* will not be materially detrimental to the public welfare or injurious to the property or improvement; ~~and~~

4. The granting of the buffer width *variance* will not significantly impact the subject *critical area*; ~~and~~

5. The decision to grant the *variance* includes the *best available science* and gives special consideration to conservation or protection measures necessary to preserve or enhance *anadromous fish habitat*; and

6. The granting of the *variance* is consistent with the general purpose and intent of the *City*'s comprehensive plan and adopted development regulations.

D. Conditions May Be Required. In granting any *variance*, the *City* may prescribe such conditions and safeguards as are necessary to secure adequate protection of *critical areas* from adverse impacts, and to ensure conformity with this chapter.

E. *City Manager* Review. The *city manager* shall review the application. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the *variance* criteria in this section.

F. Time Limit.

1. Establishment of any development activity authorized pursuant to a *variance* shall occur within four years of the effective date of the decision for such *variance*. This period may be extended for one additional year by the *city manager* if the *applicant* has submitted the applications necessary to authorize the development activity and has provided written justification for the extension.

2. For the purpose of this subsection, "establishment" shall occur upon the issuance of all local permit(s) needed to begin the development activity; provided, that the improvements authorized by such permits are completed within the timeframes of said permits.

G. Burden of Proof. The burden of proof shall be on the *applicant* to bring forth evidence in support of the application and upon which any decision has to be made on the application.

18.55.180 Exception – Reasonable use.

A. If the application of this chapter pertaining to *critical areas* will prevent the *applicant* from making any *reasonable use* of the subject property, the *applicant* may apply for an exception pursuant to this section unless the project is located on lands regulated under the Kenmore shoreline master program. Projects on lands regulated under the Kenmore shoreline master program are regulated under the procedures of Chapter 16.75 KMC. An application for a reasonable use exception must accompany a *development permit* application through the City's review and decision process.

1. Criteria for Granting. The *city manager* shall grant a *reasonable use* allowance only when all of the following criteria are met:

a. Reasonable Use

i. Private proposals: The *applicant* demonstrates that the application of this chapter will deny all *reasonable use* of the subject property otherwise allowed by applicable law;

ii. New *public agency development* proposals: The *applicant* demonstrates that the application of this chapter would interfere with a *public agency* proposal to fulfill a duty to serve per federal, state, or local laws; or to provide an essential public facility; or to address a public need or demand for service consistent with an adopted capital facilities plan, system plan, or other master plan that has been subject to an alternative site evaluation and public review process;

b. The development activities involve the least intrusion into and disruption of the *critical area* necessary to allow a *reasonable use* of the subject property by a private applicant or to achieve a public agency responsibility consistent with adopted laws, rules, and plans per criterion "a";

c. The development activities will not cause or result in damage to properties other than the subject property and will not endanger the public health, safety or welfare;

d. The *applicant*'s inability to make *reasonable use* of the subject property has not resulted from any of the following:

(1) Prior subdivision or segregation of the subject property, or changes to the boundaries of the subject property through a boundary line adjustment or otherwise; or

(2) Prior actions taken in violation of this chapter or any local, State, or federal law or regulation;

e. No other *reasonable use* of the property has less impact on the *critical area*;

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

g. *Mitigation* proposed by the *applicant* is sufficient to protect the *functions and values* of the *critical area* and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

2. Appeals. The *applicant* may appeal a decision of the *city manager* on a *reasonable use* allowance application to the *hearing examiner* pursuant to the provisions of the Kenmore Municipal Code.

B. Exception Request and Review Process. An application for a *reasonable use* exception shall be made to the *City* and shall include a *critical areas* report, including *mitigation* plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 19.35 KMC).

C. *City Manager* Review. The *city manager* shall review the application. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the criteria in subsection A of this section.

D. Burden of Proof. The burden of proof shall be on the *applicant* to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

E. Time Limit.

1. Establishment of any development activity authorized pursuant to a *reasonable use* exception shall occur within four years of the effective date of the decision for such *reasonable use* exception. This period may be extended for one additional year by the *city manager* if the *applicant* has submitted the applications necessary to authorize the development activity and has provided written justification for the extension.

2. For the purpose of this subsection, “establishment” shall occur upon the issuance of all local permit(s) needed to begin the development activity; provided, that the improvements authorized by such permits are completed within the timeframes of said permits.

Best Available Science Evaluation

DRAFT JANUARY 2019 | PUBLIC AGENCY & UTILITY EXCEPTION (PAUE)

Prepared for:

City of Kenmore

18120 68th Ave NE
Kenmore, WA 98028

Prepared by:

SHANNON & WILSON, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS

BERK

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1. Situation and Recommendation

BACKGROUND AND PURPOSE

Public agency and utility projects are often both difficult to site and to permit. A public agency and/or utility may have limited funding and constraints on facility location or access to property. Before a public agency or utility project even enters the permit process, there may have been years of public discussion about project design and location. The project may have been discussed in the Comprehensive Plan and/or placed into a Capital Facilities Plan. In other cases, public projects may have been permitted many years ago on properties containing critical areas. Changes in current conditions may necessitate expansion, renovation or replacement of the public facility or utility despite critical area concerns.

Historically, if a public agency or utility could not meet the City of Kenmore's critical areas regulations standards, an exception permit review process (the Public Agency and Utility Exception or PAUE) was allowed subject to a study and demonstration that impact minimization and other criteria had been met. Several years ago, it was determined that this exception only could be applied to utility projects, leaving no exception for public agency projects. In an attempt to remedy this situation, revisions to the PAUE were proposed in 2016. These revisions were appealed to the Growth Management Hearings Board which overturned the regulations after finding that the City needed to better demonstrate how the code proposal incorporated best available science (BAS) in development of the regulations or provide the basis for departures from BAS in its record.

State guidance provides criteria for including BAS in development regulations and also discusses departures from BAS:

> *WAC 365-195-915*
>
> *Criteria for including the best available science in developing policies and development regulations.*
>
> *(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:*
>
> > *(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.*
> >
> > *(b) The relevant sources of best available scientific information included in the decision-making.*
> >
> > *(c) Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:*
> >
> > > *(i) Identify the information in the record that supports its decision to depart from science-based recommendations;*
> > >
> > > *(ii) Explain its rationale for departing from science-based recommendations; and*
> > >
> > > *(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.*
>
> *(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas.*

Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

The purpose of this report is to address BAS for the PAUE regulations. The City presently is updating all its critical area regulations and amendments to the PAUE appropriately are included with this update.

Attachment A summarizes the City's current code for the PAUE for utilities. Attachment A also shows the 2016 Kenmore code amendment proposal, which would have reextended the exception to public agency projects, as well as utilities, and added more stringent review criteria. This is the proposal that was challenged and not upheld by the Growth Management Hearings Board due to the Board's findings. Washington Department of Commerce recommendations about PAUEs, which continue to incorporate public agencies as recently as their June 2018 *Critical Areas Handbook*[1], are also provided in Attachment A.

This Best Available Science (BAS) Evaluation is intended to address scientific and other considerations consistent with the Growth Management Act (GMA) rules, and to identify issues and options towards amending PAUE regulations to address necessary public agency and utility projects. The document is organized as follows:

1. Situation and Recommendations
2. Best Available Science Provisions in GMA
3. Science and Regulatory Context
4. Other Considerations
5. Departures from Best Available Science
6. Conclusion

The City's critical area regulations are found in Chapter 18.55 of the Kenmore Municipal Code. These regulations are designed to protect critical areas and their functions and values. Chapter 18.55 also sets out the critical areas review process and exemptions, variances and exceptions to the rules. According to the Commerce Critical Areas Handbook, exemptions are those activities or uses for which the critical area rules do not apply and no review is required. Variances may be used to modify the standards. Exceptions are used when application of the critical area regulations would prohibit a development proposal by either a public agency or utility or a private property owner. The evaluation in this report is focused on the BAS underlying revisions to the PAUE and its critical areas review process. Attachments support elements of this evaluation.

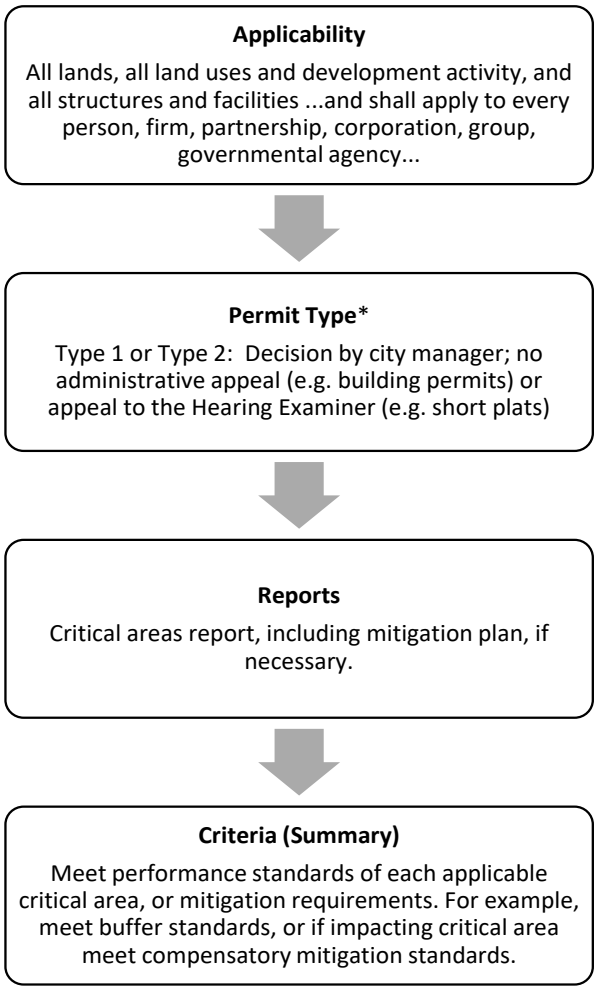
CRITICAL AREA EVALUATION PROCESS

Standard Process

The City applies its critical areas regulations to all types of development and project sponsors. The permit review is administrative in many cases.

[1] Washington Department of Commerce (2018). Critical Areas Handbook (Chapter 3: Structuring Critical Areas Regulations). Available: https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/critical-areas/

Exhibit 1 Kenmore Standard Critical Areas Regulations Process



Note: *Review may take permit type of associated land use activity. Type 1 City Manager (CM) Decision, Type 2 CM Decision with Appeal to Hearing Examiner, Type 3 Hearing Examiner Decision with CM recommendation, and Type 4 City Council Decision with CM and Hearing Examiner recommendation.

However, there are limited circumstances in which variances or exceptions are needed. The City's Municipal Code addresses three different ways to modify the regulations: a variance, a reasonable use exception, or a PAUE. Review procedures for these three processes are described below.

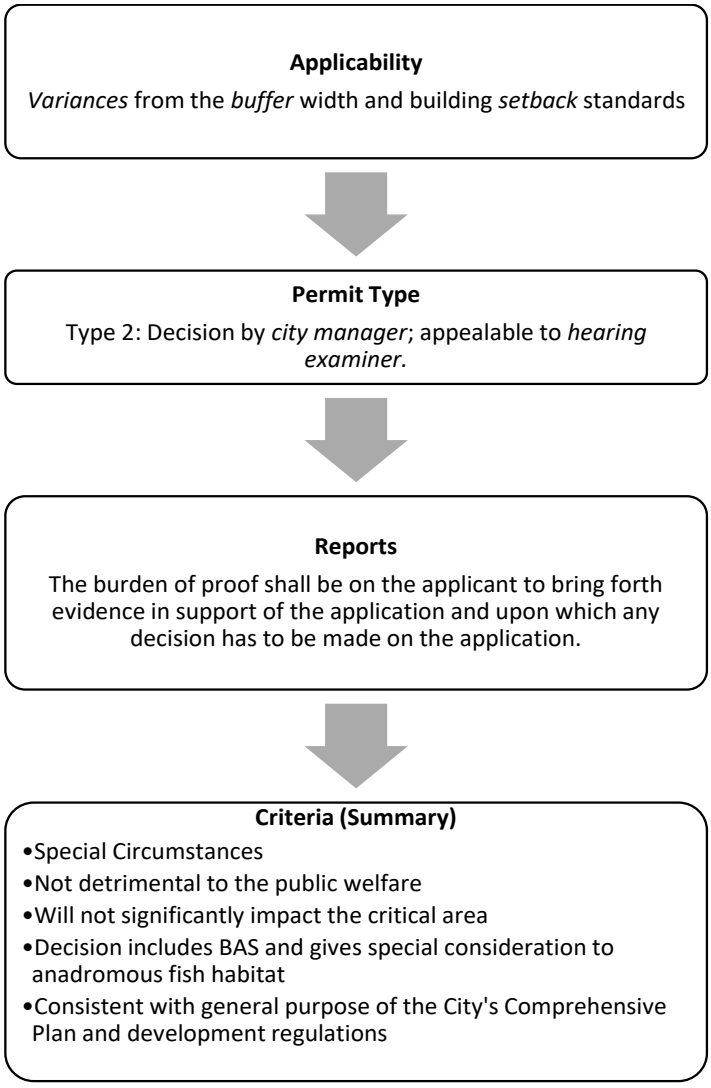
Variance

A variance is a deviation from the dimensional standards in the code. The City allows a critical area variance from the buffer width and building setback standards of the code. The decision is administrative, but appealable to the City's Hearing Examiner. A couple of the review criteria for a variance are difficult for public agency and utility projects to address because they are geared for private landowners. For example:

"2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question;"

Although, without the PAUE, variances have been used by public agencies for buffer modifications, the process is better suited to private applications where no balancing of public agency responsibilities is considered. Too, variances cannot be used for projects in a critical area.

