

Reasonable Use Exception Materials

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a. Approval of any land division, land use, building, or development of lands adjacent to or within 500 feet of lands designated as mineral resource land (MRL) shall be conditioned on the execution by the applicant of a statement of acknowledgment containing the disclosure statement on forms provided by the permit center. The executed form shall be recorded by the County auditor in the same manner as a deed. However, if a disclosure conforming to the provisions of this subsection has been recorded for a prior permit, subsequent disclosures shall not be required.

b. The required disclosure statement is as follows:

If your real property is within five hundred (500) feet of real property within an area designated as Mineral Resource Land (MRL), you may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, tree removal, odors, fumes, dust, smoke, the operation of machinery, and the storage and disposal of aggregate products. One or more of the inconveniences described may occur as a result of extraction and processing operations which are in conformance with existing laws and regulations. San Juan County has determined that the use of certain real properties for mineral resource extraction and processing activities is necessary to ensure resource availability in the County. The County will not consider to be a nuisance those inconveniences or discomforts arising from extraction and processing operations, if such operations are consistent with commonly accepted best management practices and comply with local, state, and federal laws.

(Ord. 2-1998 Exh. B § 3.6.3)

18.30.110 Critical areas.

A. Purpose. The critical areas overlay district is adopted to implement the policies of the Comprehensive Plan for the protection of critical areas. The purpose is to protect the functions and values of critical areas and to protect people, public and private property, and natural ecosystems. There are five types of critical areas as defined in SJCC 18.30.120 through 18.30.160:

1. Geologically hazardous areas.
2. Frequently flooded areas.
3. Critical aquifer recharge areas.

4. Wetlands.

5. Fish and wildlife habitat areas.

B. Applicability. This overlay district provides regulations for land use and development in and within 300 feet of critical areas.

Any land use or development activity which is subject to a development permit or approval under this code may be undertaken on land located within or containing a critical area or its buffer only if the provisions of this section are met. The appendices are incorporated herein by reference. A copy is on file at the auditor's office and planning department.

C. Allowable Uses. All uses shall be subject to requirements specified in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 for the underlying district, unless otherwise specified in this code.

D. General Exemptions. The following uses and activities are exempt from the provisions of this section; provided, that they are otherwise consistent with other sections in this code:

1. Emergencies that threaten the public health, safety, and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this code.

2. Routine maintenance and repair of existing structures, utilities, sewage disposal systems, water systems, drainage facilities, ponds, public and private roads, and driveways.

3. Installation, construction, replacement, or modification of (a) electrical lines or electrical facilities; (b) telecommunication lines; or (c) water and sewer distribution lines within private or public rights of way; provided, that a prior written statement of exemption is obtained from the administrator.

4. Establishment and routine maintenance and repair of lawns, landscaping, gardens, orchards, and fences accessory to a single-family residential use; provided, that where a regulated wetland or its buffer is present the provisions of SJCC 18.30.150, Wetlands, shall apply.

5. Removal of hazardous, diseased, or dead trees and vegetation and, when necessary, measures to control a fire or halt the spread of disease or damaging insects.

6. Land divisions exempt from the land division requirements as specified in SJCC 18.70.010(C).

E. Reasonable Use Exception. If the application of this section would result in denial of all reasonable use of a property (i.e., denial of all economi-

cally beneficial or productive use of the land), development may be allowed which is consistent with the general purposes of this code, this section, and the public interest. "Reasonable use," for the purposes of this section, shall include improved area(s) totaling not more than 21,780 square feet or 80 percent of the parcel, whichever is less, on any parcel which constituted a legal building site prior to the adoption of these regulations. Within the improved area(s) the critical area may be cleared, filled, drained, excavated or otherwise altered by development. All improvements, including parking and driving areas, with the exception of a driveway for a single-family residence, shall be included in the improved area(s) unless the improvements are otherwise exempt under this section. Reasonable use exceptions from the provisions of this section shall be subject to all of the following criteria:

1. The application of this section would deny all reasonable use of the property so that there is no reasonable use, other than that proposed, with a lesser impact on the critical area;

2. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and

3. Any proposed improved area shall be located in such a way as to minimize the impact to the critical area. (Ord. 15-2005 § 3; Ord. 2-1998 Exh. B § 3.6.4)

18.30.120 Geologically hazardous areas.

A. Classification. Geologically hazardous areas are classified in three categories according to the probability of hazardous geologic activity occurring. In all cases, a slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 20 feet of vertical relief. In the absence of a topographic field survey of the subject property, the administrator shall use the United States Coast and Geodetic Survey 7.5 Minute Series Topographic Quadrangle Maps to determine slopes.

