

**Ski Acres Estates Reasonable Use
File Number RU-22-00001
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

I. GENERAL INFORMATION

Requested Action: Snopass SF Lofts LLC, property owner, submitted a reasonable use exception request to the 150-foot Type F stream critical area buffer to accommodate access and future building envelopes to adjacent lots within the buffer. Reasonable use exceptions are processed under KCC 17A.01.060.

Location: The subject properties are parcel #'s: 418135, 408135, 398135, 388135, 378135, 368135 and a part of the Ski Acres Estates Plat that are located off Tanner Way, approximately 0.6 miles from the intersection of Hyak Dr and State Route 906 in Snoqualmie Pass, WA in Section 9, Township 22, Range 11.

II. SITE INFORMATION

Total Property Size:	1.6
Number of Lots:	6 (no new lots are being proposed)
Domestic Water:	Snoqualmie Pass Utility District
Sewage Disposal:	Snoqualmie Pass Utility District
Power/Electricity:	PSE
Fire Protection:	Snoqualmie Pass Fire and Rescue

Site Characteristics:

North: Primarily residential development
South: Mostly Forested Lands
East: SR 906/I-90/Forested Lands
West: Ski Resort Areas

Access: The site is accessed via Tanner Way that is accessed by State Route 906.

III. ZONING, ENVIRONMENTAL AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Residential (R). The purpose and intent of the Residential zone is to provide for and protect areas for homesite development designed to meet contemporary building and living standards where public water and sewer systems are provided.

The Residential zoning designation has required setbacks of 25 feet for the front, 5 feet for the side and 15 feet for the rear. It also has a maximum 30% building coverage and 2.5 stories or 35-foot height limit (whichever is less). The proposed building pads do not meet the required front setbacks for most of the lots. This is due to the encroachment into the critical areas buffer and to protect the quality of the stream. The 1,250 square foot proposed building pads fall below the 30% maximum building coverage.

The applicant is requesting to utilize the reasonable use exception process pursuant to KCC 17.A.01.060(2), to deviate from the prescribed critical area setback requirements in KCC 17A.04.030 regarding the required Type F stream setbacks (150 ft). Title 17A.01.060(2)(c) of the Kittitas County Code outlines seven criteria in which a reasonable use can be granted. The applicant must demonstrate that the proposal **has met all seven criteria**. The following is a summary describing whether or not each criterion has been satisfactorily demonstrated:

KCC 17A.01.060(2)(c) Granting Criteria (all seven must be met):

1. The application of this Title would deny all economic use of the property.

Applicant Response

“The existing 6 parcels are zoned for a single family home on each. To not allow the construction of a home on each parcel, as well as an access road to access each parcel would deny the legal all reasonable economic use of the property”

Staff Response

CDS staff have reviewed the complete file information, including but not limited to the applicant submitted information and comments received during the comment period. KCC 17A.01.060(2)(a) allows consideration of additional information such as zoning and adjacent land uses to determine what is considered reasonable use for a site. The original Ski Acres Estates plat was recorded in 1968 and the lots were/are intended for residential development. At the time these lots were platted, there were no critical areas that affected the properties. The current buffer (effective 2/7/2022) into the lots and the road that would access these lots denies all reasonable economic use of the property. CDS finds that the applicant has satisfied the criteria outlined in KCC17A.01.060(2)(c)(i).

The applicant has demonstrated in a factual and meaningful way that the application of this Title (KCC 17A) would deny all economic use of the property. The reasonable use exemption request, as presented, is consistent with KCC 17A.01.060(2)(c)(i).

2. No other reasonable economic use of the property has less impact on the critical area and its buffer

Applicant Response

“There is no other use of these parcels other than for a single family home with less impact on the stream buffer than is proposed on the existing attached site plan”

Staff Response

CDS staff have reviewed the complete file information, including but not limited to the applicants submitted information and comments received during the comment period. CDS agrees that unless the applicant does nothing with the property, single-family homes have the least amount of impact on the stream buffer and are the most consistent with existing adjacent land uses..

The applicant has demonstrated in a factual and meaningful way there are no other reasonable economic uses that have less impact on the critical area and its buffer on the property. The reasonable use exemption request, as presented, is consistent with KCC 17A.01.060(2)(c)(ii).

3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property.