Exhibit 2. Kenmore Critical Areas Variance Process



Reasonable Use Exception

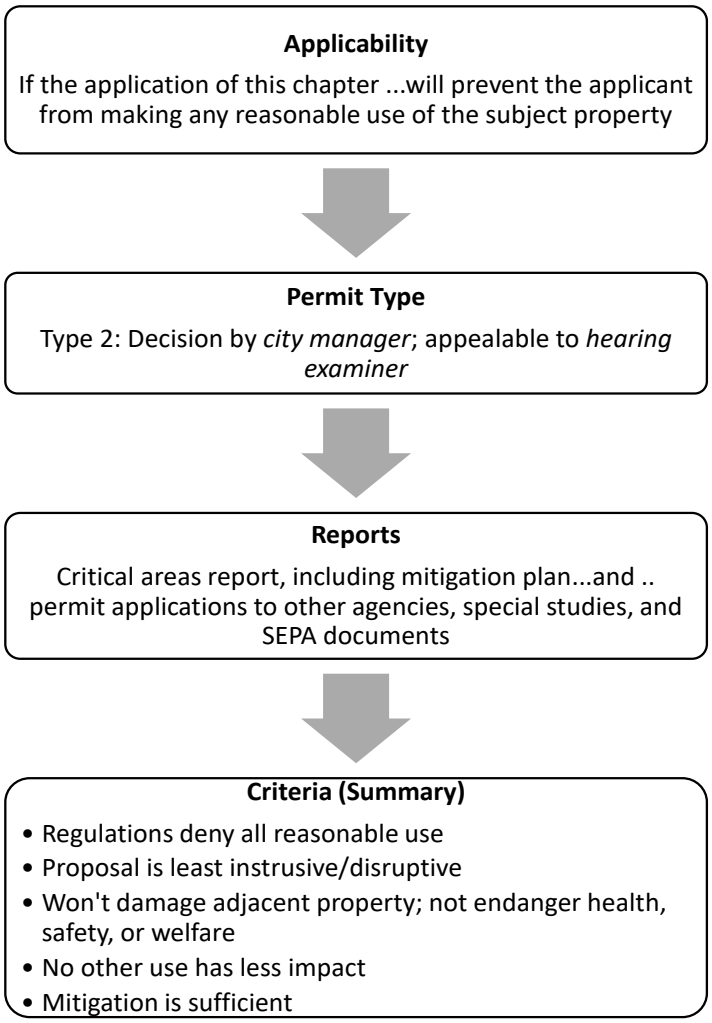
For private development, in cases where an entire property is encumbered by critical areas and the development proposal would be prohibited by the critical area regulations, the City allows a Reasonable Use Exception (RUE) to avoid takings of private property rights. This would be used if a variance process is not feasible or fully applicable – for example, if a critical area may be altered beyond a buffer or setback change. The RUE process is a Type 2 decision like a variance (administrative, but appealable to the City's Hearing Examiner). The RUE is intended for projects where "critical areas will prevent the applicant from making any reasonable use of the subject property…"

The specific review criteria for an RUE are inappropriate for public agency and utility projects, as they are meant for the exercise of private property rights and to avoid the taking of private property rights. For example:

> "a. The applicant demonstrates that the application of this chapter will deny all reasonable use of the subject property otherwise allowed by applicable law;"

Allowing a minimal level of "reasonable use" could substantially restrict or prevent a public agency service from being provided.

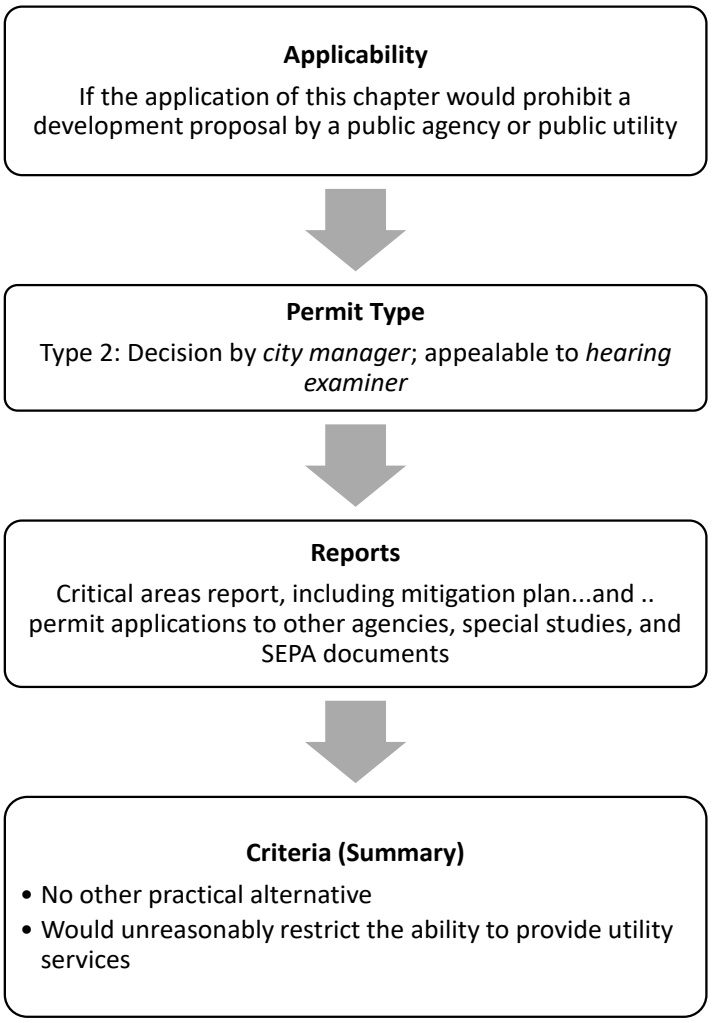
Exhibit 3. Kenmore Critical Areas Reasonable Use Exception



Public Agency and Utility Exception (PAUE)

For public utilities, when a development proposal includes critical area or buffer alterations that are otherwise prohibited, the City offers the PAUE. This would include cases where buffer and/or critical area intrusion or impacts would occur, and standard requirements cannot be met. The process is a Type 2 decision like a variance or RUE (administrative, but appealable to the City's Hearing Examiner).

Exhibit 4. Kenmore Current Public Agency and Utility Exception



The Washington Department of Commerce has published a 2018 Critical Areas Handbook ("Handbook"). Chapter 3 of the Handbook describes having Exemptions, PAUEs, Allowed Uses or Activities, and RUEs.

The City of Kenmore's existing critical areas procedures follow the Handbook and include similar PAUE criteria. However, the City proposes to depart from the Handbook PAUE criteria to allow critical area review for public agency projects, beyond utilities, while also proposing an enhanced decision-making process with amended decision criteria. See Attachment A, part A-3 for Commerce example language.

Prior to implementing public agency projects, State law requires public agencies to plan for those projects, including procedural steps that include public input and consideration (for example, RCW 36.70A.070(3),(4),(6) – GMA mandatory elements). Without the PAUE, planned public agency projects that are not candidates for consideration under a variance have no process for permit evaluation. The RUE process is used by private applicants but not for public agencies. Some existing developments, such

as a school, may already include uses or structures at or near the edge of a critical area. Because of school facility and education requirements, expansion and modernization of the buildings and supporting recreation areas might not be accommodated without the PAUE.

Prior to the interpretation that the PAUE was to be used only for utilities, public agency projects were permitted through that process. In Kenmore, the Brightwater conveyance system portal access and odor control facility intruded into wetlands, streams and their buffers and was reviewed through the PAUE process. The project provided extensive enhancement and restoration as described under historic projects further below. Without the PAUE, beneficial public agency projects may be precluded by application of the critical areas rules, negating the ability of a public agency to provide needed public services.

CODE OPTIONS AND RECOMMENDATIONS

This section recommends amendments to the PAUE for public agency and utility[2] proposals.

Review Process and Reports

We recommend that the permit review process continue as Type 2 with City Manager Decision, Appealable to Hearing Examiner. Continue with Critical Area Report and Mitigation Plan.

> *Rationale: The decision-making process provides for sufficient oversight and evaluation, with an appeal process should there be unusual circumstances. The added Criteria for Approval will strengthen the review process and will be addressed in the Critical Area Report and Mitigation Plan.*

Exception or Variance Options

Options for consideration of public agency projects include:

1. Propose amendments as presented in 2016 ordinance.
2. Amend 18.55.160 Exception – Public Agency and Utility to ensure a consistent approach to public agency proposals and utilities that serve the public interest and address new decision criteria (see below). Allow conditions of approval and consideration of best management practices (BMPs) like King County allowed alterations in their critical area regulations.
3. Remove 18.55.160 Exception – Public Agency and Utility and integrate allowances for considering public agency proposals and utilities into Variance or Reasonable Use processes; provide for unique criteria. Allow conditions of approval and consideration of BMPs like King County allowed alterations in their critical area regulations.
4. Retain the existing PAUE which limits review to utility projects.

We recommend that the City select Option 2 and amend the PAUE.

> *Rationale: Option 2 is like the current structure, fits 2018 Commerce Guidebook recommendations for process, and recognizes that public facilities and utilities must meet public purposes and other laws.*

[2] Where private utilities (e.g. telecommunications, power) serve the general public, have a duty to serve under state and federal laws, or have oversight and requirements to plan such as with the Washington Utilities and Transportation Commission, the City has indicated it wishes to treat them similar to public facilities and services.

While Option 3 can work with some edits to variance or RUE purpose and having both common criteria and unique criteria for public proposals, it would blur the distinction between private development and a process to reduce takings and a process to consider the needs of public agencies and utilities that have different responsibilities for the community compared to a private owner.

Criteria for Permit Approval

We recommend amendments to the permit decision criteria.

Rationale: This is the heart of the proposal – to have a more comprehensive list of decision criteria that illustrate the thought and care that has gone into the public agency and utility proposal, the ways in which mitigation sequencing has been integrated, the consistency of the proposal with a system-wide plan, program, or policy, and how critical areas functions and values are protected/mitigated.

Specifically, we recommend that the City:

1. Retain the criterion that states that there is no other practical alternative to the proposed development with less impact on the critical areas.
2. Amend the criterion that states that the application of this chapter would unreasonably restrict the ability to provide public agency or utility services to the public.
3. Add criteria like the following:
   - There is not another feasible location with less adverse impact on the critical area and its buffer.
   - Mitigation sequencing[3] has been demonstrated in a mitigation plan, with a robust demonstration of the agency or utility's efforts to site mitigation using a watershed approach.
   - Development activities involve the least intrusion into and disruption of the critical area necessary while fulfilling a public purpose and need.
   - The proposal is consistent with a public agency or utility system plan, master plan, program, or policy that has been the subject of a public review process.
   - The proposal is consistent with the general purpose and intent of the City's comprehensive plan and adopted development regulations.
   - The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.

[3] Per KMC 18.20.1710 "Mitigation" means the use of any or all of the following actions listed in descending order of preference:
A. Avoiding the impact by not taking a certain action;
B. Minimizing the impact by limiting the degree or magnitude of the action by using appropriate technology or by taking affirmative steps to avoid or reduce the impact;
C. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area or buffer;
D. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;
E. Compensating for the impact by replacing, enhancing or providing substitute critical areas and environments; and
F. Monitoring the impact and taking appropriate corrective measures."

- The proposal attempts to protect existing critical area functions and values and mitigate impacts to the critical area functions and values consistent with the best available science.
- The proposal is consistent with other applicable regulations and standards.

Standard Conditions of Permit Review and Approval

We recommend that the City require documentation from the applicant that demonstrates that all feasible options have been considered, and that mitigation is robust. Sources of example best management practices (BMPs) include King County table notes and the Commerce Guidebook. See Attachment A, parts A-3 and A-4 respectively. Applicants also should address Conditions of Approval by federal and state agencies described in Section 3 of this document under "Impacts, Risks, Protections, and Mitigation."

1. Further, we recommend that the City: Continue to condition proposals based on the critical area report and mitigation plan; and
2. Identify best management practices (BMPs) for PAUE proposals as standard conditions; these standard conditions could be supplemented or adjusted based on the results of the critical area report and mitigation plan.

Example standard conditions of approval could include (but not be limited to):

Facilities over water:

- Facilities/utilities are not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the state or federal government unless the city manager determines that there is no other feasible crossing site.
- The construction occurs during approved periods for instream work.
- Facilities/utilities will not change or diminish the overall aquatic area flow peaks, duration or volume or the flood storage capacity.
- If new construction, bridge piers or abutments for bridge crossings are not placed within the FEMA floodway or waterward of the ordinary high-water mark.

Facilities in fish or wildlife habitat or buffer; or wetland buffer:

- No clearing, external construction or other disturbance in a fish or wildlife habitat of importance is allowed during breeding seasons.
- Minimize impervious surfaces that will contribute to surface water run-off, unless the construction is necessary for soil stabilization or soil erosion prevention or unless the facility is specifically designed and intended to meet Americans with Disability Act provisions.
- To the maximum extent practical, buffers are expanded equal to the width of the facility (a trail, for example) including disturbed areas.
- The facility is not located over habitat used for a species listed as endangered or threatened by the state or federal government; except that the city manager may approve the location if it is

4.

determined that there is no other feasible crossing site for linear facilities such as pipelines, bridges, or trails.

- Standard conditions for facilities over water are followed where applicable.
- To the extent feasible, temporarily disturbed areas will be replanted to native forest or shrub communities. Applicants will plan and implement a robust invasive species monitoring and control program.

Facilities in geologically hazardous areas:

- The alterations will not subject the critical area to an increased risk of landslide or erosion.
- Vegetation removal is the minimum necessary to locate the facility.
- In a landslide hazard area, information from a qualified geotechnical professional demonstrates that the project is safe as sited and designed.

2. Best Available Science Provisions in GMA

As mentioned in the Background/Purpose section of this report, State rules implementing GMA guide how to demonstrate that best available science is included in the development of critical areas policies and regulations. The criteria also acknowledge that agencies can depart from best available science and consider non-scientific information such as legal, social, cultural, economic, and political information.