1. Category I.

a. Areas designated in the Washington Department of Ecology Coastal Zone Atlas as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide) and other areas identified by site-specific geologic reports.

b. Areas with slopes of greater than 50 percent and with a vertical relief of 20 feet or more, except areas of exposed, unfractured bedrock. If

any portion of a slope meets this definition, the slope or some larger portion may be designated a landslide hazard area.

2. Category II.

a. Erosion hazard areas characterized by soils identified in the USDA San Juan County Soil Survey as having severe water erosion hazards:

i. The Pickett Soil portion within the Pickett-Rock Outcrop Complex;

A. (PrD-only where slope exceeds 15 percent);

B. (PrE);

ii. The Roche Soil portion within the Roche-Rock Outcrop Complex, 30 to 70 percent slopes (RxE); or

iii. Roche gravelly loam, 8 to 15 percent slopes (RgC).

b. Any area with all three of the following characteristics:

i. Slopes in excess of 15 percent;

ii. Soil having layers of moderate or faster permeability (0.8 inches per hour or greater) overlying layers having very slow or slower permeability (0.20 inches per hour or less); and

iii. Evidence of groundwater seepage to the surface.

c. Areas directly underlain or affected by mine workings including steep and unstable slopes created by open mines. Mine hazard areas are based upon the identification of active or historic mining activity and site-specific information regarding topography and geology provided by the applicant as needed.

3. Category III. San Juan County in its entirety is located within Seismic Zone 3 in accordance with the Uniform Building Code.

B. Protection Standards.

1. Category I.

a. The following shall be prohibited:

i. Structures where the primary occupancy is public assembly, including but not limited to schools, churches, day care centers, hospitals and other medical facilities; and

ii. Facilities for emergency response and public safety.

b. Applications for development other than in subsection (B)(1)(a) of this section shall be accompanied by a geotechnical report, which is approved by the County and prepared in accordance with subsection (C) of this section, below, and which demonstrates that:

i. The slope is less than 80 percent;

and

WAC 365-196-830

Protection of critical areas.

(1) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas of critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs. When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

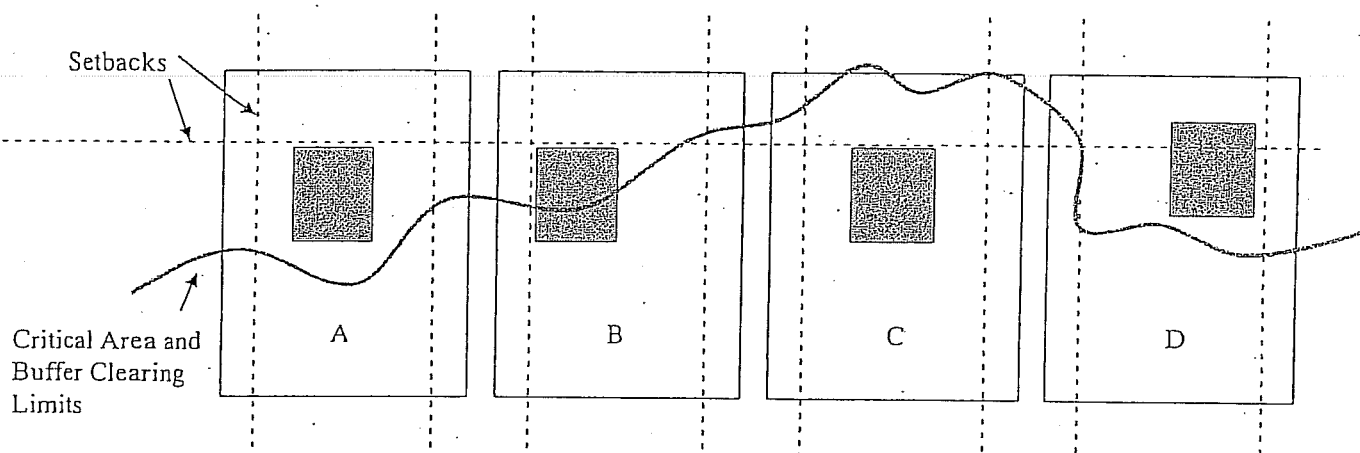
[Statutory Authority: RCW 36.70A.050 and 36.70A.190, 10-03-085, § 365-196-830, filed 1/19/10, effective 2/19/10.]