Applicant Response

“The proposed access road is the minimal needed to service the existing parcels and meet all standards such as fire access and county minimum widths. The homes sizes have been kept minimal with average footprints of 1,250sf in size which is approximately 20% smaller than the average footprint for recently permitted houses in the neighborhood based upon recent building permit documents.”

Staff Response

The road to serve the lots must meet minimum county road standards and fire access requirements. The lots are already small and lots in this zone can only have a 30% maximum lot coverage to begin with. Staff finds that the footprints of 1,250 sq. ft. in size to be reasonable for a single-family house size and allowing economic use of the property.

The applicant has demonstrated in a factual and meaningful way that the proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property. The reasonable use exemption request, as presented, is consistent with KCC 17A.01.060(2)(c)(iii).

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

Applicant Response

“The existing single parcels existed prior to the enactment of the stream buffer which now require this reasonable use, which went into effect December of 2021. These parcels existed prior to the effective date of this Title and is not a result of any action taken by the owner of these parcels.

Staff Response

The original Ski Acres Estates plat was recorded in 1968 and the lots were/are intended for residential development. At the time these lots were platted, there were no critical areas that affected the properties. The current critical areas buffer (effective 2/7/2022) increased the buffers on this property that derived the property of reasonable economic use.

The applicant has demonstrated in a factual and meaningful way that the proposal is not the result of actions taken by the applicant after the effective date of this Title (KCC 17A). The reasonable use exemption request, as presented, is consistent with KCC 17A.01.060(2)(c)(iv).

5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site

Applicant Response

“The proposed access road and single family home building pads does not pose any threat to public health, safety or welfare on or off the development site.”

Staff Response

The proposal has similar qualities to other single-family developments and will not pose an unreasonable threat to public health, safety and welfare. The applicant has already completed a SEPA checklist and was issued a Mitigated Determination of Non-Significance (MDNS) that addresses any of these concerns. The creek does not serve as drinking water for any residents.

The applicant has demonstrated in a factual and meaningful way that the proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site. The reasonable use exemption request, as presented, is consistent with KCC 17A.01.060(2)(c)(v).

6. The proposal will result in no net loss of critical area functions and values consistent with the best available science

Applicant Response

“The proposed cumulative impacts from the access road and single family home pads totals of 12,082sf of

existing buffer. In addition, an area of 4,940sf of temporary impacts to the buffer will be required due to existing topography and the requirement to flatten out some of these areas for building pads and the access road.

To compensate for the 12,082sf of permanent impact to the buffer from the homes and road, a total of 9,924sf of existing buffer will be enhanced through removal of any trash and the replanting of degraded buffer areas with native trees and shrubs to include mountain hemlock, silver fir, douglas fir, vine ample and huckleberry. In addition, large woody debris will be placed within the buffers and along the stream utilizing trees removed from the building area to enhance some wildlife habitat.

The proposed temporary impacts will be mitigated through replanting with a mix of native trees and shrubs to restore the buffer functions temporarily impacted during construction.

The proposed buffer enhancement and restoration will result in no net loss of buffer function to the stream, and utilizes best available science.”

Staff Response

The applicant’s proposal for mitigation results in no net loss of ecological functions through replanting and enhancement of wildlife habitat along the stream. The associated SEPA MDNS ensures consistency with the Kittitas County Critical Areas Ordinance.

The applicant has demonstrated in a factual and meaningful way that the proposal will result in no net loss of critical area functions and values consistent with the best available science. The reasonable use exemption request, as presented, is consistent with KCC 17A.01.060(2)(c)(vi).

7. The proposal is consistent with other application regulations and standards.

Applicant Response

“The proposal is consistent with other applicable regulations and standards.”

Staff Response

The proposal is conditioned to be consistent with all other applicable regulations and standards. The applicant has already completed a SEPA (MDNS) and grading permit for this proposal.

The applicant has demonstrated in a factual and meaningful way that the proposal is consistent with other application regulations and standards. The reasonable use exemption request, as presented, is consistent with KCC 17A.01.060(2)(c)(vii).

Staff Conclusions

Staff finds that the reasonable use exception request **does** meet all seven criteria outlined in KCC 17A.01.060(2)(c) as described above. Therefore, the critical areas reasonable use request is consistent with the conditions necessary to grant a reasonable use exception under KCC 17A.01.060(2)(c)

IV. ADMINISTRATIVE REVIEW

Deem Complete: The application was determined complete on March 18, 2022.