> *WAC 365-195-915 Criteria for including the best available science in developing policies and development regulations.*
>
> *(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:*
>
> > *(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.*
> >
> > *(b) The relevant sources of best available scientific information included in the decision-making.*
> >
> > *(c) Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:*
> >
> > > *(i) Identify the information in the record that supports its decision to depart from science-based recommendations;*
> > >
> > > *(ii) Explain its rationale for departing from science-based recommendations; and*
> > >
> > > *(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.*
>
> *(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.*

Consistent with state rules, this document provides the analysis necessary to support PAUE regulations that accommodate critical areas modifications in support of necessary public agency and utility projects. It is worth noting that a PAUE is *not* an an exception from the requirement to complete and document a thorough mitigation sequencing process, nor is it an exception from the requirement to implement appropriate mitigation. The unique characteristics of the PAUE lie in recognition that many projects proposed by public agencies and utilities have more limited opportunities to avoid and minimize critical area impacts at the project scale. However, on the flip side, they typically have had more extensive avoidance and minimization analysis at that entity's program planning scale or have other opportunities for off-site mitigation at other public sites.

Each of the BAS tenets related to development of critical area regulations is addressed in the following sections of this report.

3. Science and Regulatory Context

This section of the report addresses:

> *(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.*
>
> *(b) The relevant sources of best available scientific information included in the decision-making.*

CRITICAL AREA FUNCTIONS AND VALUES, BAS AND PROTECTIVE REGULATIONS

Critical area functions and values are described more fully in several BAS sources developed by Washington State agencies (See Attachment B).

A summary of common critical area functions and values is provided in Exhibit below. Critical areas are listed in rows, and typical functions and values are listed in columns. Where functions and values are typically associated with that critical area an "X" appears in the intersecting cell.

For example, in terms of water quantity, wetlands can store surface water, alter flood flows, or recharge or discharge groundwater. They can improve water quality by removing sediments and decreasing downstream erosion, moderating water temperatures, and removing nutrients. They provide habitat for aquatic species, birds, and other wildlife. (Washington Department of Ecology 2005)

However, in an urban environment, not all functions and values are fully present. For example, habitat quality and structure may markedly differ in an urban environment, and species dependent on the habitat and associated buffers may differ in their responses to abutting urban uses, roads, etc.

> *Recent research is emphasizing that relatively undisturbed uplands between wetlands are important for maintaining the populations of many wetland dependent species. A narrow undisturbed buffer can provide the first stage of a connection between wetlands, or it alone can provide that connection if wetlands are close together. A buffer, however, that is not part of a system of connected upland and wetland habitats may not provide adequate protection for populations of amphibians. (Washington Department of Ecology 2013)*

4.

Exhibit 5. Critical Area Functions and Values Summary

	Water Quantity		Water Quality				Habitat	Safety
	Flow	Storage	Sediment	Nutrients	Temperature	Contaminants	Quality & Structure	Persons & Property
Streams (Water) and/or Buffers	X		X	X	X	X	X	
Fish and Wildlife Habitats of Importance							X	
Wetlands and/or Buffers		X	X	X	X	X	X	
Frequently Flooded Areas	X	X	X					X
Geologic Hazards			X					X

POTENTIAL IMPACTS, PROTECTIONS, AND MITIGATION

All projects in Kenmore that could impact critical areas or their buffers, regardless of the nature of the project or applicant, are required to demonstrate how mitigation sequencing has been applied. The mitigation sequencing process itself was formalized at the federal level by a joint memorandum between the Environmental Protection Agency and the U.S. Army Corps of Engineers in 1990 as part of its Clean Water Act review, indicating recognition by the agencies that avoidance and minimization cannot always eliminate adverse impacts. Prior to that, mitigation sequencing was incorporated into state and local regulations and guidance (such as those listed in Attachment B, WAC 197-11-768 in 1984, and elsewhere in this document), and much of the science in the natural resources management realm relates to quantifying impacts and designing compensation. Projects that may be pursuing an exception from a specific dimensional or performance standard contained in the regulations would not be exempt from that process.

A critical areas report also is required for any project affecting critical areas or their buffers. This report must be prepared by a qualified professional and must incorporate BAS to protect the functions and values of the critical areas. KMC 18.55.110 states that BAS is scientific information applicable to the critical area prepared by local, State or federal natural resource agencies, a qualified scientific professional or a team of qualified scientific professionals.

Kenmore's critical area regulations (KMC Chapter 18.55) focus on preserving and protecting critical areas in the City. In general terms, projects that may need to pursue a PAUE, RUE, Variance, or some other higher-level approval have the potential to adversely affect functions and values of critical areas and buffers. These projects may affect the critical area directly or its buffer. Extending the PAUE to public agencies may increase the number of projects that could depart from strict adherence to the regulations. However, the existing City codes and standards provide a framework for ensuring that projects are thoughtfully designed, and any impacts are appropriately minimized and mitigated. KMC 18.55.200, for example, requires that "Mitigation shall be … sufficient to maintain the functions and values of the critical area, or to prevent risk from a hazard posed by a critical area."

Several agencies other than the city have permit authority over projects in and over streams and lakes, or in wetlands. Any project in these areas would still be required to obtain all necessary permits. These agencies have designed protections and mitigations to address potential adverse impacts. These protections and mitigations, which are based on best available science, could be adapted by the City for projects in critical areas or their buffers and included as additional conditions of approval in City permits.

The following table (Exhibit 6) summarizes potential impact mechanisms and how they may be moderated through Kenmore's existing Municipal Code and standard conditions adapted from other state and federal regulatory authorities.

Exhibit 6. Potential Impacts and Mitigation

Functions and Values	Potential Impacts and Risks	Protections and Mitigations in Existing City Code	Protections and Mitigations in Applicable State and Federal Codes
Habitat	▪ Short-term losses of vegetation and associated habitat during construction. ▪ Permanent losses of vegetation and associated habitat. ▪ Short-term or permanent wetland fill, stream channel modifications, or other alterations. Note: As a practice, the City does not issue permits for permanent wetland fill. In many cases, the proposed "impacted" buffer areas are already in use and a proposed change of conditions or use in that area of buffer does not result in any practical changes to buffer function or degradation of the critical area.	▪ Both permanent and temporary impacts to vegetation in critical areas and their buffers are required to be mitigated as outlined in Kenmore Municipal Code. For example, enhancement, restoration, or compensatory mitigation onsite or offsite may be allowed. ▪ All wetland fills would require mitigation consistent with KMC, as well as federal and state standards.	Any in-stream or in-wetland activities would likely require permits from Washington Department of Fish and Wildlife, Washington Department of Ecology, and/or U.S. Army Corps of Engineers. These permits include extensive conditions designed to protect aquatic habitats. ▪ "No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements." [1] ▪ "Confine the use of equipment to specific access and work corridors to protect riparian, wetland, and aquatic vegetation." [2] ▪ "Restore the disturbed bed, bank, and riparian zones as close as possible to pre-project condition unless modified elevations and contours are authorized by the department in the approved construction drawings." [2]

Functions and Values	Potential Impacts and Risks	Protections and Mitigations in Existing City Code	Protections and Mitigations in Applicable State and Federal Codes
Water Quality	▪ Short-term construction-related impacts from sediment/erosion. ▪ Short-term construction-related impacts from incidental spills or accidents. ▪ Long-term operation-related impacts from stormwater management. Note: In many cases within urban areas, potential water quality impacts are temporary in nature, and technologies and BMPs exist that can significantly reduce the duration or intensity of an impact. Rarely do projects introduce long-term adverse water quality impacts. It is more common that new stormwater detention and/or treatment requirements in urban areas developed before modern standards will improve water quality compared to a current condition.	▪ Compliance with the City-adopted *2016 King County Surface Water Design Manual* when applicable. ▪ All projects with any ground disturbance already require development of and compliance with a Temporary Erosion and Sediment Control (TESC) plan. ▪ All projects require compliance with the City's *Stormwater Pollution Prevention Manual*.	▪ All projects over an acre or that might discharge into waterbodies would be operating under a National Pollutant Discharge Elimination System Construction Stormwater General Permit from Washington Department of Ecology, which includes a Stormwater Pollution Prevention Plan and monitoring and reporting requirements. ▪ "Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark…, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow..." [1] ▪ "Store all construction and deconstruction material in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state." [2] ▪ 'Protect all disturbed areas from erosion. Maintain erosion and sediment control until work and cleanup of the job site are completed." [2] ▪ "Completely remove any temporary fill and return the affected areas to pre-project elevation and contours. Fill material must be removed before the end of the in-water timing window if the fill material could erode into or deliver sediment-laden water into waters of the state." [2]
Water Quantity	▪ Changes to ground or surface water inputs to streams and wetlands resulting from site development and stormwater management.	▪ Compliance with the City-adopted *2016 King County Surface Water Design Manual* when applicable.	Any in-stream or in-wetland activities would likely require permits from Washington Department of Fish and Wildlife, Washington Department of Ecology, and/or U.S. Army Corps of Engineers. These permits include extensive conditions designed to protect aquatic habitats. ▪ "To the maximum extent practicable, the pre-construction course, condition,

4.

Functions and Values	Potential Impacts and Risks	Protections and Mitigations in Existing City Code	Protections and Mitigations in Applicable State and Federal Codes
			capacity, and location of open waters must be maintained for each activity, including stream channelization, stormwater management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities)." [1]

[1] Source: U.S. Army Corps of Engineers Nationwide Permit General Conditions.

[2] Source: WAC 220-660-120 (Common freshwater construction provisions) which are incorporated into Washington Department of Fish and Wildlife Hydraulic Project Approvals.

WATERSHED APPROACH TO MITIGATION FOR PUBLIC AGENCY PROJECTS

Over the years, scientific studies[4,5,6,7] have increasingly shown that on-site, in-kind mitigation can fail to provide adequate compensation for lost functions in the long term, for a variety of reasons. Some of those reasons are specific to management and maintenance (or lack of) of the mitigation site in the first five to ten years after implementation. However, some of those reasons are related to larger-scale ecosystem processes and urbanization outside of the mitigation site. For example, Ecology's *Selecting Wetland Mitigation Sites Using a Watershed Approach* (Hruby and others, 2009) says this:

> "Permitting agencies require compensatory mitigation when applicants cannot reasonably avoid all impacts to wetlands and their functions and values. State and national studies of wetland mitigation, however, show a disappointingly low success rate in meeting performance measures and replacing wetland functions (Ecology 2002; National Research Council 2001). The studies identify a number of reasons for this including poor site selection. Our past policies and practices have over-emphasized the need to replace lost functions at or near the wetlands impacted (the impact site), rather than choosing mitigation sites that best fit with the mitigation goals of the project and its contributing basin. The studies demonstrate a clear need to change this approach."

[4] Johnson, P., D.L. Mock, A. McMillan, L. Driscoll, and T. Hruby (2006). Washington State Wetland Mitigation Evaluation Study Phase 2: Evaluating Success. Washington State Department of Ecology Publication #02-06-009. Available: https://fortress.wa.gov/ecy/publications/documents/0206009.pdf

[5] Hruby, T., K. Harper, and S. Stanley (2009). Selecting Wetland Mitigation Sites Using a Watershed Approach. Washington State Department of Ecology Publication #09-06-032. Available: https://fortress.wa.gov/ecy/publications/documents/0906032.pdf

[6] Johnson, P., D.L. Mock, E. Teachout, and A. McMillan (2000). Washington State Wetland Mitigation Evaluation Study Phase 1: Compliance. Washington State Department of Ecology Publication #00-06-016. Available: https://fortress.wa.gov/ecy/publications/documents/0006016.pdf

4.

Accordingly, there is increasing science-based guidance and agency rules that provide direction on how and where to implement mitigation (such as the joint Environmental Protection Agency and U.S. Army Corps of Engineers *Compensatory Mitigation for Losses of Aquatic Resources*[7] and the Ecology resources mentioned above).

Many City critical areas codes (e.g., Sammamish, Kirkland, Lake Forest Park, Seattle), including Kenmore's, include a preference for on-site and in-kind mitigation, with a set of criteria for when off-site and out-of-kind mitigation is appropriate (related to probability of success, connectivity, and adjacent land uses or development pressures). These codes are consistent with Ecology's 2016 *Wetland Guidance for CAO Updates: Western Washington Version*. Effectively, these criteria do not preclude use of a watershed approach to mitigation, and on-site mitigation may still be appropriate. In practice, though, the watershed approach is more difficult to implement as envisioned for private property owners who have limited access to other potential mitigation sites unless there are banking or in-lieu fee programs that serve the impacted drainage basin. Public agencies and utilities typically have a larger suite of properties and corridors to choose from, which may even span multiple drainage basins. They are therefore better equipped to use and implement a watershed approach, starting with comprehensive and forward-looking planning efforts prior to project-specific design and later in the mitigation development process.

City of Mukilteo provides an example of evaluating watershed characterization results at a sub-basin scale. This pairing with local fine scale information led to stormwater and land use strategies and prioritization of specific capital improvements for Japanese Creek basins.[8,9]

4. Other Considerations

This section of the report addresses:

> (c) *Any nonscientific information—including legal, social, cultural, economic, and political information—used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science.*

As part of its BAS review, the City can consider non-BAS factors – e.g. legal, social, economic, and political information. Some considerations related to public agency and utility proposals include:

Duty to Serve (Legal): Some public agencies or utilities have a duty to serve the public. For example, schools must serve children at least 8 years old and above and offer K-12 education. Water providers must service all properties in their retail service area. Telecommunication providers must provide landline phone connections. Agencies may have federal or state requirements regarding service reliability, redundancy, expansion, proximity to population served, or other factors. To meet each agency's duty, they may need to consider a variety of planning, engineering, and legal practicalities to site and operate existing and future facilities.

