City of Bellevue
Development Services Department
Land Use Staff Report

Proposal Name:	**Hartson/Wade Code Interpretation**
Proposal Address:	**110 148th Ave NE**
Proposal Description:	Applicant seeks formal interpretation of the Land Use Code regarding the site commonly known as Hartson/Wade and application of the City's Critical Areas Overlay District provisions, including Reasonable Use to this site.
File Number:	**16-129554-DA**
Applicant:	Brent Carson of VanNess Feldman, LLP, on behalf of Ron Hartson
Decisions Included:	Interpretation of the Land Use Code (Process II, Part 20.30K LUC)
Legal Planner:	**Trisna Tanus**
State Environmental Policy Act Threshold Determination:	**EXEMPT**
Director's Decision:	**Interpretation of the Land Use Code** Michael A. Brennan, Director Development Services Department Carol V. Helland, Land Use Director Development Services Department

Application Date:	April 18, 2016
Notice of Application Publication Date:	May 12, 2016
Decision Publication Date:	July 21, 2016
Project Appeal Deadline:	August 4, 2016

For information on how to appeal a proposal, visit the Development Services Center at City Hall or call (425) 452-6800. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

Interpretation of the Director
Bellevue File No. 16-123551-DA

I. INTRODUCTION

The Applicant, Brent Carson of Van Ness Feldmann, LLP, on behalf of Ron Hartson (Hartson) who co-owns the Hartson/Wade Property located at 110 148th Ave NE, Bellevue, Washington, designated with King County Assessor's Parcel Number 3525059061 (the "Property"), seeks a Formal Code Interpretation of the applicable land use regulations pertaining to a contemplated townhouse development of the Property. A request for interpretation is processed pursuant to Part 20.30K of the Land Use Code (LUC) and the Director's decision may be appealed as a Process II decision to the Hearing Examiner pursuant to Part 20.35 LUC.

Summary of the Interpretation Request:

The Applicant seeks interpretation regarding the application of several provisions of the City's Critical Areas Overlay District, Part 20.25H LUC, to a contemplated townhouse development on the Property. Particularly, the Applicant seeks interpretation of:

(1) The scope and requirements of the Reasonable Use Exception (RUE) under LUC 20.25H.055.B and LUC 20.25H.200.A.4, and if other associate uses, such as roads and stormwater facilities, supplement or are independent of the RUE;
(2) The relationship and application of the provisions in LUC 20.25H.055.B. and 20.25H.200.A.4;
(3) Confirmation of calculation of allowable critical area and critical area buffer disturbance;
(4) Accounting of total disturbance area of wetland buffers associated with wetlands scheduled and presumed allowed to be filled;
(5) Accounting for buildable area of critical area and critical area buffer scheduled and presumed allowed to be disturbed and made buildable;
(6) Confirmation and guidance on the use of a variance;
(7) The application of the LUC's play area requirements to the contemplated development;
(8) Access requirements for the contemplated development;
(9) Guidance for stormwater design and location for the contemplated development.

Short Answer:

This interpretation request includes broad questions of how the LUC may apply to a contemplated townhouse development project. Because a Formal Interpretation Request per Part 20.30K LUC is limited in scope, several inquiries are not addressed herein. As presented by the Applicant, the facts in this case support:

(1) An RUE pursuant to Part 20.25H LUC (e.g. LUC 20.25H.055.B) for the Applicant's contemplated townhouse development on the subject site is applicable and other associated uses must are considered part of the development and RUE;

(2) LUC 20.25H.055.B and LUC 20.25H.200.A.4 are separate provisions that must be applied in conjunction with each other; and, thus, the maximum area of disturbance of critical area and critical area buffer under LUC 20.25H.200.A.4 applies to the totality of the RUE development application permitted under LUC 20.25H.055.B;

(3) Calculation of disturbance within critical area and critical area buffer is not properly in the scope of this interpretation;

(4) Wetland buffers corresponding to wetlands that are intended and presumed allowed to be filled through an RUE cannot be considered non-existent when evaluating the total disturbance area under the same RUE;

(5) Critical area and critical area buffer must be counted in calculating buildable area in the application's density calculation regardless that the critical area and critical area buffer are presumed allowed to be disturbed and made buildable through the same application;

(6) The use of a variance is not properly in the scope of this interpretation;

(7) The application of the LUC concerning play areas for a townhouse development is not properly in the scope of this interpretation;

(8) Access requirements for the Applicant's contemplated townhouse development are not properly in the scope of this interpretation;

(9) Stormwater design and location for the Applicant's contemplated townhouse development are not properly in the scope of this interpretation.