Notice of Application: Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on March 31, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on April 15, 2022 and all

comments were transmitted to the applicant on April 21, 2022.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found that GIS indicated a Type Ns (formerly type 4) stream on the property also known as Tunnel Creek. Due to concerns about the stream from the applicant's previous SEPA application (SE-21-00012 Ski Acres), a site visit was conducted with County Staff, Fish & Wildlife and Department of Natural Resources where the stream was actually identified as a Type F stream. The current required setback in KCC 17A.04.030.4 is a 150-foot buffer from the Ordinary High Water Mark (OHWM) of the creek since it is within the Cascade Ecoregion. This does not include the additional 15' setback in KCC 17A.01.090.5. The applicant included proposed building envelopes for the associated residences. The specific placement of these structures was a consideration in the reasonable use review. The proposal is within the required setback and requires a reasonable use since a buffer averaging plan could not meet the setback requirements of the stream. The reasonable use would alleviate concerns regarding encroachments to the setback of the stream with a full mitigation plan. CDS has determined that the Ski Acres Estates is not exempt from SEPA review and the applicant has applied and received an Mitigated Determination of Non-Significance (MDNS) for the project.

VI. AGENCY AND PUBLIC COMMENTS

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments are on file and available for public review.

VII. PROJECT ANALYSIS

In review of this proposal, it is important to consider the applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Consistency with the provisions of KCC 17A, Critical Areas:

CDS performed a critical area review of the subject parcel and found that GIS indicated a Type Ns (formerly type 4) stream on the property also known as Tunnel Creek. Due to concerns about the stream from the applicant's previous SEPA application (SE-21-00012 Ski Acres), a site visit was conducted with County Staff, Fish & Wildlife and Department of Natural Resources where the stream was actually identified as a Type F stream. The current required setback in KCC 17A.04.030.4 is a 150-foot buffer from the Ordinary High Water Mark (OHWM) of the creek since it is within the Cascade Ecoregion. This does not include the additional 15' setback in KCC 17A.01.090.5. The applicant included proposed building envelopes for the associated residences. The specific placement of these structures was a consideration in the reasonable use review. The proposal is within the required setback and requires a reasonable use since a buffer averaging plan could not meet the setback requirements of the stream. The reasonable use would alleviate concerns regarding encroachments to the setback of the stream with a full mitigation plan. CDS has determined that the Ski Acres Estates is not exempt from SEPA review and the applicant has applied and received an Mitigated Determination of Non-Significance (MDNS) for the project. With the reasonable use and mitigation, this project is consistent with the provisions of KCC 17A.

Consistency with the provisions of KCC 17.16 – Residential Zone:

This proposal, is not consistent with the setbacks outlined in Kittitas County Zoning Code 17.16

Residential Zone but as conditioned, the proposal identifies reasonable building envelopes for the associated structures to ensure ecological functions are not negatively impacted. The specific placement of these structures was a consideration in the reasonable use review.

Consistency with the provisions of the KCC Title 14.04, Building Code:

All buildings must be consistent with International Building Codes and approved building plans as issued by Kittitas County.

Consistency with the provisions of KCC Title 20, Fire and Life Safety:

The proposal must be consistent with the provisions of KCC Title 20.

Agency Comments:

Timely comments were received from the following agencies during the comment period: Kittitas County Public Works and Washington Department of Fish & Wildlife. All comments are on file and available for public review.

Kittitas County Public Works (KCPW)

Kittitas County Public Works provided comment on this application on April 14, 2022. KCPW commented that they recommend approval of the reasonable use application based on the following conditions:

- All applicable standards described in Kittitas County Code Chapter 12 shall apply to any proposed development. Further comments may be made when additional permits are submitted
- All property corners disturbed or destroyed by this construction shall be replaced by a Surveyor licensed to practice in the State of Washington.
- No anticipated flood concerns are identified for this proposal. The applicant has demonstrated through the grading permit process (GP-21-00010) that drainage will be maintained.

Staff Response

CDS has provided these comments to the applicant and conditioned this determination to ensure the applicant shall obtain all necessary permits required by KCPW for this development and meet all Kittitas County Road and Bridge Standards.

Washington State Department of Fish & Wildlife (WDFW)

Washington State Department of Fish & Wildlife provided comments on this application on March 31, 2022. They commented that they held a previous site visit with the applicant and are not opposed to the reasonable use accommodation as long as there a mitigation plan to ensure no net loss of functions to the riparian area. WDFW mentioned that the current mitigation place lacks details on location of replanting and removal of trees, and as such they are requesting the application be put on hold until a detailed mitigation plan and a site visit can be conducted.

