

**Immer Reasonable Use  
File Number RU-25-00001  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**I. GENERAL INFORMATION**

Requested Action: Chris Immer, property owner, submitted a reasonable use to build an accessory building & driveway to access the accessory building from the road. Reasonable Use exceptions are processed under KCC 17A.01.060.

Location: The subject properties are parcels 738035. The parcel is located off Jay Way, west of the intersection of Jay Way & Yellowstone Road by 0.05 miles in Snoqualmie Pass, WA. bearing Assessor's Map number 22-11-09052-0009 in Kittitas County.

**II. SITE INFORMATION**

Total Property Size:	0.35 acres
Number of Lots:	1
Domestic Water:	Future connection to Snoqualmie Pass Utility District
Sewage Disposal:	Future connection to Snoqualmie Pass Utility District
Fire Protection:	Snoqualmie Pass Fire & Rescue

Site Characteristics:

North: Primarily residential & forest lands  
South: Interstate 90 and ski resort.  
East: Primarily residential & forest lands  
West: Interstate 90 and ski resort.

Access: The site is accessed via Jay Way.

**III. ZONING, ENVIRONMENTAL AND DEVELOPMENT STANDARDS**

The subject properties have a zoning designation of Residential. The subject properties have a land use designation of LAMIRD.

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 at Snoqualmie Pass has required setbacks of 25 feet for the front, 5 feet for the side and 15 feet for the rear. The proposed project occurs within the associated Type 2 (F) fish-bearing stream buffer and the wetland buffer for wetland A on the properties.

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 buffer requirements in KCC 17A.04.030 regarding the required Type F stream buffer (150 ft) and the KCC 17A.07.030 regarding the required category 2 wetland buffer (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 parcels are 100% covered with wetland and or stream buffer. The parcels are zoned for single family homes. There is no way to build on these parcels as allowed by the zoning without impacting buffer. This would deny the legal 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. The current critical areas and associated buffers for the lot, as outlined in the Critical Areas report, deny all reasonable economic use of the property.

**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 buffers.*

Staff Response

CDS staff have reviewed the complete file information, including but not limited to the applicant's submitted information and comments received during the comment period. CDS believes that unless the applicant does nothing with the property, an accessory building has the least amount of impact on the critical areas & their associated buffers.

**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 construction of a single family home on each parcel would include a reasonably sized structure typical for the neighborhood and minimizing buffer impact.*

Staff Response

The accessory building will present the minimum necessary impact to the critical area while allowing reasonable 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 parcels existed prior to the enactment of the regulations of wetland and streams and their associated buffers. As a result of the critical area regulations these parcels now require this reasonable use, which went into effect in 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 owners of these parcels.*

Staff Response

The critical areas and their corresponding buffers impact the buildable area of the property, making it difficult to utilize the property for any economic means. 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

*A single family home on each of these parcels does not pose any threat to public health, safety or welfare on or off the site.*

Staff Response

The proposal has similar qualities to other accessory buildings & single-family residences and will not pose an unreasonable threat to public health, safety and welfare.

**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 any structure constructed on each parcel would not impact the functions of any of these critical areas. To compensate for any impacts mitigation measures would be undertaken at an appropriate ratio of 1:1 for impacts to include thinning of overstory trees and placement of an appropriate native shrub understory. Currently the majority of the parcels consists of a dense, dark forest with too many closely spaced immature trees. Thinning and placement of native understory shrubs would increase the functions of these buffers. The proposed buffer enhancement will result in no net loss of buffer function to the critical areas and utilizes best available science.*

Staff Response

With the assistance of the Washington Department of Fish & Wildlife, the applicant is proposing mitigation measures to protect and enhance the stream buffer and stream. CDS has conditioned this determination to ensure the applicant works with the Washington Department of Fish & Wildlife to develop a mitigation plan that results in a no net loss of critical area functions and values. CDS has conditioned this determination to ensure the county reviews and approves the mitigation plan.

**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 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). The reasonable use application and supporting materials were reviewed using the critical areas code (KCC 17A) that was current at the time the application was submitted.

#### **IV. ADMINISTRATIVE REVIEW**

Deem Complete: The application was determined complete on March 12, 2025.

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 13, 2025, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on March 27, 2025, and all comments were transmitted to the applicant on March 28, 2025.

