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**To:** [Rachael Stevie \(CD\)](#)  
**Subject:** RU 22-00002: East Peak Reasonable Use Variance comments  
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**Attachments:** [image.png](#)

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Hello Kittitas County CDS,

Thank you for providing an opportunity to comment on East Peak Reasonable Use Variance. East Peak Development, LLC is requesting a reasonable use exception to the 150-foot buffer and 15-foot setback for a Type III wetland and the 50-foot buffer and 15-foot setback for a Type Ns stream. In my opinion the "Reasonable Use Variance" should not be granted without additional consideration.

In the "Project Narrative" for the Reasonable Use Variance, East Peak Development, LLC states in their response the Hyak PUD Final Development Plan was approved in 2018 by the Kittitas County board of Commissioners showing a 50 unit condo building and 8 detached single family lots. It further states "The approved density was based on an in-depth analysis of surrounding uses". However, during the "in-depth analysis" the original project plan failed to identify the wetland which the proposed 50 unit condo building was to be constructed upon.

The paragraphs below were sourced from a file titled "RZ-87-00002\_Hyak Amend PUD\_FPUD Master File".

**3. Prior to submittal of the final development plan, the applicant shall prepare a wetland mitigation plan for all identified wetlands. Wetland encroachments shall not result in a net loss of total wetland areas. The final development plan shall clearly delineate all wetland areas and definitively describe all mitigation features, including but not limited to: construction constraints, mitigation, delineation, associated wetlands, swamps and drains.**

**Response: The applicant proceeded with a Partial Final Development Plan for Divisions 1 & 2 and received final approval for the Partial Final Development Plan and Divisions 1 & 2. The applicant submitted documentation from a consultant stating no wetlands were present satisfying this condition in order to receive approval for Divisions 1 and 2. Furthermore in reviewing the County wetland mapping there seems to be no identified wetlands on the project site. In review of the County file for the Hyak Amended PUD there is some references to a wetland located above the existing Sundance building. This area was formerly labeled as Area B of the Hyak Amended Planned Unit Development original map. Currently this area is in the process of being purchased by Sundance therefore no development, by the Hyak Planned Unit Development, will occur. The area of purchase by Sundance is considered open space. See Exhibit 4, specifically Sheet EX-2. Furthermore there is no required condition regarding wetland mitigation within Ord. 94-12.**

In reviewing the Hyak PUD Final Development Plan approved in 2018, Kittitas County required a wetland mitigation plan for all identified wetlands. East Peak Development states in the project narrative for the 2018 Hyak PUD Final Development plan (shown above), that documentation from their consultant stated no wetlands were present, satisfying the

Kittitas County CDS condition. The county accepted this statement submitted by the developer, and the wetland condition was met as per the FPUD documents.

I was unable to locate a wetland mitigation plan from the 2018 Hyak PUD Final Development Plan in the available public website. Was a wetland mitigation plan reviewed by the county? If so, I would like to receive a copy of the wetland mitigation plan submitted.

Wetlands are a valuable public resource and should be protected. Even Kittitas County code state's "Wetland encroachments shall not result in a net loss of total wetland area." A 150-foot buffer, plus a 15-foot setback does not deny the developer of reasonable economic use of the property. The developer failed to identify wetlands in their original development plan and now claim they are being denied reasonable economic use. The latin phrase "Caveat Emptor" comes to mind in this situation; the buyer alone is responsible for checking the quality and suitability of the land before a purchase is completed.

If the county is to grant the reasonable use request then the county and public should receive a like-kind exchange for granting the developer's request. This like-kind exchange should be located within the Hyak PUD development plan, in addition to the existing the existing open space and be available for the public good.

**In response to the Reasonable Use Variance:**

**Counter response to the Project Narrative 10 A.** "The application of this Title would deny all reasonable economic use of the property." Clearly, the application of this Title "DOES NOT" deny all reasonable economic use of "Hyak PUD - Tract B". The construction of a 50 unit condo building can still occur on this site. Furthermore, tract B is only a small portion of the property controlled by the developer.

**Counter response to Project Narrative 10 B.** East Peak Development, LLC states in their response that "the application looked at a number of site layout and the Site Plan (Exhibit A) presented in this application is the most efficient and condensed plan to achieve the reasonable use of the property." This may be true however, the condensed plan from 8 single family lots to 7 attached units still has a significant portion of the 7 attached units within the wetland buffer. A more reasonable response would be to construct the 50 unit condo building at the north-end of the property and vacate the plan to construct the 7 attached units within the wetland buffer.

**Counter response to Project Narrative 10 C.** East Peak Development, LLC states in their response "The application has taken significant measures to minimize the impact of the development on the critical areas". Again, the answer is clearly NO. All 7 of the attached units are within the 150-buffer. A reasonable use would be to vacate the plan for the 7 townhomes.

**Counter response to Project Narrative 10 D.** East Peak Development, LLC states in their response "The PUD entitlements existed prior to the enactment of the revised buffers (Feb, 2022). Again, the PUD entitlements failed to identify the wetland, either through the fault of the developer or Kittitas county. Both parties likely bear responsibility for the mis-steps in the original Hyak PUD. Furthermore, the rules regarding entitlement, permitting and construction of buildings change over-time; experienced developers are aware of this risk.

**Counter response to Project Narrative 10 E.** Wetlands are a valuable public resource, providing critical areas for animals and plants to thrive, water infiltration into the water supply and helps to manage spring snow melt.

**Counter response to Project Narrative 10 F.** The Reasonable Use Variance will result in a significant reduction of the available wetland buffer. A wetland buffer that was established by the best available science and updated as recently as February 2022.

**Counter response to Project Narrative 10 G.** No comment.