Applicant Response

The applicant responded to WDFW's comments on April 4, 2022 saying that they were sorry for the lack of detail in the mitigation plan but the timing with snow on site made it difficult to get into the granular planning on the site and hope to have a more detailed plan in May. They attached a tree survey of the property indicating what trees would be removed. They were hoping they could get a site visit put together to finalize a detailed mitigation plan in May.

Staff Response

CDS has provided these comments to the applicant on 4/1 and the applicant responded (see above). Staff has conditioned this determination to provide a detailed mitigation plan for approval prior to work taking place. A site visit was scheduled with WDFW, Ed Sewall of Sewall Wetland Consulting Inc., and county staff in May.

Washington State Department of Fish & Wildlife (WDFW)

Washington State Department of Fish & Wildlife provided response comments to the Owner’s response comments from the March 31, 2022 WDFW comments on April 15, 2022. They mentioned that they thought they could allow some encroachment but still need to stay away enough from the creek to provide shade for the stream and other riparian protections. They thought some of the tree removal was too close to the stream regardless of mitigation and mentioned potential distances of trees being removed. They also commented to ask how the homeowners would keep the enhancements in when they are right in their backyard and asked for a site visit.

Staff Response

Staff has conditioned this determination to provide a detailed mitigation plan for approval prior to work taking place. A site visit was scheduled with WDFW, Ed Sewall of Sewall Wetland Consulting Inc., and county staff in May. An additional condition was added to have notice on title so that homeowners are aware to keep the enhancements.

Public Comments:

There were no public comments for this reasonable use request.

All comments received during the comment period were transmitted to the applicant on April 21, 2022. The applicant responded on April 26, 2022 and said they did not have any response other than the dialogue that has already occurred with Fish & Wildlife.

VIII. FINDINGS OF FACT

1. Snopass SF Lofts LLC, property owner, submitted a reasonable use exception to the 150-foot Type F stream critical area buffer to accommodate access and future building envelopes to adjacent lots within the buffer
2. Parcel #'s: 418135, 408135, 398135, 388135, 378135, 368135 and a part of the Ski Acres Estates Plat that are located off Tanner Way, approximately 0.6 miles from the intersection of Hyak Dr and State Route 906 in Snoqualmie Pass, WA in Section 9, Township 22, Range 11.

3. Site Information

Total Property Size:	1.6 acres
Number of Lots:	6 (no new lots are being proposed)
Domestic Water:	Snoqualmie Pass Utility District
Sewage Disposal:	Snoqualmie Pass Utility District
Power/Electricity:	PSE
Fire Protection:	Snoqualmie Pass Fire and Rescue

4. Site Characteristics:

North: Primarily residential development

South: Mostly Forested Lands
East: SR 906/I-90/Forested Lands
West: Ski Resort Areas

The site is accessed via Tanner Way that is accessed by State Route 906.

5. The Comprehensive Plan land use designation is “LAMIRD” with a zoning designation of LAMIRD Type 1 Residential.
6. The purpose and intent of the Residential zone is to provide for and protect areas for homesite development designed to meet contemporary building and living standards where public water and sewer systems are provided.
7. A Reasonable Use Application was submitted to Kittitas County Community Development Services department on March 9, 2022.
8. The application was determined complete on March 18, 2022.
9. Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on March 31, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on April 15, 2022 and all comments were transmitted to the applicant on April 21, 2022.
10. CDS performed a critical area review of the subject parcel and found that GIS indicated a Type Ns (formerly type 4) stream on the property also known as Tunnel Creek. Due to concerns about the stream from the applicant’s previous SEPA application (SE-21-00012 Ski Acres), a site visit was conducted with County Staff, Fish & Wildlife and Department of Natural Resources where the stream was actually identified as a Type F stream. The current required setback in KCC 17A.04.030.4 is a 150-foot buffer from the Ordinary High Water Mark (OHWM) of the creek since it is within the Cascade Ecoregion. This does not include the additional 15’ setback in KCC 17A.01.090.5. The applicant included proposed building envelopes for the associated residences. The specific placement of these structures was a consideration in the reasonable use review. The proposal is within the required setback and requires a reasonable use since a buffer averaging plan could not meet the setback requirements of the stream. The reasonable use would alleviate concerns regarding encroachments to the setback of the stream with a full mitigation plan. CDS has determined that the Ski Acres Estates is not exempt from SEPA review and the applicant has applied and received an Mitigated Determination of Non-Significance (MDNS) for the project.
11. The proposal is consistent with the provisions of KCC 17A, Critical Areas as conditioned.
12. The proposal is consistent with the reasonable use exception criteria in KCC 17A.01.060(2)(c). All seven criteria have been satisfied.
13. The proposal is not consistent with the provisions of KCC 17.30, R-Residential zoning but as conditioned, the proposal identifies reasonable building envelopes for the associated structures to ensure ecological functions are not negatively impacted.
14. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code as conditioned.
15. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety, as conditioned.