#### **V. ENVIRONMENTAL REVIEW**

The reasonable use application was reviewed using the critical areas code (KCC 17A) that was current at the time the application was submitted. A critical area review was performed by CDS staff and GIS data indicates an R5UBH wetland and Type 2 (F) fish bearing stream on or near the proposed lot. Through a Critical Area report performed by Sewall Wetland Consulting, Inc., it was discovered that there is a Type 2 (F) fish-bearing stream, a category II wetland (Wetland A) and a category III wetland (Wetland B) on or near the site.

For a Type 2 (F) Stream, the required buffer listed in KCC 17A.04.030(4) is a 150' buffer from the Ordinary High-Water Mark (OHWM) of the creek within the Cascade Ecoregion. This does not include the additional 15' building setback in KCC 17A.01.090.5.

Wetland A, a category II wetland has a 150'buffer for land use with moderate impacts. This does not include the additional 15' building setback in KCC 17A.01.090.5.

Wetland B, a category III wetland has a 110'buffer for land use with moderate impacts. This does not

include the additional 15' building setback in KCC 17A.01.090.5.

The proposal is within the required buffers for the Type 2 (F) stream and category II wetland and requires a reasonable use exception.

Per an updated site plan submitted by the applicant as part of a proposed mitigation plan, the proposed development will disturb 2,873 square feet of critical area buffer. The amount of wetland buffer being impacted is 2,233 square feet. Per KCC 17A.07.070.6, the wetland mitigation restoration ratio for Category II, forested areas is 4:1. Therefore, the 2,233 square feet of disturbance in the wetland buffer will require 8,932 square feet of mitigation. The remaining critical area buffer impact of 2,873 (total buffer impact) – 2,233 (wetland buffer portion) = 640 square feet which includes only the stream buffer impact. The mitigation area for the stream buffer is 1:1. Therefore, the mitigation area for the stream impact of 640 square feet is 640 square feet. The wetland mitigation area of 8,932 square feet and the 640 square feet of stream mitigation area are added together for a total buffer mitigation of 9,572 square feet.

The amount of available space on parcel # 738035 is inadequate to properly mitigate the disturbance created by the proposed development. KCC 17A.01.100(4) allows mitigation banking and in-lieu fee mitigation. With the assistance of the Washington Department of Fish & Wildlife, the applicant agrees to develop a mitigation plan to protect and enhance the stream buffer and stream. CDS has conditioned this determination to ensure the applicant works with the Washington Department of Fish & Wildlife to develop a mitigation plan that results in a no net loss of critical area functions and values. CDS has conditioned this determination to ensure the county reviews and approves the mitigation plan.

## 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.

### Agency Comments:

Comments were received from the following agencies during the comment period: Kittitas County Fire Marshal, Washington Department of Health – Office of Drinking Water (WA DOH ODW), Yakima Nation Fisheries, Kittitas County Public Works, Washington Department of Fish & Wildlife, Washington Department of Transportation. All comments are on file and available for public review.

### Kittitas County Fire Marshal

Must meet code requirements for Wildland Urban Interface and driveway requirements at time of building permit.

### Applicant Response

*The applicant provided no response.*

### Staff Response

*CDS has conditioned this determination to ensure the applicant shall meet the Wildland Urban Interface and driveway requirements as outlined by the Fire Marshal.*

### WA DOH ODW

I will be forwarding this to DOH ODW on the west side who manage King County and have responsibility for the Snoqualmie Pass Water District.

### Applicant Response

*The applicant provided no response.*

Staff Response

*CDS has provided these comments to the applicant.*

Yakima Nation Fisheries

The project, RU-25-00001 Immer, Lies within the Ceded lands/ Usual & Accustomed area of the confederated Tribes and Bands of the Yakama Nation. The project review didn't yield any new information that would require further investigation of the potential impacts on Archaeological/ Cultural Resources. I am also attaching an Inadvertent Discovery Plan which you can share with the contractor.

Applicant Response

*The applicant provided no response.*

Staff Response

*CDS has shared the comments with the applicant and conditioned this determination to ensure the applicant shall have an Inadvertent Discovery Plan (IDP) in place prior to beginning construction.*

Kittitas County Public Works (KCPW)

Kittitas County Public Works provided comment on this application on March 26, 2025.