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[7] Environmental Protection Agency and U.S. Army Corps of Engineers, 2008, Compensatory Mitigation for Losses of Aquatic Resources, Final Rule. 73 FR 70:19594-19705. April 10. Available: https://www.epa.gov/sites/production/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf

[8] See example with Washington Department of Ecology Watershed Characterization Project Website: https://fortress.wa.gov/ecy/coastalatlas/wc/StoryMap.html?id=mukilteo.

[9] See the City of Mukilteo's Critical Areas Mitigation Program https://mukilteowa.gov/wp-content/uploads/2015/08/01_CAMP-11-10-11_complete01.pdf

Feasibility (Economic): Under state wetlands protection laws, mitigation requirements should be practicable, and an agency may weigh public costs, logistics, and technology:

> *State and federal laws require applicants to avoid and minimize impacts whenever reasonable through practicable alternatives. Under state rule, a practicable alternative is defined as an alternative that is:*
>
> *"Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."*
>
> *Avoiding and minimizing impacts becomes even more important when rare, high quality, or difficult to replace resources are involved. (State of Washington Department of Ecology, 2018)*

Under the federal Clean Water Act, practicable is similarly defined:

> *Pursuant to these requirements, the district engineer will issue an individual section 404 permit only upon a determination that the proposed discharge complies with applicable provisions of 40 CFR part 230, including those which require the permit applicant to take all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a section 404 permit complies with the Section 404(b)(1) Guidelines. (CFR › Title 33 › Chapter II › Part 332 - Compensatory Mitigation for Losses of Aquatic Resources, Section 332.1(c)(2))*

Essential Public Facilities (Legal): Under the Growth Management Act some public facilities are considered essential such as highways of regional significance like SR 522 or difficult to site facilities such as solid waste, airports, etc. and cannot be precluded, though mitigation can be required. (RCW 36.70A.200)

Growth Management Act Goals, Other State Laws, and Local Plans and Regulations (Legal and Social): The Growth Management Act has 14 goals that guide plans and regulations, and they are not listed in a priority order. Each community weighs and balances goals. These goals address: urban growth, reduce sprawl, transportation, housing, economic development, property rights, permits, natural resources industries, open space and recreation, environment, citizen participation, public facilities and services, historic preservation, and shoreline management. The City must accommodate growth and provide capital facilities and services to meet the demands of growth according to levels of service standards. Additionally, there are other laws and rules that guide local planning such as regular transportation improvement programs, stormwater standards, etc. The City must respond to a range of laws as well as the desires and needs of its community.

Capital Facilities Plans (Legal, Social, and Political): Public agencies or utilities often prepare capital facilities plans to meet state laws (e.g. water or wastewater) or to qualify for grant funding (e.g. parks). Through these plans, the need and demand for the facilities is addressed, alternative alignments or locations are considered, and the public is engaged in the policy choices. The agency or utility can use that process to help demonstrate that the least impactful and most appropriate locations have been selected, or there are no other feasible alternatives.

For the City, State law requires "early and continuous public participation" prior to adoption of a capital facilities plan. Public agency projects generally are vetted through this type of process prior to any efforts to implement at the permit review stage, providing more detailed review of potential critical areas impacts and mitigation.

Attachment C provides an evaluation of Parks, Schools, Roads and Trails, Stormwater, Sewer and Water, and Power and Telecommunications, including applicable laws, current facilities, and planned facilities including system plans, master plans, and programs. The information shows that the City and other agencies are managing infrastructure and facilities built decades ago, are extensive throughout the City, and touch on every critical area. However, each has identified needs to modernize or add to their system in a way that accounts for environmental stewardship and meets requirements of federal, state, and local laws.

5. Departures from BAS

HISTORIC PROJECTS

This section of the report addresses the first criterion for departure from BAS:

> *(i) Identify the information in the record that supports its decision to depart from science-based recommendations;*

The following ten example public agency projects reinforce the City's decision to depart from the standard critical area requirements for public agency projects. In all cases, the projects provided needed studies and complied with appropriate conditions of approval. They could not have been completed under the standard critical area regulations, but continued to protect critical area functions and values consistent with BAS while allowing public agencies to meet their responsibilities:

- Brightwater portal (2005)
- Log Boom Park play area (2006)
- Log Boom Park regulator (facility for odor control) (2007)
- Log Boom Park restroom (2007)
- Sewer main extension 163rd / 90th (2015)
- SR-522 pedestrian bridge (2006)
- SR-522 Phase II (2005)
- Swamp Creek flood reduction (2003)
- Tributary 0057 storm drainage and box culvert (2011)
- Wallace Swamp Creek Park sediment pond improvements (habitat channel) (2004)

These projects were a mix of recreation, utility, transportation, and flood control-related modifications that served public needs, with impacts distributed between streams, wetlands, and their buffers. Any of the above projects that included work in or over a stream, or in a wetland, were also subject to state and/or federal agency review and approval. Following are more comprehensive descriptions of some of these projects that demonstrate the need for the PAUE and the resulting protection of functions and values of the affected critical areas.

Brightwater Wastewater Treatment Facility

Facilities associated with the Brightwater Wastewater Treatment Facility were approved through a PAUE. These actions required more than a variance (which is limited to buffer modifications) and exceeded what could be considered a minimal "reasonable use" of the property. Impacts to wetlands and streams were necessary to install the regional conveyance system portal access and odor control facility. The mitigation strategy included daylighting two streams, and creating, enhancing and restoring wetlands. Hydrology and vegetation monitoring were required for 10 years.

4.

Log Boom Park Restroom Relocation

Although this property is within the shoreline jurisdiction and the PAUE is not applicable, it does illustrate the necessity for special consideration of public agency projects in or near critical areas. Nearly all of Log Boom Park is within wetland buffers. In 2008, an existing restroom, approximately 20 feet from Lake Washington, was relocated to approximately 96 feet from Lake Washington in an area occupied by maintained lawn and a pathway. The existing restroom area was then converted to a swimming beach, a water-dependent use. The project reduced overall impervious surface. Mitigation and enhancement were provided for the buffer impacts, and a maintenance agreement was signed.

Kenmore Jr. High Renovation

The renovation of Kenmore Junior High School was approved through the critical areas variance process but would have required a PAUE had there been any direct wetland impacts and not just buffer modifications. The project also received a zoning variance that enable additional minimization of the proposed buffer impacts. The school facilities were already in wetland buffers. Facility renovations in the buffer required enhancement and restoration.

SR522 West Segment A Project

This major road improvement project was completed in 2016 and included widened and additional vehicle lanes, sidewalks, and public access improvements, among other actions. It was approved through the critical areas variance process but would have required a PAUE had there been any direct stream or wetland impacts and not just buffer modifications. Road realignment activities shifted paved surfaces farther from the stream when feasible. Impacts were mitigated through buffer enhancements.

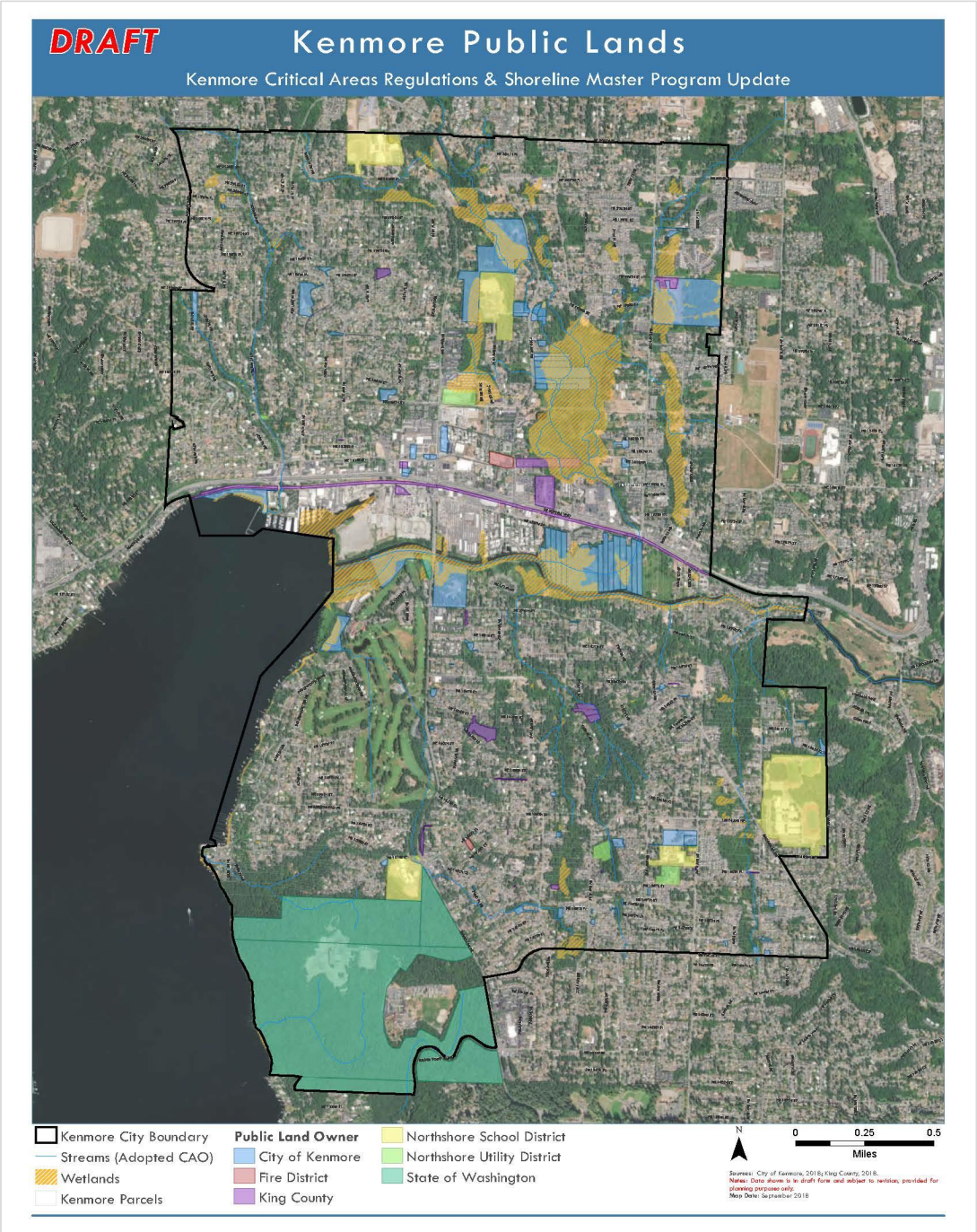
NEED FOR THE PAUE

This section of the report addresses the second criterion for regulatory departure from BAS:

> *(ii) Explain rationale for departing from science-based recommendations;*

Kenmore incorporated in 1998 but has been a growing urban place since at least the 1930s. The City provides parks and recreation, stormwater, and transportation services. SR-522 traverses Kenmore. Northshore Utility District provides water and sewer service, and King County provides wastewater treatment. Northshore School District provides elementary, middle, and high schools. PSE provides power and gas service. Several parks contain extensive critical areas (e.g. Squires Landing and Saint Edward State Park), schools often abut critical areas, and roads and utilities cross and parallel them. See the development pattern and selected critical areas in Exhibit 7.

Exhibit 7. Map of Facilities



Source: City of Kenmore, King County, BERK 2018

4.

As previously mentioned and demonstrated by the list of historic projects, public agency and utility projects are unique because of the balancing of non-environmental factors with protection of critical areas. The need for the PAUE process will continue as growth occurs and the Comprehensive Plan and capital facilities plans include projects necessary to manage that growth as required by State law.

FUTURE PROJECTS

This section of the report addresses the third criterion for regulatory departure from BAS:

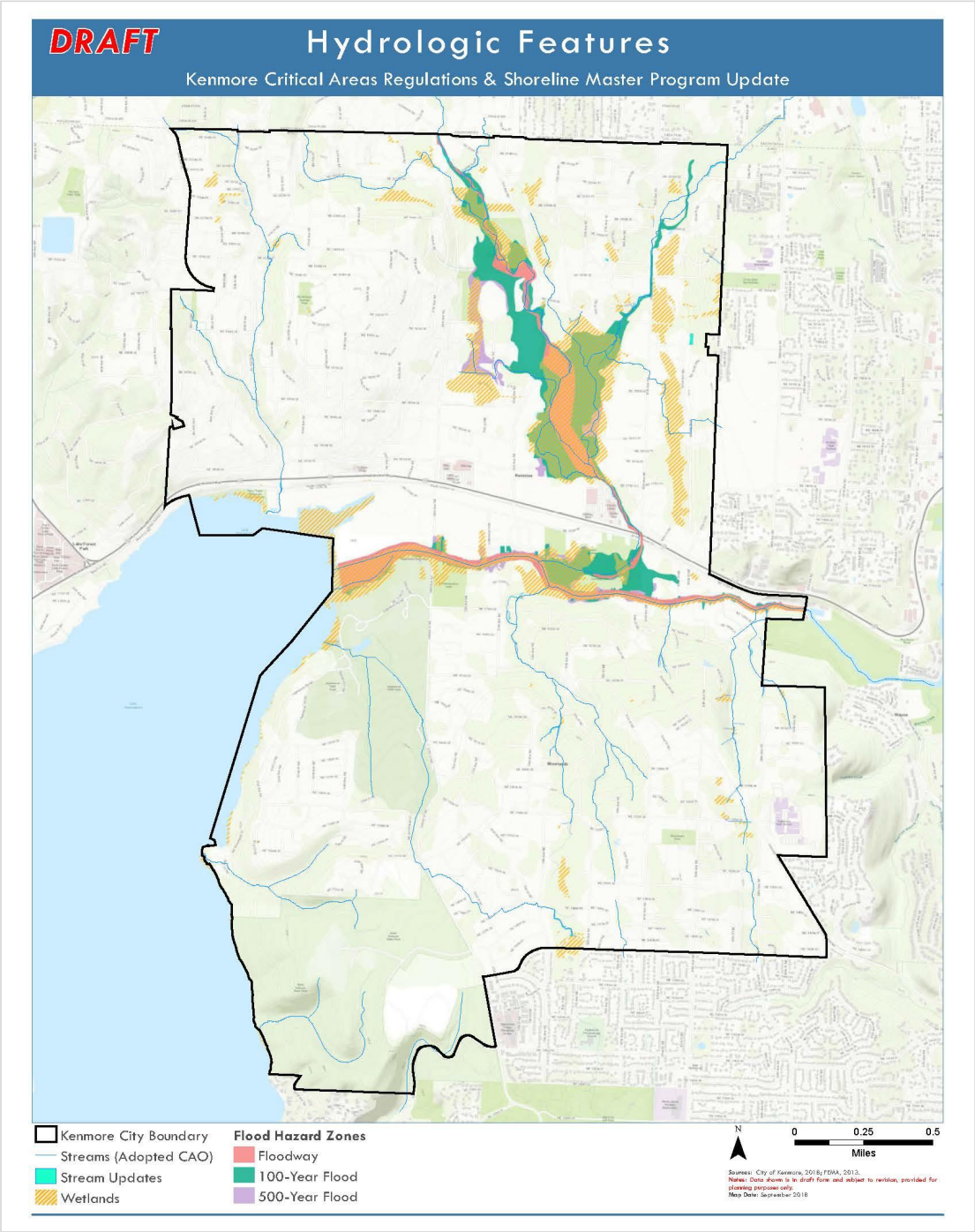
> *(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.*

The City contains three shorelines of the state – Lake Washington, Sammamish River, and Swamp Creek. Smaller streams drain to these shorelines. See Exhibit . Wetlands are concentrated within the floodplains of Swamp Creek and the Sammamish River. See Exhibit 8. Geologic hazard areas in Kenmore include lands with erosion, landslide, and seismic hazards. See Exhibit 91a.