16. The proposal is consistent with the provisions of KCC Title 12, Roads and Bridges as conditioned.
17. Comments were received from the following agencies during the comment period: Kittitas County Public Works and Washington Department of Fish & Wildlife. All comments are on file and available for public review.
18. No public comment was received.

IX. STAFF CONCLUSIONS:

1. This proposal has satisfied all seven criteria of KCC Title 17A.01.060(2)(c).
2. The proposal is consistent with state and federal regulations.
3. The proposal is consistent with local regulations including Kittitas County Code Title 12 Roads and Bridges, Title 14.04 Building Code, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire and Life Safety.

X. DECISION AND CONDITIONS OF APPROVAL:

Kittitas County Community Development Services finds that the Ski Acres Estates Reasonable Use Exemption Request (RU-22-00001) is hereby **approved**. The Ski Acres Estates Reasonable Use Exemption Request has satisfied the requirements of a reasonable use exception pursuant to KCC 17A.01.060(2)(c).

CONDITIONS OF APPROVAL:

1. The project shall proceed in substantial conformance with the plans and application materials on file with CDS dated March 9, 2022 and subsequent information included in the complete file index except as amended by the conditions herein.
2. The applicant shall comply with all local, State and Federal environmental standards and regulations in place at the time of building permit application submittal.
3. The applicant shall obtain all necessary permits required by Kittitas County Public Works for this development, and no structure shall encroach upon any easement or right-of-way.
4. All property corners disturbed or destroyed by this construction shall be replaced by a Surveyor licensed to practice in the State of Washington.
5. All current and future owners must comply with International Fire Code.
6. A detailed mitigation plan including a monitoring plan must be submitted and approved by Kittitas County, in consultation with Department of Fish & Wildlife, prior to any work (clearing, grading) being done on site. Any necessary site plan modification resulting from the detailed mitigation plan review shall remain consistent with Title 17A and be submitted concurrently with the detailed mitigation plan for Kittitas County review and approval. The detailed mitigation plan shall be in compliance with KCC 17A.01.100(2).
7. All buffers approved as part of the reasonable use shall be marked in the field with signage or other identification as seen in KCC 17A.01.090 with a permanent indicator when construction is complete. Temporary markings may be used during construction.

8. Should ground disturbing or other activities related to this proposal result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP), Yakama Nation, and the Snoqualmie Tribe. Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.
9. This associated critical areas report is valid for 5 years. The report shall be updated in 5 years and submitted to Kittitas County for review, if substantial construction has not taken place. Substantial constructions shall mean a poured foundation on approved building pads.
10. Notice on Title shall be recorded with the Kittitas County Auditor's office for all lots involved describing the following:
 - i. The location of the critical area and buffer from approved detailed mitigation plan
 - ii. A statement of as to the applicability of Title 17A to the property including this reasonable use exemption
 - iii. A statement describing limitations on action in or affecting critical area and buffers approved as part of this reasonable use, such as no tree clearing outside of what is approved in the detailed mitigation plan
 - iv. No buildings, structures, landscaping (other than required), decks (covered or uncovered), impervious ground surfaces such as driveways and patios shall be put within any buffer area on the property that are not approved as part of the detailed mitigation plan.

The notice shall be recorded once the detailed mitigation plan is approved. A copy of the recorded notice shall be provided to Kittitas County Community Development Services.

Responsible Official  _____
Jeremiah Cromie

Title: Planner II

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7046

Date: May 19, 2022

Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1550 to the Kittitas County Community Development Services at 411 N Ruby St Ste. 2, Ellensburg, WA 98926. Timely appeals must be received no later than 5:00pm June 3, 2022. Aggrieved parties are encouraged to contact Community Development

Services at (509) 962-7506 for more information on the appeal process.