ACCESS

- An approved access permit shall be required from the Kittitas County Department of Public Works prior to creating any new driveway access or altering an existing access.
- Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
- Roads not certified and associated with plats or lots approved prior to the development of Kittitas County 2015 Road Standards shall be certified to Kittitas County 2015 Road Standards.
- In addition to the above-mentioned conditions, all applicable Kittitas County Road Standards apply to this proposal. Access is not guaranteed to any existing or created parcel on this application.

ENGINEERING

- Except as exempted in KCC 14.05.060, no grading or filling upon a site involving more than one hundred (100) cubic yards shall be performed without a grading permit from the County Engineer or Public Works designee (KCC 14.05.050). An application for grading in excess of five hundred (500) cubic yards shall be accompanied by an engineered grading plan (KCC 14.05.080).

SURVEY

- Given that the proposed building site is to be as close as possible to setback lines, I propose that a licensed land surveyor be utilized to stake out the building envelope, in order to ensure that the building does not encroach on neighboring parcels.

TRANSPORTATION CONCURRENCY

- No transportation concurrency requirement for this project.

FLOOD

- Parcel #738035 is not mapped within a FEMA identified special flood hazard area (100-year floodplain). A floodplain development permit is not required for the proposed project.

Applicant Response

*The applicant provided no response.*

### 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.*

### Washington State Department of Fish & Wildlife (WDFW)

Thank you for the opportunity to comment on RU-25-00001, a reasonable use application to build an accessory building and driveway access road at 101 Jay Way, Snoqualmie Pass (Kittitas County parcel 738035). The Washington Department of Fish and Wildlife (WDFW) is familiar with the area and has reviewed the application materials on file. Our comments are regarding the project's impact on Fish and Wildlife Habitat Conservation Areas, such as priority habitats and species (PHS), particularly stream and wetland habitats.

Coal Creek, a perennial fish-bearing tributary to Lake Keechelus, is located on the northeastern portion of parcel 738035, as reflected in the Critical Areas Report. Coal Creek is an important tributary that provides habitat for native salmonids, such as Endangered Species Act (ESA) listed bull trout, and westslope cutthroat trout.

The project area is also located within a large wetland complex. Wetlands are crucial ecosystems that provide habitat for a wide variety of fish, amphibians, reptiles, birds, mammals and beyond. Wetlands also have human-related benefits, such as flood control and water quality improvement. Any infrastructure-related impacts to Coal Creek or the wetlands are likely to degrade the habitat quality and quantity.

Coal Creek and the wetland complex are designated Fish and Wildlife Habitat Conservation Areas (FWHCAs) under Kittitas County's Critical Areas Ordinance (CAO; Chapter 17A.04) and mitigation for alteration or impacts to these areas shall achieve equivalent or greater biological functions (Chapter 17A.04.070).

The proposed mitigation ratio of 1:1 as suggested in the Critical Areas Report is inadequate to achieve equivalent or greater biological functions and needs to be increased to be consistent with Kittitas County's CAO. The parcel is within the buffer of a forested Category II wetland, per the Critical Areas Report. Kittitas County CAO lists mitigation ratios for Category II forested wetlands from 4:1 (Restoration) up to 16:1 (Enhancement). While no mitigation ratios are listed for disturbance to riparian areas, the standard is that the mitigation must achieve no net loss, including loss of shade and any impervious surfaces being placed within the Riparian Management Zone (RMZ) that would preclude ecosystem function.

When evaluating the proposed development on parcel 738035, it's imperative to consider the development that has already occurred adjacent to the site along Coal Creek. On the parcel to the east, Kittitas County parcel 768035 which is also owned by Mr. Immer, a new residence was permitted in 2021. The residence is very near to Coal Creek, thus as part of the development, bio-engineered bank armoring was constructed along the streambank to harden the northern bank to protect the new residence. As designed, the armoring forces Coal Creek to migrate to the south, within parcel 738035 currently proposed for development. The existing development has direct and negative impacts to FWHCAs.

Further, it's unclear and we request clarification on whether this proposal is only for Kittitas County parcel 738035 or if the additional parcels mentioned within the project narrative and included in the Critical Areas Report are included. If there is a larger development planned for the Jay Way parcels referenced, the development and mitigation should be evaluated as a whole and not piecemealed by individual parcel.