II. INTERPRETATION

A. Background.

The Property is zoned R-10 and the applicant is proposing a residential townhouse development. The issue is the number of allowed dwelling units under the City's Critical Areas Overlay District due to wetlands and wetland buffers on the Property. Although the Property is 8.73 acres,[1] according to information prepared by Talasaea Consultants, Inc., on behalf of the Applicant (the "Talasaea Report"), 8.23 acres or 358,490 sq. ft. are encumbered by critical areas and associated buffers, leaving 0.31 acres or 22,457 sq. ft. available for development.[2] The Talasaea Report finds the Property to be encumbered by over 94% critical areas and as such, any development may likely have to proceed under the City's reasonable use provisions in the Critical Areas Overlay pursuant to LUC 20.25H.200.A.[3]

The Applicant notes that it is not proposing any modification to Kelsey Creek or its buffers. This Formal Code Interpretation request, in a broad manner, seeks to find out what mechanisms are

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[1] Note that King County Assessor's Office provides a slightly different size for the Property of 9.04 acres or 393,782 sq. ft.

[2] Talasaea Report, Fig. 3.

[3] A formal code interpretation for a specific site does not purport to approve an application; rather a formal application clarifies conflicting or ambiguous wording, or the scope or intent of the provisions of the Code. LUC 20.30K.120.

available under the City Code to disturb wetlands and their buffers to obtain a reasonable return on its investment in the Property.

B. Applicable Code Provisions.

1. Purpose of a Formal Land Use Code Interpretation.

LUC 20.30K.120 provides that an interpretation of the provisions of the LUC clarifies conflicting or ambiguous wording, or the scope or intent of the provisions of the Code and a request for such interpretation must relate to a specific site, land use district, use or application within the City of Bellevue. Additionally, LUC 20.30K.120 states that an interpretation of the provisions of the LUC may not be used to amend that Code.

2. General Zoning Authority.

The City derives its zoning authority from its police powers granted under the Washington State Constitution, Art. XI, Sec. 11. Zoning is the legislative division of a community into areas within which only certain designated uses of land or structures are permitted. In Bellevue, each property is classified into a land use district and is subject to applicable LUC requirements. LUC 20.10.050. In the current LUC, the purpose and scope of each land use district is described in LUC 20.10.180 through 20.10.395. Additionally, the uses allowed in each land use district are listed with specificity in LUC Chart 20.10.440 together with information regarding the applicable review procedure necessary to establish a particular use. LUC 20.10.370.B.

3. Critical Areas Overlay District Provisions.

Part 20.25H LUC establishes standards and procedures that apply to development within a critical area or critical area buffer. Where disturbance or modification of the critical area, critical area buffer, or critical area structure setback is proposed, the proposal requires a Critical Areas Land Use Permit, pursuant to Part 20.30P LUC, in addition to the review process of the underlying permit or approval. LUC 20.25H.015.B.

LUC 20.25H.055.B provides a chart listing uses and development that may be allowed in a critical area, critical area buffer, or critical area structure setback. Each listed development is required to meet performance standards based on the type of use or activity and the critical area affected. Reasonable Use Exception (RUE) is included in this chart. *Id.*

An RUE is a mechanism for limited use and disturbance of a crucial area and critical area buffer when there is no other reasonable use for the property. LUC 20.25H.190. An RUE may be sought when more than 90 percent of the lot is constrained by critical area and critical area buffer. 20.25H.200.A. For instance, a development under 'All Other Land Use Districts', the Director may allow disturbance within a critical area and critical area buffer as follows:

i. Up to 10 percent of the total site area, or 3,000 square feet, whichever is greater, may be disturbed for development, including all structures, grading, utility

installation, landscaping and other necessary land alteration; but not including areas of temporary disturbance associated with construction, which areas shall be restored pursuant to LUC 20.25H.210; and

ii. Density shall not exceed the density allowed under LUC 20.25H.045.