Critical areas in Kenmore provide the following functions and values:

- **Wetlands** – assist in reducing erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats.
- **Streams** – provide physical habitat for aquatic life and support terrestrial species, convey surface water; includes riparian areas that reduce erosion, store flood waters, and promote water quality
- **Fish and wildlife habitats of importance** – contribute to biodiversity and provide open space corridors.
- **Frequently flooded areas** – perform important hydrologic functions and may present a risk to persons and property.
- **Geologically hazardous areas** – include areas susceptible to erosion, sliding, earthquake, or other geological events, and pose a threat to public health and safety when incompatible development is sited in areas of significant hazard.

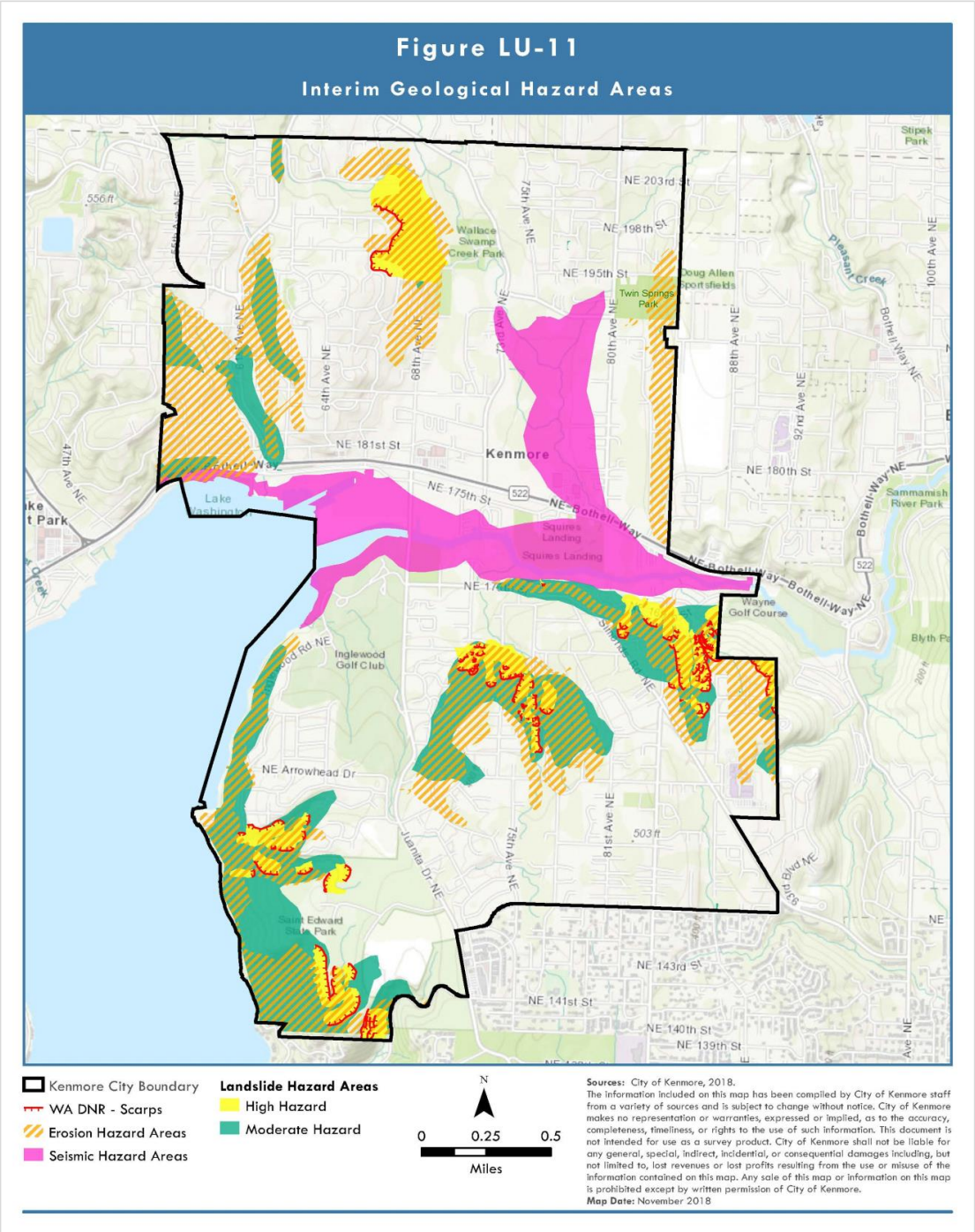
Exhibit 8. Hydrologic Features



Source: City of Kenmore, WDNR, USFWS, AWC, BERK, 2018

4.

Exhibit 91. Geologic Hazards



Source: City of Kenmore, Shannon & Wilson, WDNR, AWC, BERK, 2018

Based on current capital facilities plans and master plans (described in Attachment C), the proposals most likely to use the PAUE process in the next 6 years include:

Parks

The City inherited these sites primarily from King County upon incorporation. These sites provide for active and passive recreation, and open space. Improvements are planned to all parks and most have critical areas including degraded habitats. The system is improved based on a comprehensive evaluation of the system and based on site master plans. The plans balance public health and recreation needs with ecological stewardship. Attachment C lists critical area enhancements incorporated into park master plans.

Schools

Most schools were renovated and updated in the last 10 years as shown in Attachment C, except Inglemoor High School. There are no specific capacity projects in the 6-Year Capital Plan in Kenmore currently. However, beyond adding capacity, the District implements maintenance and rehabilitation projects. The ability to meet federal and state laws and manage their system may require some campus proposals.

Roads and Trails

The City prepares a Transportation Element, Capital Facilities Element, Transportation Improvement Program, and implements a sidewalk program and neighborhood program. The City has successfully permitted projects with shorelines and critical areas, and improves critical area functions and values, e.g. culverts and fish passage, etc. For SR 522, an essential public facility, the City also complies with federal laws and authorities which may result in other environmental requirements. See Attachment C.

Stormwater

The City manages a built stormwater system in the context of the natural surface water system. The City applies modern stormwater standards for new development. Improvements to the existing system may require alterations of critical areas, but often involve associated environmental enhancements (e.g. culverts and fish passage, reduced erosion and improvement of water quality, etc.) that can result in a net improvement to ecological function.

Water and Sewer

Several sewer or water improvements are proposed to cross over or under streams or rivers or affect geologic hazard areas. Improvements would be designed to avoid impacts where feasible and provide for vegetation restoration. See Attachment C.

Power and Telecommunication

It is likely that projects will be needed near critical areas. Much of it takes place in improved right of way. A current gas project is taking place across the Sammamish River. Within established rights of way, impacts are not anticipated or easily mitigated.

Potential Project-Specific and Cumulative Impacts

The Growth Management Hearing Board's decision included the following statement:

The City failed to include an analysis of environmental impacts of amending the PAUE.

Without assurances that preservation of critical areas functions and values will occur and that critical areas impacts will be minimized, project-specific and cumulative impacts of these public agency and utility projects could be significant in terms of loss of habitat, flood storage, water filtration, and other functions. However, as noted in Exhibit 6, "As a practice, the City does not issue permits for permanent wetland fill. In many cases, the proposed "impacted" buffer areas are already in use and a proposed change of conditions or use in that area of buffer does not result in any practical changes to buffer function or degradation of the critical area." Effectively, many of the projects that could pursue a PAUE in the future include critical area and buffer intrusions "on paper" that do not translate to on-the-ground function reduction. This is the mostly likely circumstance for future park and school projects, and many road and trails projects.

The potential for the utilities (stormwater, water, sewer, power and telecommunications) projects described above to directly encounter functioning critical areas and buffers is greater than for schools, parks, and some road and trail projects. In the case of new or replacement utility lines, the more common impacts relate to temporary construction-related disturbance if the line is below-ground (trenched or directional drilling). These impacts are typically well-controlled by compliance with standard BMPs included in project-specific temporary erosion and sediment control (TESC) plans. If the line bisects a forested community (either wetland or upland buffer), there may also be permanent conversion of forest to shrub depending on utility-specific requirements for plantings, maintenance and future access. Utility line corridors can also become dominated by non-native, invasive plants (Scotch broom or Himalayan blackberry).

6. Conclusion

The Growth Management Hearing Board's decision included the following statement:

> *The City failed to explain how expanding the kinds of projects exempted from critical area regulations can be done without impacting the functions and values of critical areas in violation of RCW 36.70A.172.*

As discussed in this BAS Evaluation, the City's original and revised PAUE proposals are not exemptions from critical areas regulations, but provide an appropriate pathway for allowing essential projects with clear public benefit to move forward while still requiring full and robust compliance with all steps of the mitigation sequencing process.

The fundamental difference between a PAUE and the accepted variance and reasonable use processes is in the nature of the projects and the nuances of the review criteria. The same science-based standards for mitigation sequencing and compensation planning and implementation apply to all these processes. However, where the reasonable use exception typically provides a single owner with a mechanism to implement a proposed development that serves only that owner, the PAUE provides public agencies and utilities a mechanism to implement a proposed development that serves the public consistent with federal laws, balancing GMA goals, and meeting local needs. Local system plans help guide city and other agency investments and offer stewardship and enhancement opportunities as demonstrated in Kenmore's local parks, roads, and stormwater plans.

Using the recommended approach to the PAUE, described in the *Code Options and Recommendations* section above, these future projects would go through mitigation sequencing, would have a critical areas

report prepared by a qualified professional, would meet specific approval criteria founded in BAS, would include public notification and an appeal process, and the permit would include appropriate conditions such as those described above in *Standard Conditions of Permit Review and Approval*. This BAS Evaluation identifies a code proposal that strengthens PAUE review criteria and identifies standard conditions of approval based both scientific and non-scientific considerations consistent with BAS rules.

4.

Attachment A: Example Exception and Allowed Activity Processes

A-1. KENMORE CURRENT 18.55.160 EXCEPTION – PUBLIC AGENCY AND UTILITY. DETERMINED TO APPLY ONLY TO UTILITIES.

A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section, unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC.

B. Exception Request and Review Process. An application for a public agency and utility exception shall be made to the City and shall include a critical areas report, including mitigation plan, if necessary, and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (SEPA).

C. City Manager Review. The city manager shall review the application. The city manager shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection D of this section.

D. Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

1. There is no other practical alternative to the proposed development with less impact on the critical areas; and

2. The application of this chapter would unreasonably restrict the ability to provide utility services to the public.

A-2. KENMORE 2016 PROPOSAL

Amend Kenmore Municipal Code (KMC) Section 18.20.2102 as follows:

18.20.2102 Practical alternative.

"Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration effectiveness, engineering feasibility, cost, safety, existing technology, and logistics in light of overall project needs, purposes and objectives, and has less impacts to *critical areas*. For example, a practical alternative to a proposal to place a sidewalk through a *wetland* might be to place an elevated boardwalk through the *wetland*.

Amend Kenmore Municipal Code (KMC) Section 18.55.160 as follows:

18.55.160 Exception – Public agency ~~and~~or private utility.

A. If ~~the~~strict application of this chapter would prohibit a *development* ~~*proposal*~~ by:

1. a *public agency* or

2. ~~public utility~~ a private entity delivering water, sewer, stormwater, electrical, or gas services (private utility),

then the agency or private utility may apply for relief from strict application of this chapter through an exception pursuant to this section, unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC.

B. Exception Request and Review Process. An application for a *public agency* ~~and~~or private utility exception shall be made to the *City* and shall include a *critical areas* report, including *mitigation* plan, if necessary, and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (SEPA).

C. *City Manager* Review. The *city manager* shall review the application as a Type 2 land use decision under KMC 19.25.020. The *city manager* shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with ~~all of~~ the *public agency* and private utility exception criteria in subsection D of this section.