WDFW requests that Kittitas County include development of a comprehensive Habitat Management Plan (HMP) to be reviewed and approved by WDFW prior to approval of the reasonable use application. A completed HMP is necessary to evaluate if the application meets the no net loss standard of critical areas function required for approval of the application. The plan should quantify the proposed development impacts and identify appropriate mitigation for all stream and wetland impacts, consistent with the Best Available Science and associated recommendations.

To evaluate the HMP for sufficiency to offset impacts to the RMZ and wetlands, WDFW requests a site visit with the applicant, County, and Department of Ecology when the ground is free of snow to fully understand the impacts and whether proposed mitigation is sufficient. We ask that the Department of Ecology be included in the site visit as this reasonable use involves impacts to both riparian and wetlands, and a combined discussion is needed to evaluate and mitigate for overall impacts. We ask that the applicant prepare a revised mitigation plan to be shared with WDFW prior to a site visit. Without a sufficient mitigation plan to offset impacts to both the RMZ and wetland, WDFW recommends disapproval of this application due to the impacts that development of this parcel could cause to the riparian and wetland ecosystems.

#### Applicant Response

*Cassandra stated that WDFW wants us to be able to use our property and was assuring that we could work out a plan that will allow us to continue to use our property appropriately. As you may know from her letter, I have successfully worked out a plan with my other lot that is connected. I worked with her predecessor to achieve the desires/specs of WDFW.*

*I believe Cassandra's current disapproval of our project is based on the fact she has not had eyes on it yet and can't without empirical evidence make a proper judgement while sitting at her desk. Cassandra also makes mention of the fact that "it's unclear and we request clarification on whether this proposal is only for Kittitas County parcel 738035 or if the additional parcels mentioned within the project narrative and included in the Critical Areas Report are included. If there is a larger development planned for the Jay Way parcels referenced, the development and mitigation should be evaluated as a whole and not piecemealed by individual parcel."*

*Although I am not speaking for any other lot owners, I do know however that there are others that will be pursuing permits as soon as we get some hard answers to the many questions that continue to arise. We are all open to having a meeting with all who need to be involved in the decisions to be made.*

*I would like to remind Kittitas county that "As the Washington Supreme Court put it, "The basic rule in land use law is still that, absent more, an individual should be able to utilize his own land as he sees fit." Furthermore, property owners who seek permission from the government to develop their property retain the "right to be free of arbitrary or irrational zoning actions," according to the U.S. Supreme Court." *Manna Funding LLC v. Kittitas county*, and as well, "A property owner who needs special permission to use her property is not seeking a government entitlement (like social security or welfare) that may or may not constitute a property "right." A property owner already has constitutionally protected property rights. Obtaining a land use permit is merely the process that the owner must follow in order to exercise those rights. The Seventh Circuit Court of Appeals said it well in *River Park v. City of Highland Park*: Zoning restrictions are not the measure of an owner's property interest; they just create a set of rules restricting the exercise of preexisting property rights." and finally, "Despite the expanding power over land use exerted by all levels of government, "[t]he basic rule in land use law is still that, absent more, an individual should be able to utilize his own land as he sees fit. U.S. Const. amends. 5, 14." *Norco Constr., Inc. v. King Cy.*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982). One aspect of this court's protection of these rights is our vested rights doctrine."*

#### Staff Response

*CDS has provided these comments to the applicant and conditioned this determination to ensure the applicant shall work with the Washington Department of Fish and Wildlife to develop a mitigation plan.*

Washington Department of Transportation

We have reviewed the proposed project and have the following comments.

- The subject property is adjacent to Interstate 90 (I-90), a fully controlled limited access facility with a posted speed limit of 70 miles per hour. WSDOT has acquired all access rights to I-90. Direct access to the interstate is prohibited.
- I-90 is an existing facility, and the proponent is proposing a more noise-sensitive land use. The proponent and future residents should be aware this is an area with existing traffic noise. They should also expect traffic noise to continue to grow into the future, as an essential public facility, I-90 may need to be expanded to accommodate future traffic growth. It is the developer's responsibility to dampen or deflect any traffic noise for this development.

Applicant Response

*The applicant provided no response.*

Staff Response

*CDS has provided these comments to the applicant.*

Public Comments:

Public comments were provided by Colin MacRae and Kari Shaller.