LUC 20.25H.200.A.4.

An RUE allowed pursuant to LUC 20.25H.200.A must also meet performance standards contained in LUC 20.25H.205, which includes complying with standards specific to the type of critical area and critical area buffer affected: LUC 20.25H.080.A for streams; LUC 20.25H.100 for wetlands; LUC 20.25E.080.B for shorelines; LUC 20.25H.125 for geologic hazard areas; and LUC 20.25H.180.C and D.7 for areas of special flood hazard. LUC 20.25H.055.B; 20.25H.205. "Where a conflict exists with the performance standards of this section, the provisions providing the most protection to critical area functions and values apply." LUC 20.25H.205. However, specific to RUEs, Footnote 8 provides: "Development authorized pursuant to a reasonable use exception, LUC 20.25H.190, shall incorporate the required performance standards ***to the maximum extent feasible***." LUC 20.25H.055.B (emphasis added).

4. Definitions.

Buildable Area. That area of a property remaining after area defined as a critical area and critical area buffer pursuant to Part 20.25H LUC has been subtracted from the gross land area. LUC 20.50.010.

Critical Areas Overlay District includes any site that is in whole or in part designated as a critical area or critical area buffer. Critical Areas Overlay District is a mechanism by which the City recognizes the existence of natural conditions which affect the use and development of property. Through this part, the City designates and classifies ecologically sensitive and hazard areas and imposes regulations on the use and development of affected property in order to protect the functions and values of these areas and the public health, safety and welfare, and to allow the reasonable use of private property. LUC 20.25H.005; 20.25H.010.

Critical Areas. Areas required to be protected under the Growth Management Act, Chapter 36.70A RCW. The city's critical areas are designated under Part 20.25H LUC. LUC 20.50.016.

Critical Area Buffer is established based on each critical area type. LUC 20.25H.035.

C. Analysis.

1. A Reasonable Use Exception is applicable in this case.

In this instant case where more than 90 percent of the subject site is constrained by critical area and critical area buffer, an RUE is applicable pursuant to LUC 20.25H.055.B and LUC 20.25H.200. The RUE must comply with performance standards as listed in LUC 20.25H.055.B

based on the type(s) of critical area(s) on the site and general performance standards in LUC 20.25H.205. Conflicts are resolved by applying provisions that most protect critical area functions and values. LUC 20.25H.055.B. However, because the LUC recognizes 'reasonable' use of real property, an RUE development must comply with the required performance standards ***to the maximum extent feasible***." *Id.*, at FN. 8.

As the Applicant presented, the subject site qualifies for an RUE based on the amount of critical area and critical area buffer. Consistent with Part 20.25H LUC, e.g. LUC 20.25H.200.A.4; 20.25H.205, an RUE application and any subsequent approval authorizes the primary structure(s) as well as all associated buildings that are part of the development. Associated development includes all structures, grading, utility installation, and access driveways. *See,* LUC 20.25H.200.A.4; 20.25H.205. Thus, applicable performance standards would apply to and must be met by the RUE development, inclusive of all associated development, to the maximum extent feasible. *See*, LUC 20.25H.055.B, FN. 8.

This Interpretation does not attempt to assign which performance standards would apply as such determination is outside of this Interpretation's purview. The Applicant's inquiry regarding this matter may more appropriately addressed by the City's Pre-development Services process or through review of the required Critical Areas Land Use Permit.

2. LUC 20.25H.055.B and LUC 20.25H.200.A.4 are separate, applicable provisions and as such, the maximum area of disturbance of critical area and critical area buffer under LUC 20.25H.200.A.4 applies to the totality of an RUE development application sought through LUC 20.25H.055.B.

The Applicant next asks to confirm its reading that the provisions of LUC 20.25H.055.B (use chart) and LUC 20.25H.200.A.4 should be read as independent of each other. For example, the Applicant suggests that wetland fill and buffer alteration performed as part of road development should be independent from and additive to any disturbance allowed as part of the RUE.