D. *Public Agency* and Private Utility Exception ~~Review~~ Criteria. The criteria for review and approval of a *public agency* ~~and~~or private utility exception~~s~~ are as follow~~s~~:

1. There is no other *practical alternative* to the ~~proposed~~ *development proposal* with less impact on the *critical area~~s~~* or *buffer*; and

2. The *development proposal* benefits the public; and

3. Strict application of this chapter would ~~unreasonably~~ restrict or prohibit the ~~ability to provide utility services to the public~~*development proposal*; and

4. The *development proposal* minimizes impacts to the *critical area* or *buffer* to the maximum extent practical, for example, through placement of facilities on previously disturbed areas, boring rather than trenching for utilities, use of pervious or other low impact materials, etc.; and

5. The *development proposal* mitigates impacts to the *critical area functions and values* to the maximum extent practical, consistent with the *best available science* and with the objective of no net loss of *critical area functions and values*. For impacts to *wetlands*, the *development proposal* should strive to meet the mitigation performance standards outlined in KMC Sections 18.55.330(G) and 18.55.330(H).

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A-3. COMMERCE CRITICAL AREAS HANDBOOK, 2018

Agency/Utility Exceptions

The Commerce Critical Areas Handbook 2018 gives example language on agency/utility exceptions:

> If the application of the critical areas regulations would prohibit a development proposal by a public agency or utility, the regulations may allow the agency or utility to apply for an exception. Criteria for review and approval may include:
>
> - There is no other practical alternative to the proposed development with less impact on the critical areas;
> - The application of the critical area regulations would unreasonably restrict the ability to provide utility services to the public;
> - The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
> - The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
> - The proposal is consistent with other applicable regulations and standards.

Commerce Guidebook 2018 – Allowed Uses or Activities

The Handbook also provides guidance on allowed activities in critical areas or buffers such as some roadway expansion or minor utility proposals:

"Allowed uses or activities" are those uses or activities that are unlikely to result in a critical areas impact because of other regulations or previous reviews. These activities are subject to review by the city or county, but do not require a separate critical areas review or report. Since these activities are generally not "exempt," the critical areas standards continue to apply and the underlying permit could be conditioned to ensure that the activity complies with critical areas protection. Some jurisdictions use the term "partial exemptions" to note that these activities are exempt from the critical areas review process, but not the protection standards. Allowed uses or activities that may not need to complete a new critical review might include:

- **Projects previously reviewed for critical areas impacts.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits), may not need to complete a new critical area review. Some jurisdictions place a time limit on how long a previous critical area review is good for, such as five years, to account for changes in codes, critical areas' boundaries, or other factors over time.
- **Modification of existing structures.** Structural modifications or replacement of an existing legally constructed structure that doesn't alter or increase impacts to a critical area or buffer and doesn't increase risk to life or property.
- **Activities within the improved right-of-way.** Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a county/city authorized private roadway. Provisions to address activities that alter a wetland or watercourse or result in the transport of sediment or increased stormwater runoff may include: (1) Increasing buffer widths equal to the width of the right-of-way improvement, including disturbed areas; and (2) Retention and replanting of native vegetation along the right-of-way and resulting disturbance.
- **Minor utility projects.** Utility projects with minor or short-duration impacts to critical areas and no significant impact on the function or values of a critical area, provided such projects are constructed with best management practices and additional restoration measures. Criteria for minor utility projects can include: (1) No practical alternative with less impact on the critical area; (2) The activity involves the placement of a small utility facility (e.g., pole, street sign, etc.); and (3) The activity involves disturbance of an area less than a certain number of square feet.
- **Public and private pedestrian trails.** Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers. Conditions for approval can include: (1) The trail surface must meet all other requirements including stormwater regulations: (2) Critical area and/or buffer widths must be increased, where

WAC 365-195-910 does not say Commerce's model ordinances are the best and most current science available. *Id* at 15.

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possible, equal to the width of the trail corridor, including disturbed areas; and (3) Trails proposed in landslide or erosion hazard areas must be constructed so as to not increase the risk of landslide or erosion in accordance with an approved geotechnical report.

- **Minor vegetation removal.** Selective removal of invasive, noxious and non-native vegetation with hand labor and light equipment. However, removal of vegetation from a critical area or its buffer may require approval.
- **Removal of hazard trees.** Removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property may require a report from a certified arborist, registered landscape architect, or professional forester. The report documents the hazard and provides a replanting plan for replacement trees consistent with the jurisdiction's compensatory mitigation standards to provide for no net loss of ecosystem functions and values. Other tree pruning or cutting activities may be subject to requirements regarding tree replacement or provision for critical wildlife habitat. Measures to control a fire or halt the spread of disease or damaging insects should be consistent with the state Forest Practices Act (Chapter 76.09 RCW, and local forest regulations if adopted) with provisions for replacement.
- **Chemical applications.** The application of herbicides, pesticides, fertilizers, or other hazardous substances, as approved the city/county. Provided, their use should be restricted in accordance with state Department of Fish and Wildlife Management Recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency.[10]
- **Minor site investigation work.** Work necessary for land use permit submittals, such as surveys, soil logs, percolation tests, and other related activities, can be an allowed use when they do not require construction of new roads or significant amounts of excavation. But, in every case, impacts to the critical area should be minimized and disturbed areas immediately restored.
- **Navigational aids and boundary markers.** Construction or modification of navigational aids and boundary markers.

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A-4. KING COUNTY ALLOWED ALTERATIONS EXAMPLES

King County has a detailed table of allowances in critical areas.

KEY
Letter "A" in a cell means alteration is allowed

A number in a cell means the corresponding numbered condition in subsection D. of this section applies

"Wildlife area and network" column applies to both Wildlife Habitat Conservation Area and Wildlife Habitat Network

ACTIVITY	LANDSLIDE HAZARD AND OVER 40% AND BUFFER	STEEP SLOPE HAZARD AND BUFFER	WETLAND AND BUFFER	AQUATIC AREA AND BUFFER AND SEVERE CHANNEL MIGRATION	WILDLIFE AREA AND NETWORK
Roads					
Construction of new public road right-of-way structure on unimproved right-of-way			A 26	A 26	
Construction of new road in a plat			A 26	A 26	
Expansion beyond public road right-of way structure	A	A	A 26	A 26	
Bridges or culverts					
Construction of a new bridge	A 16, 39	A 16, 39	A 16, 39	A16, 39	A 4, 16, 39
Replacement of bridge or culvert	A 16	A 16	A 16	A 16, 30	A 16, 27
Expansion of bridge or culvert	A 16, 17	A 16, 17	A 16, 17, 31	A 17, 31	A 4
Utilities and other infrastructure					
Construction of new utility corridor or utility facility	A 32, 33	A 32, 33	A 32, 34	A 32, 34	A 27, 32, 35
Construction or maintenance of a hydroelectric generating facility	A 67	A 67	A 66	A 66	A 4, 66
Construction of a new residential utility service distribution line	A 32, 33	A 32, 33	A 32, 60	A 32, 60	A 27, 32, 60
Maintenance, repair or replacement of utility corridor or utility facility	A 32, 33	A 32, 33	A 32, 34, 36	A 32, 34, 36	A 4, 32, 37
Construction of new surface water conveyance system	A 32, 33	A 32, 33	A 32, 38	A 32, 38	A 4
Construction, maintenance or repair of in-water heat exchanger			A 68	A 68	
Maintenance, repair or replacement of existing surface water conveyance system	A 33	A 33	A 16, 32, 38	A 16, 40, 41	A 4, 37
Construction of new surface water flow control or surface water quality treatment facility			A 32	A 32	A 4, 32
Construction of new flood protection facility			A 42	A 42	A 27, 42
Maintenance, repair or replacement of flood protection facility	A 33, 43	A 33, 43	A 43	A 43	A 27, 43
Flood risk reduction gravel removal	A 61	A 61	A 61	A 61	A 61
Construction of new instream structure or instream work	A 16	A 16	A 16	A 16, 44, 45	A 4, 16, 44, 45
Recreation					
Construction of new trail	A 46	A 46	A 47	A 47	A 4, 47
Habitat, education and science projects					
Habitat restoration or enhancement project	A 49	A 49	A 49	A 49	A 4, 49

A summary of common conditions cited in the table includes:

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Facilities over water:

- the corridor is not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the state or federal government unless the department determines that there is no other feasible crossing site.
- the corridor width is minimized to the maximum extent practical.
- the construction occurs during approved periods for instream work.
- the corridor will not change or diminish the overall aquatic area flow peaks, duration or volume or the flood storage capacity.
- if new construction, bridge piers or abutments for bridge crossings are not placed within the FEMA floodway or waterward of the ordinary high-water mark.

Facilities in geologically hazardous areas:

- the alterations will not subject the critical area to an increased risk of landslide or erosion.
- vegetation removal is the minimum necessary to locate the utility or construct the corridor.
- significant risk of personal injury is eliminated or minimized in the landslide hazard area.

Construction of new trail:

- No clearing, external construction or other disturbance in a fish or wildlife habitat of importance is allowed during breeding seasons.
- Allowed as long as the trail is not constructed of impervious surfaces that will contribute to surface water run-off, unless the construction is necessary for soil stabilization or soil erosion prevention or unless the trail system is specifically designed and intended to be accessible to handicapped persons.
- to the maximum extent practical, buffers are expanded equal to the width of the trail corridor including disturbed areas.
- there is not another feasible location with less adverse impact on the critical area and its buffer.
- the trail is not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the state or federal government unless the department determines that there is no other feasible crossing site.
- the trail width is minimized to the maximum extent practical.
- the construction occurs during approved periods for instream work.
- the trail corridor will not change or diminish the overall aquatic area flow peaks, duration or volume or the flood storage capacity.
- the trail may be located across a critical area buffer for access to a viewing platform or to a permitted dock or pier.

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Attachment B: State Sources of Science

Washington State Department of Ecology's sources of science for **wetlands** include, but are not limited to:

- *Wetlands in Washington State - Volume 1: A Synthesis of the Science*, March 2005
- *Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands*, April 2005
- *Update on Wetland Buffers: The State of the Science*, October 2013
- *Washington State Wetland Rating System for Western Washington*, 2014 Update
- *Selecting Wetland Mitigation Sites Using a Watershed Approach*, December 2009

The Washington State Department of Fish and Wildlife's sources of science for **fish and wildlife habitat conservation areas** include, but are not limited to:

- *Management Recommendations for Washington's Priority Habitats: Riparian*, 1997 (currently being updated and open for public comment)
- *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications*, 2018
- *Riparian Ecosystems, Volume 2: Management Recommendations*, 2018
- *Stream Habitat Restoration Guidelines, 2012*
- *Water Crossing Design Guidelines, 2013*

The Washington State Department of Ecology describes sources of best available science and effective regulation in **frequently flooded areas** at a website:

- Frequently flooded areas: Critical Areas Ordinance, accessed September 19, 2018

A description of **geologic hazards**, mapping, and resources is found at the Washington Department of Natural Resources website:

- Geologic Hazards and the Environment, accessed September 19, 2018.

The Washington State Department of Commerce Growth Management Services has also been updating guidance on how jurisdictions consider BAS in **critical areas regulations**, with several chapters completed in June 2018, and the final chapters ready in fall 2018:

- *Critical Areas Handbook*, 2018

Attachment C: Public Facility and Utility Evaluation

This section considers system plans or master plans, how these plans address alternative public facility and utility locations, and how they have identified avoidance, impacts, and mitigation measures.

PARKS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Identification of Open Space Corridors – RCW 36.70A.160

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. …

Other Laws and Rules

Federal Americans with Disabilities Act requirements influence project locations and design, e.g. trail and sidewalk widths and parking.

The State Shoreline Management Act requires no-net-loss of shoreline ecological function and requires shoreline public access be implemented when new demand is created.

Washington State plans for state facilities and applies public use rules and regulations.

Inventory

After Kenmore incorporated in 1998, the City eventually inherited parks acquired by King County. Kenmore has 92.5 acres of parks.

Exhibit 2. Kenmore Park Inventory

Park Name	Classification	Acreage	Shoreline	Stream	Wetland	Flood	Geo
Linwood	Neighborhood	1.4		X			
Moorlands	Neighborhood	3.6					
Northshore Summit	Neighborhood	3.6			X		X
Squire's Landing	Nature	40.4	X		X	X	X
Wallace Swamp Creek	Nature	25.5	X		X	X	X
Rhododendron	Community	12.5	X				
Log Boom	Waterfront	5.5	X		X		
Total		**92.5**					

Source: City of Kenmore 2013

Other regional facilities include St Edward State Park, Burke Gilman Trail, and Tolt Pipeline Trail.

Exhibit 3. Regional Park Facilities

Park Name	Owner	Acreage/Length	Shoreline	Stream	Wetland	Flood	Geo
St Edward	State Park	291 acres	X	X	X		X
Burke-Gilman Trail	King County	2.5 miles	X	X	X	X	X
Tolt Pipeline Trail	Seattle/Kenmore	.28 miles			X		

Source: City of Kenmore 2013

The City has also inherited or acquired Public Open Space, which includes property that is not presently accessible or serves to protect habitat or environmentally sensitive areas. Examples include the Inglewood Wetlands located along Lake Washington and the Sammamish River and multiple parcels along 73rd Avenue NE associated with flood control efforts. In all the City has 29.36 acres of city-owned open space, King County has 2.58 acres associated with the heron rookery, and Seattle Audubon has 4.16 acres.

System Management / Future Plans

The City plans and manages its parks, recreation, and open space through a Park, Recreation, and Open Space Plan (PROS; adopted Nov. 25, 2013). The City has goals to enhance and develop its existing

properties, add a water walk, as well as protect sensitive areas. The PROS Plan also has a habitat conservation element.