Applicant Response

*The applicant provided no response.*

Staff Response

*CDS has provided these comments to the applicant.*

## **VII. PROJECT ANALYSIS**

A critical area review was performed by CDS staff and GIS data indicates an R5UBH wetland and Type 2 (F) fish bearing stream on or near the proposed lot. Through a Critical Area report performed by Sewall Wetland Consulting, Inc., it was discovered that the on or near the site there is a Type 2 (F) fish-bearing stream, a category II wetland (Wetland A) and a category III wetland (Wetland B).

For a Type 2 (F) Stream, the required buffer listed in KCC 17A.04.030(4) is a 150' buffer from the Ordinary High-Water Mark (OHWM) of the creek within the Cascade Ecoregion. This does not include the additional 15' building setback in KCC 17A.01.090.5.

Wetland A, a category II wetland has a 150'buffer for land use with moderate impacts. This does not include the additional 15' building setback in KCC 17A.01.090.5.

Wetland B, a category III wetland has a 110'buffer for land use with moderate impacts. This does not include the additional 15' building setback in KCC 17A.01.090.5.

The proposal is within the required critical area buffers for the Type 2 (F) stream and category II wetland and requires a reasonable use exception.

Per an updated site plan submitted by the applicant as part of the proposed mitigation plan, the proposed

development will disturb 2,873 square feet of critical area buffer. The amount of wetland buffer being impacted is 2,233 square feet. Per KCC 17A.07.070.6, the wetland mitigation restoration ratio for Category II, forested areas is 4:1. Therefore, the 2,233 square feet of disturbance in the wetland buffer will require 8,932 square feet of mitigation. The remaining critical area buffer impact of 2,873 (total buffer impact) – 2,233 (wetland buffer portion) = 640 square feet which includes only the stream buffer impact. The mitigation area for the stream buffer is 1:1. Therefore, the mitigation area for the stream impact of 640 square feet is 640 square feet. The wetland mitigation area of 8,932 square feet and the 640 square feet of stream mitigation area are added together for a total buffer mitigation of 9,572 square feet.

The amount of available space on parcel # 738035 is inadequate to properly mitigate the disturbance created by the proposed development. KCC 17A.01.100(4) allows mitigation banking and in-lieu fee mitigation. With the assistance of the Washington Department of Fish & Wildlife, the applicant will be developing a mitigation plan to protect and enhance the stream buffer and stream. CDS has conditioned this determination to ensure the applicant works with the Washington Department of Fish & Wildlife to develop a mitigation plan that results in a no net loss of critical area functions and values. CDS has conditioned this determination to ensure the county reviews and approves the mitigation plan.

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.

Consistency with the provisions of the KCC Title 17, Zoning:

The proposal must be consistent with the provisions of KCC Title 17.

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

The proposal must be consistent with the provisions of KCC Title 17A.

## VIII. FINDINGS OF FACT

1. Chris Immer property owner, submitted a reasonable use to build an accessory building & driveway to access the accessory building from the road.
2. Parcel #'s: The subject properties are parcels 738035. The parcel is located off Jay Way, west of the intersection of Jay Way & Yellowstone Road by 0.05 miles in Snoqualmie Pass, WA. bearing Assessor's Map number 22-11-09052-0009 in Kittitas County.
3. Site Information

Total Property Size:	0.35 acres
Number of Lots:	1
Domestic Water:	Future connection to Snoqualmie Pass Utility District
Sewage Disposal:	Future connection to Snoqualmie Pass Utility District
Fire Protection:	Snoqualmie Pass Fire & Rescue
4. Site Characteristics:

North:	Primarily residential & forest lands
South:	Interstate 90 and ski resort.
East:	Primarily residential & forest lands
West:	Interstate 90 and ski resort.

Access: The site is accessed via Jay Way.

5. The Comprehensive Plan land use designation is LAMIRD. The zoning is 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 3, 2025.
8. The application was determined complete on March 12, 2025.
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 13, 2025, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on March 27, 2025, and all comments were transmitted to the applicant on March 28, 2025.

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

A critical area review was performed by CDS staff and GIS data indicates an R5UBH wetland and Type 2 (F) fish bearing stream on or near the proposed lot. Through a Critical Area report performed by Sewall Wetland Consulting, Inc., it was discovered that the on or near the site there is a Type 2 (F) fish-bearing stream, a category II wetland (Wetland A) and a category III wetland (Wetland B).

For a Type 2 (F) Stream, the required buffer listed in KCC 17A.04.030(4) is a 150' buffer from the Ordinary High-Water Mark (OHWM) of the creek within the Cascade Ecoregion. This does not include the additional 15' building setback in KCC 17A.01.090.5.