The Applicant's reading is not supported by the language of the Code. Land Use Code sections 20.25H.055.B and 20.25H.200.A.4 work in conjunction with each other and provide complimentary provisions. First, it is important to note that Part 20.25H LUC—Critical Areas Overlay District—has the purpose of recognizing the existence of natural conditions which affect the use and development of property and it is the City's intent to protect the functions and values of these areas. LUC 20.25H.010. LUC 20.25H.055.B then provides a chart of uses and development that may be allowed in a critical area, critical area buffer, or critical area structure setback. With each use or development, the chart provides the applicable performance standards that must be met. LUC 20.25H.055.B.

Reasonable Use Exceptions are allowed per LUC 20.25H.055.B. Outside of single family land use districts, provisions applicable to "All Other Land Use Districts" govern the amount of disturbances that may be permitted to allow for the reasonable use of property. LUC 20.25H.200.A.4. The intent of an RUE is to allow limited use and disturbance of critical area and critical area buffer when there is no other reasonable use for the property. LUC 20.25H.190.

Unlike the broad uses allowed in RUEs, the chart in LUC 20.25H.055.B provides only limited allowable uses and activities, such as repair and maintenance of certain structures and facilities; emergency actions; and new or expansion of roads and rights-of-way, and does not permit new residential development.

Parallel to the allowance for RUEs in LUC 20.25H.055.B, LUC 20.25H.200.A.4 expands upon the criteria and requirements for an RUE. Land Use Code 20.25H.200.A.4 provides a maximum area that may be disturbed within a critical area and critical area buffer, "including all structures, grading, utility installation, landscaping and other necessary land alteration." LUC 20.25H.200.A.4.a. This Code section clearly intends for an RUE application to consider the totality of development, including all associated construction activities, in calculating the allowable disturbance area.

In other words, the requirements of LUC 20.25H.200.A.4 are applicable to an RUE, as a total development application, as allowed in LUC 20.25H.055.B. It would be contrary to the clear intent of the LUC to consider this instant proposal as only townhouses without any infrastructure, or for infrastructure without the townhouses. Rather, the RUE application includes the primary development (townhouses) and associated developments (driveways, utility installation, landscaping, etc.) intended for the site as one development. Therefore, the maximum area of disturbance of critical area and critical area buffer under LUC 20.25H.200.A.4 applies to the totality of the RUE development application.

3. Calculation of disturbance within critical area and critical area buffer is outside the scope of a Formal Code Interpretation.

A Formal Code Interpretation is not the proper course to seek confirmation of the Applicant's calculations of buildable area and disturbance area. Pursuant to LUC 20.30K.120, a Formal Code Interpretation provides for clarification of conflicting or ambiguous wording, or the scope and intent of the Code provisions. This question is more appropriately addressed by the City's Pre-development Services process or through review of the required Critical Areas Land Use Permit.

4. Critical area buffers, including wetland buffer associated with wetland scheduled and allowed to be filled pursuant to an RUE, cannot be considered non-existent when evaluating the allowable areas allowed to be disturbed under the same RUE.

The Applicant suggests that wetland buffers for those to-be-filled wetlands should not be considered as part of the disturbance area per LUC 20.25H.200.A.4.a. LUC 20.25H.200.A.4 (emphasis added) states that "the Director may allow ***disturbance within a critical area and critical area buffer*** as follows: i. Up to 10 percent of the total site area, or 3,000 square feet, whichever is greater, may be disturbed for development." Thus, all critical area and critical area buffer that are disturbed pursuant to an RUE must be considered in the total maximum area of disturbance.

There is no provision in the LUC to disregard critical area buffers for wetlands eliminated through an RUE. The calculation required to establish the applicability of an RUE pertains to the totality

of critical area and critical area buffer, in that an RUE is only applicable to lots that are more than 90 percent constrained by critical area and critical area buffer. *Id.* Furthermore, an RUE is the vehicle by which the disturbance to critical area and critical area buffer is allowed, including any elimination of wetlands. An RUE application cannot, on one hand, count all critical area and critical area buffer in qualifying for the exception (which then would allow for the elimination of certain wetlands) and simultaneously disregard wetland buffer for wetlands it plans to eliminate. All critical area and critical area buffer must be considered in the RUE, both for the applicability of the exception itself, and for the total disturbance area.