Excerpt from Washington State Department of Commerce Critical Areas Assistance Handbook

Reasonable Use Exception Permit

Unlike variances, the purpose of a reasonable use exception permit is not to allow general development within critical areas, but to only allow the minimal "reasonable" use of the property so as to avoid a constitutional taking. Section X.10.150 of the Example Code Provisions provides an example of a reasonable use exception that is a compilation of reasonable use processes in use by various jurisdictions.

Four scenarios are sketched on the next page that illustrate situations where a reasonable use exception might or might not be applicable:



Reasonable Use Scenarios

A – No reasonable use would be granted because there is sufficient space outside the critical area clearing limits.

B – A reasonable use permit might be granted since there is insufficient space for a reasonable use. The development area would need to be limited or scaled back in size and located where the impact is minimized.

C – A reasonable use permit would be granted for a minimal development if the property is completely encumbered and mitigation methods are applied.

D – The jurisdiction might consider modifications to the required setback to prevent intrusion into the protection area.

Criteria Consistent With Case Law and Defining Reasonable Use

The criteria for reasonable use permits needs to be consistent with case law to reduce the potential for appeals and overturned decisions. Key to being consistent with case law is careful use of the term "reasonable." Generally, the concept of "reasonable" is left to the courts to decide, thereby making it difficult for cities to rule on whether or not a project qualifies. A reasonable use is often thought to be a modest single-family home, although some other structure might be "reasonable" depending on zoning, adjacent uses, and the size of the property.

The reasonable use permit criteria should allow for "reasonable" uses. If the criteria state that the applicant must demonstrate that no other use "is possible," or that there are "no feasible alternatives," it would conflict with the concept of a "reasonable" use as other "possible" alternatives may be so costly as to be unreasonable. "Possible" alternatives may also not meet the objectives of the property owner. For example, continued preservation of habitat is a "possible" use of property, but probably not a "reasonable" use for the owner.

Reasonable Use Exceptions - RUE

Reasonable Use Exceptions (RUE) are code provisions based on the Washington State Constitution's prohibition against taking private property for public purposes without just compensation. These provisions are used as a "safety valve" to address exceptional circumstances; not as a general or wide-spread approach to allow development within critical areas.¹

In general, most jurisdictions use all or most of the following criteria to evaluate requests for RUE. These criteria were developed for the Model Code for King County Cities, and have been widely adopted by jurisdictions throughout the state.

1. Application of the critical areas chapter would otherwise deny all reasonable use of the property;
2. There is no other reasonable use consistent with the underlying zoning of the property that has less adverse impact on the critical area and/or associated buffer;
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;
4. Any alteration is the minimum necessary to allow for reasonable use of the property;
5. 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 critical areas chapter or its predecessor; and
6. The applicant may only apply for a reasonable use exception if the requested exception provides relief not otherwise available from a variance approval.

Many jurisdictions follow a tiered approach (like shown in #6 above) that may include the need to first apply for a variance. It is only after that process is complete with a denied variance application, that an application for a RUE is accepted.

The following example code from Yakima County shows more detailed descriptions of these and other criteria:

(1) Reasonable Use Standard. This chapter is not intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable economic use of the subject property, including agricultural use, use or development shall be allowed if an applicant for a proposal demonstrates all the following to the satisfaction of the administrator:

- (a) There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;
- (b) That there is no feasible alternative to the proposed activities, including locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since the effective date of the ordinance codified in this chapter, change in use, reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the critical area and its related buffer;

¹ In some cases, a critical area may be so important that it is justified to purchase it outright or purchase or transfer the development rights associated with the parcel, instead of allowing it to be impacted by development. Local governments sometimes partner with or rely on private non-profit organizations to accomplish such purchases.