Wetland A, a category II wetland has a 150'buffer for land use with moderate impacts. This does not include the additional 15' building setback in KCC 17A.01.090.5.

Wetland B, a category III wetland has a 110'buffer for land use with moderate impacts. This does not include the additional 15' building setback in KCC 17A.01.090.5.

The proposal is within the required buffers for the Type 2 (F) stream and category II wetland and requires a reasonable use exception.

With the assistance of the Washington Department of Fish & Wildlife, the applicant will develop a mitigation plan to protect and enhance the stream buffer and stream. CDS has conditioned this determination to ensure the applicant works with the Washington Department of Fish & Wildlife and Kittitas County CDS to develop a mitigation plan that results in a no net loss of critical area functions and values. The mitigation plan shall address how the applicant will mitigate the proposed development.

Per an updated site plan submitted by the applicant as part of the proposed mitigation plan, the proposed development will disturb 2,873 square feet of critical area buffer. The amount of the wetland buffer being impacted is 2,233 square feet. Per KCC 17A.07.070.6, the wetland mitigation restoration ratio for Category II, forested areas is 4:1. Therefore, the 2,233 square feet of disturbance in the wetland buffer will require 8,932 square feet of mitigation. The proposed mitigation plan shows an area of 2,873 square feet to the south and west of the Coal Creek tributary. This area is already in

the critical area buffer, is next to the stream and has natural plant growth appropriate to critical area buffers. While the area would benefit from additional plantings, it is not an appropriate location for mitigation equal to the amount of land available. Half of the 2,873 square feet proposed can be utilized as mitigation because of its existing buffer and its conditions. Half of 2,873 is 1,437 square feet.

The applicant can use the portion of property to the west of the Coal Creek tributary as mitigation. However, the amount of available space on parcel # 738035 is inadequate to properly mitigate the disturbance created by the proposed development. KCC 17A.01.100(4) allows mitigation banking and in-lieu fee mitigation. The applicant shall first seek on-site mitigation (as outlined above), then look in the immediate surrounding vicinity (like neighboring parcels), then expand to opportunities in the broader Coal Creek watershed, and lastly identify a location in a different watershed if an opportunity is not found in the broader Coal creek watershed.

10. The proposal is consistent with the provisions of KCC 17A, Critical Areas as conditioned.
11. The proposal is consistent with the reasonable use exception criteria in KCC 17A.01.060(2)(c). All seven criteria have been satisfied.
12. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code as conditioned.
13. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety, as conditioned.
14. The proposal is consistent with the provisions of KCC Title 12, Roads and Bridges as conditioned.
15. Comments were received from the following agencies during the comment period: Kittitas County Fire Marshal, Washington Department of Health – Office of Drinking Water (WA DOH ODW), Yakima Nation Fisheries, Kittitas County Public Works, Washington Department of Fish & Wildlife, Washington Department of Transportation. All comments are on file and available for public review.
16. Public comments were received from Colin MacRae & Kari Shaller.

#### **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 Immer Reasonable Use Exception Request (RU-25-00001) is hereby **approved**. The Immer Reasonable Use Exception 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 3, 2025 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 regulations, including environmental standards and regulations in place at the time of building permit application submittal.
3. The applicant shall comply 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.
4. No driveway or road shall be constructed within five feet of the side yard boundary, unless the driveway or road is part of an easement shared with the neighboring property owner. (KCC 12.05.080).
5. An approved access permit shall be required from the Kittitas County Department of Public Works prior to creating any new driveway access or altering an existing access.
6. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
7. Roads not certified and associated with plats or lots approved prior to the development of Kittitas County 2015 Road Standards shall be certified to Kittitas County 2015 Road Standards.
8. In addition to the above-mentioned conditions, all applicable Kittitas County Road Standards apply to this proposal. Access is not guaranteed to any existing or created parcel on this application.
9. A licensed land surveyor shall be utilized to stake out the building envelope, in order to ensure that the building does not encroach on neighboring parcels
10. Except as exempted in KCC 14.05.060, no grading or filling upon a site involving more than one hundred (100) cubic yards shall be performed without a grading permit from the County Engineer or Public Works designee (KCC 14.05.050). An application for grading in excess of five hundred (500) cubic yards shall be accompanied by an engineered grading plan (KCC 14.05.080).
11. All current and future development must comply with International Fire Code.
12. All current and future development must comply with International Building Code.
13. The applicant is to work with the Snoqualmie Pass Utility District on the approval and installation of all utilities to the parcel.
14. The applicant shall have an Inadvertent Discovery Plan (IDP) in place prior to beginning construction.
15. 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). Work shall remain suspended until the findings are 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.
16. The applicant shall develop and submit a mitigation plan, per KCC 17A.04.070, that is approved by the