5. Critical area and critical area buffer must be counted in calculating buildable area even if the critical area and critical area buffer are presumed allowed to be disturbed and made buildable.

The Applicant's first inquiry regarding this issue asks for confirmation of its density calculation pursuant to LUC 20.25H.045 as applied to the subject site. This question is outside the scope of a Formal Code Interpretation pursuant to LUC 20.30K.120 and will not be addressed herein.

The Applicant next asks whether the maximum density calculation is allowed to be based on the buildable area of the site ***after*** wetlands and wetland buffers allowed to be filled are filled and the land made buildable. The maximum density calculation for development in the Critical Area Overlay District considers the buildable area at the time of calculation and application, not as a hypothetical, post-disturbance scenario.

For a townhouse development such as being contemplated here, the maximum density allowed "is equal to the number of dwelling units per acre as specified in LUC 20.20.010, times the buildable area in acres, plus the dwelling units per acre times the total area of critical area and critical area buffer in acres times the development factor…" Buildable area is defined in the LUC as "that area of a property ***remaining after*** area defined as a critical area and critical area buffer pursuant to Part 20.25H LUC has been subtracted from the gross land area." LUC 20.50.010 (emphasis added). A critical area is an area required to be protected under the Growth Management Act, Chapter 36.70A RCW and a critical area buffer corresponds to each critical area. LUC 20.50.016; 20.25H.035.

The density calculation must be performed and submitted with the land use application. The definition of buildable area provides that it is a numeric value derived from a summation formula (Buildable area = Gross land area – critical area and critical area buffer). LUC 20.50.010. This calculation clearly intends the use of present values, meaning those values at the time of application and not those presumed to have resulted after the application is approved and construction has been completed. There are no provisions in the LUC to support the use of post-application and post-development values for the critical area and critical area buffer to calculate buildable area. As such, the numeric values to be used in this density calculation, including the buildable area, must all be present values.

Finally, regarding the potential to increase density through a Planned Unit Development, this inquiry is not addressed herein as it is outside the scope of a Formal Code Interpretation pursuant

to LUC 20.30K.120 and may be more appropriately addressed by the City's Pre-development Services process or through review of the required Critical Areas Land Use Permit.

6. Whether a variance may be used to accomplish the Applicant's proposal is not properly in the scope of a Formal Code Interpretation.

The Applicant's inquiry of whether a variance pursuant to Part 20.30G LUC may be sought to accomplish additional density is outside the scope of a Formal Code Interpretation pursuant to LUC 20.30K.120. This issue may be more appropriately addressed by the City's Predevelopment Services.

7. The application of the LUC concerning play areas for a townhouse development is not properly in the scope of a Formal Code Interpretation.

The inquiry of how the requirements, including certain exception or waiver, for play areas in the LUC apply to the Applicant's proposed townhouse development is outside the scope of a Formal Code Interpretation pursuant to LUC 20.30K.120. This question may be more appropriately addressed by the City's Pre-development Services process or through review of the required Critical Areas Land Use Permit.

8. Access requirements for the Applicant's contemplated townhouse development are not properly in the scope of a Formal Code Interpretation.

Requirements for access to a hypothetical development are not within the scope of a Formal Code Interpretation pursuant to LUC 20.30K.120. Access issues may be more appropriately addressed by the City's Pre-development Services process or through review of the required Critical Areas Land Use Permit.

9. Stormwater design and location for the Applicant's contemplated townhouse development are not properly in the scope of a Formal Code Interpretation.

Requirements regarding stormwater design and location, or guidance thereof, are outside the scope of a Formal Code Interpretation pursuant to LUC 20.30K.120. This topic may be more appropriately addressed by the City's Pre-development Services process or through review of the required Critical Areas Land Use Permit.