(c) That the proposed activities will result in minimum feasible alteration or impairment to the critical area's functional characteristics and its existing environment;

(d) That disturbance of critical areas has been minimized by locating any necessary alteration as far as possible from critical areas and the project employs all reasonable methods to avoid or mitigate adverse effects on critical area functions and values, including maintaining existing topography, and hydrology and maintaining or enhancing existing vegetation through site planning including road or driveway location. Disturbance or activities shall be located in a related buffer to the extent possible rather than in the critical area;

(e) That the proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, or sensitive species or habitats;

(f) That the proposed activities will not significantly affect the quality of ground water or surface water quality;

(g) That the proposed activities comply with all state, local, and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

(h) That any and all alterations to critical areas and their related buffers will be mitigated as required by the provisions of this chapter;

(i) That there will be no injury to nearby public or private property and no significant effect upon the health, safety, or welfare of persons within or outside of the property; and

(j) That the inability to derive reasonable economic use of the property is not the result of deliberate actions by the applicant or prior owners after the effective date of the ordinance codified in this chapter.

(k) In the case of development of a single-family dwelling on a single contiguous parcel under one ownership as of the effective date of the ordinance codified in this chapter, the director may approve up to 2,500 square feet of land disturbance as part of ministerial building permit approval without meeting criteria in subsections (1)(a) and (b) of this section; provided, that additional disturbance may be allowed for a driveway required to be longer than 50 feet in order to meet criteria in subsection (1)(d) of this section.

More specific details for both single family lots and other multifamily, commercial and industrial development are included in the **Mukilteo** CAO:

C. Allowed Reductions for Single-Family Residential Reasonable Use Lots. As provided under state law and the guidelines of the Department of Trade and Economic Development, reasonable use permits shall allow the development of a modest single-family residential home on a critical area lot.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.

2. Development on reasonable use lots shall leave at least seventy percent of the lot undisturbed to protect the critical areas. On small lots seven thousand five hundred square feet or less, a maximum building footprint of two thousand five hundred square feet would be allowed. Additional impervious area for the driveway will be permitted which provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area the use of bridges and open bottom culverts shall be considered minimal impact. Yard areas will be permitted only if they do not encroach into the critical area or buffer.

3. Critical area regulations, buffers and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on reasonable use lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the

potential to result in significant adverse impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

D. Allowed Reductions for Multifamily, Commercial, and Industrial Lots.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.

2. The number of required parking stalls may be reduced by up to forty percent if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.

3. Critical area regulations, buffers, and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on reasonable use lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

E. If upon application of the wetland mitigation and buffer reduction options contained in Chapters 17.52A through 17.52D, and reasonable provisions contained herein, a development cannot be built without further intrusion into the critical area or buffer, then the applicant can pursue a variance under Chapter 17.64, Conditional Uses and Variances.

F. Subdivisions of reasonable use lots will not be allowed unless there is sufficient area to construct all buildings, driveways, drainage facilities, landscaping, and yards areas without intruding on the critical area, buffer, or setback. (Ord. 1112 § 3, 2005)

A more limited approach is shown in this code from **Napavine** that applies only to single family residential permits:

A. Reasonable Use Exceptions. The following exceptions shall apply. The city shall apply the standards of this chapter to the maximum extent practicable to avoid and minimize adverse impacts on the functions and values of critical areas and buffers. Mitigation of impacts, consistent with this chapter, is required.

B. Reasonable use exceptions include:

1. The placement or modification of one single-family residence and normal accessory structures on a buildable legal lot of record. The city shall employ reasonable discretion in applying the standards of this chapter to limit the proposed location and size of structures and removal of native vegetation.

2. The expansion of a home or accessory structure on a lot that does not show building or development envelopes, wetlands or wetland buffers on the recorded plat, not to exceed fifty percent (50%) of the existing building footprint.
3. The replacement of single-wide mobile home with another dwelling and normal accessory structures, per NDC.
4. Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.

Bainbridge Island is more specific about what is expected of an applicant for a RUE, including the need to explore using other code provisions, such as buffer averaging or a habitat management plan, as well as other any other applicable programs that the city may have established, such as the purchase or transfer of development rights.