Washington Department of Fish & Wildlife and Kittitas County Community Development Services (CDS). The mitigation plan is to include minimizing impacts to the riparian buffers and mature conifer trees as well as planting natural plants, shrubs & trees typically found near streams. The mitigation plan is to include improvements to the stream reach. Areas requiring mitigation include any ground disturbance on the property associated with the proposed development. The mitigation plan is to include mitigation sequencing – avoidance, minimization and then mitigation – for the impacts of the proposed development. The mitigation plan shall include a monitoring plan, maintenance plan and an annual monitoring report provided to CDS from the applicant. Best Management Practices (BMP's) shall be used for the mitigation plan and during execution of the mitigation plan.

Per an updated site plan submitted by the applicant as part of a proposed mitigation plan, the amount of ground disturbance is estimated to be 2,873 square feet.. The applicant shall stake out this footprint, as outlined in the updated mitigation & site plan submitted with the proposed mitigation plan on January 16, 2026, with wooden stakes/lathes prior to any ground disturbing activities. If ground disturbing activities occur outside this staked area, a new amount of square footage shall be calculated to reflect the amount of additional mitigation required to offset the additional ground disturbance. This calculation and new square footage shall be approved by Kittitas County CDS staff. If the additional disturbance impacts the wetland buffer, a 4:1 mitigation ratio will be utilized. If the additional disturbance impacts only the stream buffer, a 1:1 mitigation ratio will be utilized.

Mitigation shall occur in the disturbed areas outside of the footprint of the structure and driveway after construction is complete. Additional mitigation to improve ecological functions with plantings shall take place to the west of the Coal Creek tributary on the western portion of parcel # 738035 An amount of square footage equivalent to half of the proposed mitigation area located south of the Coal Creek Tributary on the proposed mitigation plan dated 1-16-26 can be utilized as mitigation.

The amount of available space on parcel # 738035 is inadequate to properly mitigate the disturbance created by the proposed development. KCC 17A.01.100(4) allows mitigation banking and in-lieu fee mitigation. The applicant shall first seek on-site mitigation (as outlined above), then look in the immediate surrounding vicinity (like neighboring parcels), then expand to opportunities in the broader Coal Creek watershed, and lastly identify a location in a different watershed if an opportunity is not found in the broader Coal creek watershed. The mitigation plan shall address how the applicant will mitigate the disturbance to meet the mitigation area as outlined in this decision. The applicant shall purchase an equivalent number of plantings needed to plant an area equal to the remaining mitigation required on parcel # 738035.

The mitigation plan shall be approved by both the Washington Department of Fish & Wildlife and Kittitas County Community Development Services prior to final inspection of the building permit.

17. If required for construction of the accessory building, the applicant shall provide a slope stability plan and report that is stamped and signed by a licensed engineer to Kittitas County Community Development Services demonstrating proper slope stability measures for the steep slope found within the proposed development.
18. The applicant shall work with the Kittitas County Fire Marshall and Washington Department of Fish and Wildlife to meet the requirements of the critical area mitigation plan and the Wildland Urban Interface code.

Per Title 17A.01.090(5), notice on Title shall be recorded with the Kittitas County Auditor's office for all lots involved describing the following:

- i. The presence and location of the critical area and buffer.

- ii. A statement of as to the applicability of Title 17A to the property including this reasonable use exception.
- iii. A statement describing limitations on action in or affecting critical area and buffers approved as part of this reasonable use.

A copy of the recorded notice shall be provided to Kittitas County Community Development Services.



**Responsible Official** \_\_\_\_\_

Bradley Gasawski

**Title:** Planner I

**Address:** Kittitas County Community Development Services  
411 N. Ruby Street, Suite 2  
Ellensburg, WA. 98926  
Phone: (509) 962-7539

**Date:** January 29, 2026

**Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1670 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 February 12, 2026. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.**