> *Goal P-2 Create an interconnected system of Linear Parks, sidewalks, bike routes and safe crossings linking and improving access to the downtown, waterfront, parks, and public spaces within Kenmore and with neighboring cities. (A/D) (PP)*
>
> *Goal P-3 Protect environmentally sensitive areas, including Nature Parks, and provide opportunities for restoration, enhancement and public access. (S)*
>
> *Goal P-4 Preserve, develop, and enhance existing parks and similar city properties to provide a balance between passive and active recreation opportunities, acquire new parks where needed and appropriate and when resources are available.*

Kenmore has also developed park master plans for most parks which identify critical area protection and enhancement measures. The Kenmore Walkways and Waterways includes several projects in current parks including Rhododendron Park, Log Boom Park, and Squire's Landing.

Exhibit 4. Kenmore Parks Plans and Critical Area Protection & Enhancement Measures

Property	Master Plan	Critical Area Protection & Enhancement Measures
Existing Parks		
Linwood	X	Not applicable
Moorlands	X	Not applicable
Northshore Summit	X	▪ Enhanced wetland, wetland buffer
Squire's Landing	X	▪ New elevated walkways, trails, and viewpoints, and natural open space and environmental enhancements (listed below) ▪ Environmental enhancements: upland restoration, wetland creation area, wetland restoration/enhancement, and wetland buffer.
Wallace Swamp Creek	X	▪ Restore degraded habitat areas including riparian corridor restoration
Rhododendron	X	▪ Walkways and Waterways Proposals: improve public access to waterfront and to preserve and enhance ecological functions of existing wetlands and their buffers.
Log Boom	X	▪ Improve public access to Lake Washington waterfront and preserve and enhance ecological functions of existing wetlands and their buffers, as much as possible. ▪ Log Boom Beach restoration assumes 6:1 mitigation for 0.5-acre beach restoration
Tolt Pipeline Trail	X	Not applicable
New Projects		
Water Walk and Waterfront Master Plan	Future	▪ Since land is not fully acquired the environmental conditions are unknown. If critical areas are present, critical area regulations, shoreline regulations, and master planning would determine habitat protection and enhancement measures.
Twin Springs Park (Future)	Future	▪ Habitat restoration

Source: City of Kenmore 2013, 2018

Summary

The City owns developed and undeveloped parkland and open space. Other state and county agencies own regional parkland and trails. Most of the properties contain critical areas or their buffers and serve both recreation and open space functions.

Future park and trail development has been identified through a system plan. Given limited land availability and development patterns, the City must leverage its existing parks and work with partners such as Seattle on the Tolt Pipeline to create new opportunities. To connect existing and future facilities and to provide recreation that meets the demand for parks and recreation, the City would develop already disturbed sites in an urban environment with degraded wetlands and streams and shorelines. There are opportunities for both recreation and environmental protection and enhancement going forward. The City has identified opportunities for restoration and enhancement on its park sites through master plans. Master plans have thoughtfully balanced both public access to recreation with stewardship of environmentally sensitive areas and enhancement/restoration.

SCHOOLS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

Many state laws address education requirements from operations to curriculum to public works. A detailed list is available at this link: http://www.k12.wa.us/RulesRegs.aspx. In terms of a duty to serve, any child 8 years of age and under 18 years of age shall attend a public school.

Inventory

There are three elementary schools, one middle school, and one high school in Kenmore. All were built decades before Kenmore incorporated in the 1950s and 1960s. Many decades later, schools were modernized. All have portables.

Exhibit 5. School Sites in Kenmore: Capacity, Age, Recent Improvements

School	Year Built	Last Modernization or addition	Permanent Classroom Capacity	Portables			Total Capacity
				Total #	Interim Capacity	% of Total	
Arrowhead ES	1957	1994/2011	312	4	96	23.5%	408
Kenmore ES	1955	2002/2011	408	6	144	26.1%	552
Moorlands ES	1963	2002/2011	432	9	216	33.3%	648
Kenmore MS	1961	2002/2008/2012	849	1	23	2.6%	872
Inglemoor HS	1964	2000	1,677	6	146	8.0%	1,823

Source: Northshore School District, 2017

Most of the school sites are located in or near mapped critical areas and their buffers.

Exhibit 6. Kenmore School Sites and Critical Areas Onsite or Near

School	Shoreline	Stream	Wetland	Flood	Geo
Arrowhead ES		X			
Kenmore ES			X	X	
Moorlands ES					
Kenmore JHS		X	X		X
Inglemoor HS					X

Source: City of Kenmore, BERK 2018

System Management / Future Plans

District growth projections anticipate growth of over 2,300 new students in the next ten years. The District also must respond to federal and state requirements, e.g. reduced class sizes. The District uses several means to manage and efficiently use its facilities such as altering attendance boundaries, installing portables, and adding capacity at existing sites or new properties. However, no major capital projects are proposed in Kenmore in the 2017 6-year capital facility plan (2017-2022). Improvements are proposed in other locations in the district. However, as shown in prior tables the schools are several decades old and were modernized for the most part in 2011 and 2012 except for Inglemoor High School last modified in 2000. It is anticipated that future school improvements may be proposed as needs or demand arises.

The District conducts environmental review itself, but projects in or near critical areas must comply with City regulations.

ROADS AND TRAILS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including: [see law for details – all modes – local and state]

(iv) Finance, including: [see law for details]

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies.
…

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation

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systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

If federal funds are used for roads or if a permit is required from a federal agency, the City must comply with the National Environmental Policy Act and related environmental authorities such as federal Endangered Species Act. Many roads have stormwater facilities and must comply with other state or federal laws (see below).

Inventory

The City of Kenmore owns and maintains over 110 miles of public road, and shares management of 2 miles of SR 522 with the Washington State Department of Transportation. The City's Public Works Department manages the improvement and maintenance of this transportation network.

Some roadways cross or abut streams, wetlands, floodplains, and geologically hazardous areas. Many of the roads were established decades ago without modern stormwater treatment or management.

SR 522 is a state highway under Kenmore's management. It is an essential public facility under state laws. It crosses shorelines (e.g. Swamp Creek), creeks, floodplains, and geologically hazardous areas (seismic), and lies near wetlands.

System Management / Future Plans

The City or state may require roadway improvements to manage all modes of travel – cars, transit, bikes, and pedestrians.

The City has adopted a Transportation Element of its Comprehensive Plan. The City also phases and programs projects through its Capital Facility Plan and Transportation Improvement Program. The City also has a Neighborhood Transportation Plan Program, where local projects may include signing and striping or lighting. Some larger projects may also be identified.

A sample of city capital programs and projects include:

- SR 522 West Segment B Improvements (57th to 61st Avenues)
- West Sammamish River Bridge (Southbound Traffic) (See environmental permitting results below)
- Sidewalk Plan – 20-30 Year Plan with 6-Year Priority List
- Walkways and Waterways

- Juanita Drive Pedestrian and Bicycle Safety
- 68th Avenue Pedestrian and Bicycle Safety

Examples of recent road projects that resulted in shoreline and critical areas permits and related enhancements include:

West Sammamish River Bridge Proposal and Environmental Protection: Replacement of an existing two-lane, 600 foot-long by 30-foot-wide bridge that carries southbound traffic across the Sammamish River ("West Sammamish River Bridge"). Constructed in 1938, the West Sammamish River Bridge has become an important link in the regional transportation network; each day 26,000 vehicles and 2,000 transit riders utilize the bridge. In 2012, an inspection of the bridge revealed critical deficiencies including cracking, settlement and significant loss of soil around the piers. The bridge sufficient rating is 6.45 out of 100; replacement is considered critical. Repair is not considered cost-effective or practical. The project proposes to replace the deteriorated bridge with a new and wider two-lane bridge that includes an added 16-foot-wide bicycle and pedestrian path that meets current ADA standards.

The existing bridge is supported by 11 piers and the new replacement bridge will be supported by six (6) piers that align with the East Sammamish River Bridge, resulting in a net reduction of piers and improved navigability and channel flow. Coffer dams will be installed to isolate pier removal and pier installation areas from Sammamish River flows.

The project does not add additional vehicle capacity and is not anticipated to result in additional noise. Work includes construction of the bridge, abutments, roadway work tying the new bridge into 68th Avenue NE/Juanita Drive NE roadways, lighting, aesthetic improvements to the East Sammamish River Bridge so both bridges match, extending and improving bicycle and pedestrian facilities along both sides of 68th Avenue NE, upgrading signals, replacing utilities, landscaping, stormwater treatment, and temporary reconfiguring boat launch parking during construction.

The project spans three (3) shoreline environments: 1) Downtown Waterfront (DW) located north of the Sammamish River, 2) Urban Conservancy (UC) located south of the Sammamish River, and 3) Aquatic (A) located in areas below the Ordinary High-Water Mark (OHWM).

Environmentally Critical Areas include the Sammamish River, Fish and Wildlife Habitats of Importance, Seismic Hazard, Flood Hazard, and two (2) associated Wetlands. Environmentally critical areas have been addressed in detail to ensure compliance and adequate protection measures.

Lower Swamp Creek Bridge Repair: The proposal is for the repair of existing bridge referred to as Lower Swamp Creek Bridge #5015 located at NE 175th St and 80th Ave NE. The repair includes patching pick holes on the top of the concrete bridge, treating the ends of the glulam cap beams with roofing tar and covering with tin hats, hand relocating existing loose scatter riprap to protect the upstream corner of Pier #1 and placing quarry spalls behind the timber fender planks. Best management practices (BMPs), as outlined in the King County Surface Water Design Manual, will be implemented to reduce and control soil erosion.

STORMWATER

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land... The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. … Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

The City must comply with:

- Clean Water Act
- National Pollutant Discharge Elimination System

Inventory

Kenmore's Public Works Department is responsible to ensure that public surface water and stormwater systems function properly. They oversee 4,550 catch basins and manholes, 69 miles of drainage pipes, 13 miles of ditches, and over 200 flow control and water quality facilities.

The City also inspects and regulates privately owned and maintained surface water and stormwater systems, including an additional 2,400 catch basins and manholes, 47.5 miles of drainage pipes, 6 miles of ditches, and 130 flow control and water quality facilities. Surface water management also relies on

the natural surface water system and vegetation including forests, wetlands, floodplains, rivers, and streams on both public and private lands.

Development can cause problems like flooding, erosion, sedimentation, habitat loss, loss of groundwater recharge, and water quality degradation, and therefore Surface Water Management policies, codes, and procedures are implemented to reduce adverse impacts including comprehensive and thorough permit review, construction inspection, enforcement, and maintenance. The City's full Surface Water Runoff Policy can be found in Kenmore Municipal Code Chapter 13.35. Since 2016, the City has utilized the 2016 King County Surface Water Design Manual, City of Kenmore Surface Water Design Manual Addendum, and the 2016 City of Kenmore Road Standard to design and implement projects.

Low Impact Development (LID) is the City's surface water management philosophy that strives to manage surface water at the source through principles such as, but not limited to:

- Retention of native soils, vegetation and trees
- Reduction of impervious areas
- Clustering of development away from critical habitat

These requirements are met by using Best Management Practices (BMPs) like rain gardens, green roofs, bio-retention facilities and permeable surfaces (including asphalt and concrete pavements, pavers and reinforced vegetated surfaces).

SEWER AND WATER

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Other Laws and Authorities

The District must abide by several state and federal laws:

- Federal Clean Air Act
- Federal Clean Water Act
- Federal Endangered Species Act
- Local Permits (e.g. Critical Areas)
- Municipal Water Law
- National Environmental Policy Act
- Reclaimed Water Regulations and Standards
- Safe Drinking Water Act
- Shoreline Management Act Permit
- State Hydraulic Project Approval
- State Environmental Policy Act
- State Water Pollution Control Act
- Water Rights

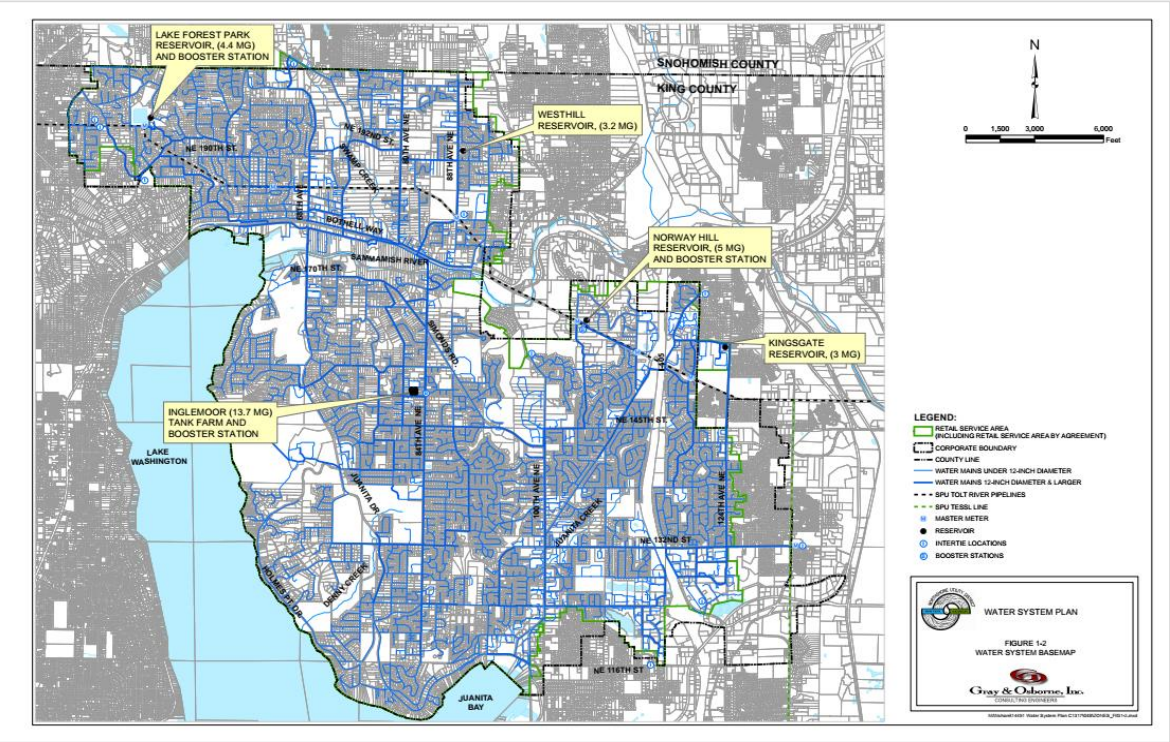
Inventory

Northshore Utility District provides the local water distribution system and wastewater collection system. The district purchases water from the City of Seattle and has a 60-year contract as of 2005.