16.20.080 Reasonable use exceptions.

A. Applicability and Intent. A reasonable use exception (RUE) is intended to ensure reasonable use of a property when reasonable use of that property cannot be achieved through any other means. An applicant may request an RUE pursuant to this section if the applicant demonstrates that:

1. The subject property is encumbered to such an extent by critical areas and/or water quality buffers that application of this chapter would deny all reasonable use of the subject property; and
2. Reasonable use of the subject property cannot be achieved through buffer averaging (BIMC 16.20.050.B), a habitat management plan (BIMC 16.20.060), or a variance (BIMC 16.20.070).

B. Exception Request and Review Process. An application for an RUE shall be made to the city and shall include a critical area report, including mitigation plan, if necessary; and any other relevant information and reports that are necessary, in the opinion of the director, to process and prepare the recommendation on the application, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act, Chapter 43.21C RCW (SEPA documents).

C. After receiving the application, the director shall determine whether the property qualifies for inclusion in any program established by the city that would eliminate the need for a RUE including, but not limited to, programs regarding transfer of development rights, mitigation banking, and open space acquisition. If the property qualifies for inclusion in one or more of such programs, the director shall notify the applicant in writing of such qualification and of the applicable rules and regulations, and shall send an application form for inclusion in such program(s). If the property is included in one or more of such programs, the application shall be further processed as amended or withdrawn, as appropriate.

D. After receiving the application, the city may, at its sole discretion, offer to purchase the development rights rather than grant an RUE, and the applicant, at his/her sole discretion, may agree to accept the offer to purchase said development rights rather than pursue an RUE.

2. The application of this Title would unreasonably restrict the ability to provide utility services to the public;
3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
5. The proposal is consistent with other applicable regulations and standards.

E. **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.

A reasonable use exception is a measure of last resort for use only in those situations where all economic use of a property would be denied by the critical areas regulations.

X.10.150 Exception – Reasonable Use

A. If the application of this Title would deny all reasonable economic use of the subject property, the [city/county] shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this Section.

B. **Exception Request and Review Process.** An application for a reasonable use exception shall be made to the [city/county] and shall include a critical area identification form; critical area 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 43.21C RCW) (SEPA documents). The [director] shall prepare a recommendation to the [hearing body/examiner] based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in Subsection (D).

C. **[Hearing Body/Examiner] Review.** The [hearing body/examiner] shall review the application and conduct a public hearing pursuant to the provisions of the [applicable city/county chapter]. The [hearing body/examiner] shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in Subsection (D).

D. **Reasonable Use Review Criteria.** Criteria for review and approval of reasonable use exceptions follow, one or more may apply:

1. The application of this Title would deny all reasonable economic use of the property;
2. No other reasonable economic use of the property has less impact on the critical area;
3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this Title, or its predecessor;
5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
6. The proposal will result in no net loss of critical area functions and values consistent with the best available science; or
7. The proposal is consistent with other applicable regulations and standards.

E. **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.

ALLOWED ACTIVITIES

X.10.160 Allowed Activities

A. **Critical Area Report.** Activities allowed under this Title shall have been reviewed and permitted or approved by the [city/county] or other agency with jurisdiction, but do not require submittal of a separate critical area identification form or critical area report, unless such submittal was required previously for the underlying permit. The [director] may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this Title to protect critical areas.

B. **Required Use of Best Management Practices.** All allowed activities shall be conducted using the best management practices, adopted pursuant to [*locally adopted best management practices, such as the stormwater management regulations*], that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The [city/county] shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. **Allowed Activities.** The following activities are allowed:

1. **Permit Requests Subsequent to Previous Critical Area Review.** 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) if all of the following conditions have been met:

Allowed activities are similar to exemptions in that they do not require critical area review. However, unlike exemptions, allowed activities must follow the critical areas standards. Conditions may be applied to the underlying permit, such as the building permit, to ensure critical area protection.

The purpose of Subsection (C)(1), regarding previous reviews, is to recognize that an applicant should not need to complete a new critical area review for a project that has just had a previous review completed. For example, if critical areas were reviewed and addressed during platting,