The Northshore Utility District has a duty to serve within its water retail service area. All proposed structures and developments within the District's retail service area is required connect directly to the District's water system.

The water system traverses every corner of Kenmore and crosses all types of critical areas and shorelines.

Exhibit 7. Water System Base Map

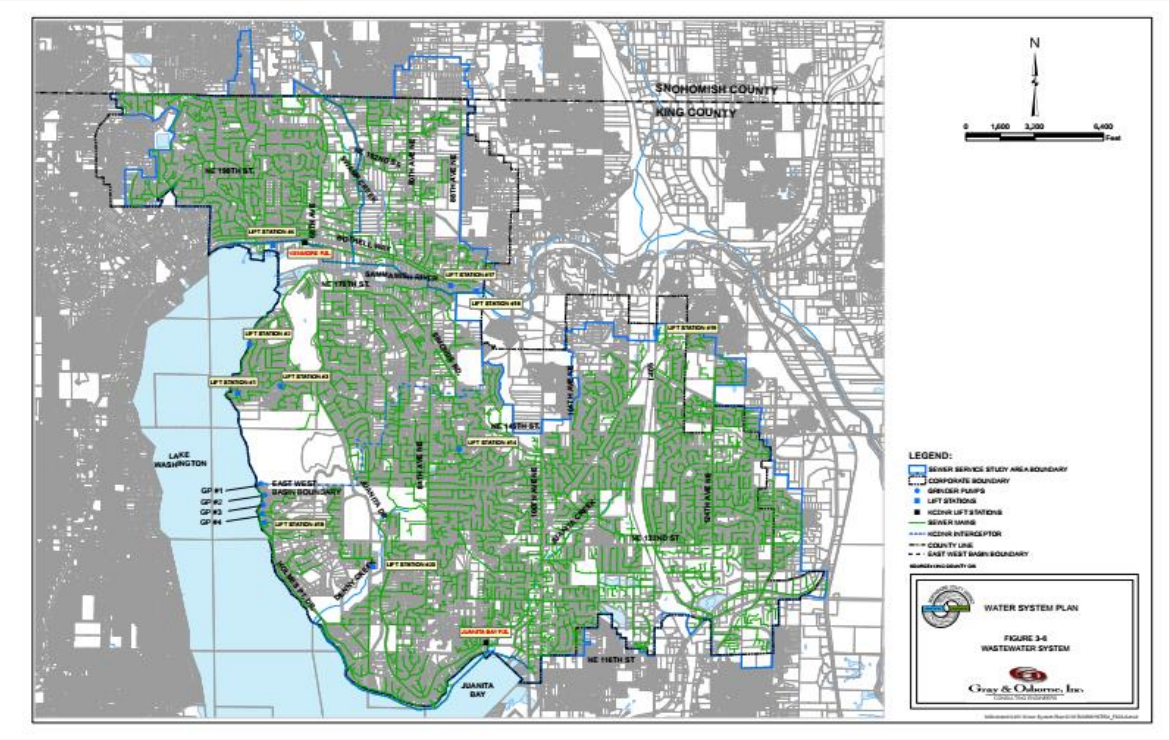


Source: NUD 2016

The District has a 2017 Water System Comprehensive Plan. Proposed water system capital projects are proposed in Kenmore including water main replacement projects. For example, projects include St. Edwards Water Main Loop that will be located in an existing sewer easement. The Inglemoor Restrained Joints in Liquefaction Zone Project will strengthen the pipeline through unstable soils along its alignment. The 68th Avenue Ne Bridge Water Main Replacement would will replace approximately 800 linear feet of the existing 12-inch ductile iron water main attached to the existing bridge crossing of the Sammamish River. The Sammamish River Crossing Replacement Water Mains project plans to directionally drill a 10-inch water main beneath the Sammamish River at 84th Avenue NE. The Inglemoor Transmission Main Replacement would replace the Inglemoor Transmission Main between the Tolt connection and the Inglemoor Tank Farm and likely follow the alignment of the existing pipeline.

The District owns and operates a wastewater collection system consisting of collection sewers, trunk sewers, lift stations and force mains. King County's Department of Natural Resources (KCDNR) Brightwater Treatment System provides wastewater treatment. In response to increased growth and limited expansion options, KCDNR designed and constructed the Brightwater Treatment System which began operation in September 2011.

Exhibit 8. Wastewater System



Source: NUD 2016

The District has a 2006 Wastewater System Comprehensive Plan. A recently bid project in Kenmore includes:

- Slough/68 City of Kenmore Bridge Sewer Bypass Installation of approximately 380 linear feet (LF) sanitary sewer piping, approximately 170 LF of steel casing pipe, four manholes, one sanitary sewer stub, two connections to the existing system, and abandonment in place of the existing sanitary sewer main. Work will include all labor, appurtenances, equipment to facilitate the work, and restoration. The proposed project is located within City of Kenmore - Rhododendron Park, Kenmore Boat Launch, and City right-of-way.

POWER AND TELECOMMUNICATIONS

Growth Management Act Goals and Requirements

Goals – RCW 36.70a.020

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Elements – RCW 36.70a.070

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

Other Laws and Rules

The Washington Utilities and Transportation Commission (WUTC) regulates Power (electric and gas) and Telecommunication utilities.

By rule, (WAC 480-100-238) and (WAC 480-90-238), all natural gas and electric utilities regulated by the commission are required to develop plans for how they will obtain future energy resources for their customers. An Integrated Resource Plan is used to identify a utility company's long-term energy resource strategy. These plans describe how the company will meet future customer needs at the least cost to ratepayers. Utility companies are required to update their plans every two years.

The WUTC regulates the rates and services of telephone companies operating in the state of Washington. The Federal Telecommunications Act of 1996 was the first major re-write of the Communications Act of 1934. It opened up local markets to competition, which changed the dynamics of the existing system of funding universal service. The 1996 Act explicitly adopted principles to guide universal service policy. These principles include:

- Promote the availability of quality services at just, reasonable and affordable rates for all consumers
- Increase nationwide access to advanced telecommunications services
- Advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas, at rates that are reasonably comparable to those charged in urban areas
- Increase access to telecommunications and advanced services in schools, libraries and rural health care facilities
- Provide equitable and non-discriminatory contributions from all providers of telecommunications services for the fund supporting universal service programs

Inventory

Frontier Communications Northwest, Inc. serves Kenmore with traditional landline services. Puget Sound Energy provides electric and natural gas service to Kenmore. These facilities tend to be in street rights of way and are found in every neighborhood and extent of the city limits. The facilities cross all critical areas types in Kenmore.

Puget Sound Energy is implementing a gas main relocation area across the Sammamish River Bridge in 2018: https://www.pse.com/pages/pse-projects/kenmore-public-improvement-projects. Other projects are likely in the future as areas change, e.g. Lakepointe.

Attachment D: Preparer Qualifications

SHANNON & WILSON, INC.

Amy Summe, Associate

Amy is a senior biologist/permit specialist and associate with Shannon & Wilson, Inc., a geotechnical engineering and environmental services firm. Amy has more than twenty years of experience in local, state and federal permitting of public and private projects, including schools, parks, utilities, roads, and commercial and residential developments. Over the last 15 years, she has also specialized in policy and regulation development: critical areas regulations updates under the state's Growth Management Act (over 6 efforts) and shoreline master programs under the Shoreline Management Act (managed or contributed to more than over 34 efforts, including cities and counties in eastern and western Washington). Most of those SMP updates also included updates of the critical areas regulations as they apply in shoreline jurisdiction.

Education

- B.S. Zoology, Washington State University, Pullman, 1997
- B.S. Environmental Science, Washington State University, Pullman, 1997

BERK CONSULTING, INC.

Lisa Grueter, Principal

Lisa is a senior land use planner and principal with BERK Consulting, Inc., a public policy firm. Lisa has more than thirty years of experience in community planning for the public and private sectors. Her expertise includes comprehensive planning, subarea planning, capital facility planning, and development regulations under the state's Growth Management Act (over 24 efforts), programmatic and planned action environmental documentation under the State Environmental Policy Act (over 36 efforts), and shoreline master programs under the Shoreline Management Act (over 15 efforts).

Education

- Master of City Planning, University of California, Berkeley, 1990
- B.A. Social Ecology, University of California, Irvine, 1987
- American Institute of Certified Planners

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

January 22, 2019

Lauri Anderson
Senior Planner
Community Development Department
18120 68th Ave NE
Kenmore, WA 98028

RE: Kenmore Critical Areas Regulations and Shoreline Master Program - Public Facility / Utility Review - Draft Issue Paper and Code Amendments

Dear Lauri:

Thank you for sending Growth Management Services the proposed amendments to Kenmore's Public Agency and Utility Exception(PAUE) section that we received on January 8, 2019.We recognize the substantial investment of time, energy, and resources this document represents, and we appreciate the opportunity to comment. The following comments are in alignment with those expressed by Commerce staff at the Focus Group on September 25, 2018.

We especially like the following:

- The draft PAUE requires documented mitigation sequencing, and demonstration of the how the agency or utility will provide actual mitigation. Mitigation sequencing includes :

1. **Avoiding the impact** altogether by not taking a certain action or parts of an action.
2. **Minimizing impacts** by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. **Rectifying the impact** by repairing, rehabilitating, or restoring the affected environment.
4. **Reducing or eliminating the impact over time** through preservation and maintenance operations during the life of the action.
5. **Compensating for the impact** by replacing, enhancing, or providing substitute resources or environments.
6. **Monitoring the impact** and taking appropriate corrective measures.

- We commend the city for recognizing that a PAUE is not an exception from the requirement to complete and document a thorough mitigation sequencing process, nor is it an exception from the requirement to implement appropriate mitigation. The draft PAUE requires applicants to show their work, and demonstrate compliance with RCW 36.70A.172, designating and protecting critical areas.

- We commend your consultants, BERK Consulting, and Shannon & Wilson, Inc. for a thorough job reviewing best available science (BAS) and providing recommendations for updating the PAUE based on that science. We appreciate the detailed BAS document because it builds a record of the factors considered as decisions were made, particularly those relating to the watershed approach to mitigation for public agency projects, and Section 5, Departures from BAS.

Thank you for the opportunity to meet with the city last fall, and giving us the chance to voice our concerns, with regard to this proposed significant expansion of the scope and intended use of the PAUE for local jurisdictions. The following, and attached proposal with tracked edits, should be addressed before you adopt your code amendments.

- As written, this draft PAUE may allow facilities, buildings, and permanent uses within the critical area and buffers. The intended use of this exception is for linear utilities that may have a temporary impact on the critical area during installation. Therefore, we still have concerns that new projects under the proposed PAUE will have impacts to critical areas. You'll need to consider and define all possible projects that could be approved under this exception.

- If you proceed with this policy expansion, we recommend narrowing the scope to consider the expansion of existing facilities but not allow construction of new facilities (except linear utilities that meet the intended use of the PAUE for local jurisdictions). This would greatly simplify the analysis of potential impacts by limiting the impact to only those critical areas that are adjacent to an existing public facility.
- Alternatively, we recommend showing how this exception for facilities warrants a different process than regular development policies

- As noted in the 2016 GMHB FDO, Case No. 16-03-0002, the city needs to explain how expanding the kinds of projects exempted from critical areas regulations can be done without impacting the functions and values of critical areas. The BAS Evaluation attempts to acknowledge this:
    - "Extending the PAUE to public agencies may increase the number of projects that could depart from strict adherence to the regulations. However, the existing City codes and standards provide a framework for ensuring that projects are thoughtfully designed, and any impacts are appropriately minimized and mitigated. KMC 18.55.200, for example, requires that "Mitigation shall be … sufficient to maintain the

functions and values of the critical area, or to prevent risk from a hazard posed by a critical area."" And,

- "These protections and mitigations, which are based on best available science, could be adapted by the City for projects in critical areas or their buffers and included as additional conditions of approval in City permits."

Although the BAS Evaluation mentions these, it is not inherent in the draft PAUE that this is a requirement of approval. The City Manager or Hearings Examiner needs clear direction to determine affirmative duty to show no net loss. As proposed, there isn't a clear direction for the City Manager or Hearings Examiner to deny any request that meets only one or two of the criteria listed, yet has an impact on the functions and values of critical areas.

- Although this process considers departures from the critical areas ordinance recommend the process also allow consideration of waiver/variance/exception from other provisions of your code, such as parking or setbacks may be a practical alternative. This additional flexibility may present other alternatives to meet your objectives without a reduction in critical areas function and value. "Practical alternatives" could include:
  - Location out of the wetland and wetland buffer
  - Exception from other areas of the code i.e. minimum parking standards to locate facilities in areas already compromised/paved for parking; or height restrictions, i.e. building upwards to expand facilities

We look forward to working with you on this code amendment, and formally reviewing at the time of 60-day review/SEPA submittal.

If you have any questions or concerns about our comments or any other growth management issues, please contact me at 360.725.3062. We extend our continued support to the City of Kenmore in achieving the goals of growth management.

Sincerely,

Valerie Smith, AICP
Senior Planner, Growth Management Services

vs:lw

cc: Mark McCaskill, AICP, Managing Director, Growth Management Services
David Andersen, AICP, Eastern Region Manager, Growth Management Services
Ike Nwankwo, Western Region Manager, Growth Management Services