D. Conclusion.

An RUE pursuant to Part 20.25H LUC is applicable to the Applicant's contemplated townhouse development. Associated uses and development, such as roadways, utility infrastructure, and landscaping must be considered as part of and comply with the performance standards and other requirements applicable to the RUE application. As such, the maximum area of disturbance of critical area and critical area buffer under LUC 20.25H.200.A.4 includes the totality of development including those associated uses and structures. Moreover, in calculating the area of disturbance for an RUE, wetland buffers for wetlands scheduled to be filled must be counted just

as the wetlands themselves are counted as part of the area of disturbance. Likewise, critical area and critical area buffer must be counted in calculating buildable area to be used in the application's density calculation even if the critical area and critical area buffer are presumed allowed to be disturbed and made buildable through the same application.

Several inquiries related to calculation of disturbance within critical area and critical area buffer, the use of variance, requirements for play areas, access requirements, and guidance on stormwater design and location are not properly within the scope of a Formal Code Interpretation under Part 20.30K LUC and thus are not addressed herein. These issues may be appropriately raised with the City's Pre-development Services process or through review of the required Critical Areas Land Use Permit.

III. FACTORS FOR CONSIDERATION

In making an interpretation of the provisions of the LUC, the Director shall take the following factors into consideration. LUC 20.30K.140.

A. Applicable Provisions of the Land Use Code.

The applicable LUC provisions considered in this Formal Code Interpretation include the following:

1. Part 20.25H LUC—Critical Areas Overlay District
   - LUC 20.25H.005—Scope
   - LUC 20.25H.010—Purpose
   - LUC 20.235H.015—Applicable procedure
   - LUC 20.25H.035—Critical area buffers and structure setbacks
   - LUC 20.25H.045—Development density/intensity
   - LUC 20.25H.055.B—Uses and Development Allowed within Critical Areas
   - LUC 20.25H.190—Reasonable use exception--Purpose
   - LUC 20.25H.200—Reasonable use exception—Applicability
   - LUC 20.25H.205—Reasonable use exception—Performance standards
   - Part 20.30P LUC—Critical Areas Land Use Permit
   - LUC 20.50.010—Definition of Buildable Area
   - LUC 20.50.016—Definition of Critical Areas
2. Part 20.30K LUC—Interpretation of the Land Use Code

B. The Impact of the Interpretation on other Provisions of the Land Use Code.

This Interpretation impacts only application of the above referenced and relevant code provisions with respect to the Hartson/Wade Property and does not have an impact on other existing sites within the City of Bellevue nor other provisions of the LUC.

C. The Implications of the Interpretation for Development within the City as a whole.

This Interpretation impacts only the Hartson/Wade Property and does not have an impact on other existing sites within the City of Bellevue.

D. Applicable Provisions of the Comprehensive Plan and other Relevant Codes and Policies.

This interpretation is consistent with the City's Comprehensive Plan Environment Goals and Policies and Relevant Codes, specifically and including:

> Land Use Element Goal: To develop and maintain a land use pattern that protects natural systems and retains trees and open space; maintains and strengthens the vitality, quality and character of Bellevue's neighborhoods; and focuses development activity in Downtown and other commercial and residential centers.
>
> Environment Element Goal: Ensure that planning efforts, infrastructure investments, and municipal operations proactively manage natural resources to meet the needs of current and future generations while maintaining the integrity, stability and beauty of natural systems.
>
> Environmental Element Policies:
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> EN-5. Protect air, water, land, and energy resources consistent with Bellevue's role in the regional growth strategy.
>
> EN-20. Maintain surface water quality, defined as meeting federal and state standards and restore surface water that has become degraded, to the maximum extent practicable.
>
> EN-30. Regulate land use and development to protect natural topographic, geologic, vegetational, and hydrological features.
>
> EN-63. Preserve and maintain fish and wildlife habitat conservation areas and wetlands in a natural state and restore similar areas that have become degraded.
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> EN-64. Manage aquatic habitats, including shoreline and riparian (streamside) habitats, to preserve and enhance their natural functions of providing fish and wildlife habitat and protecting water quality.
>
> EN-66. Give special consideration to conservation or protection measures necessary to preserve or enhance anadromous salmonids, recognizing that requirements will vary depending on the aquatic resources involved, including differing stream classification, and that additional efforts may be identified in the regional salmon recovery planning process.

EN-69. Preserve and enhance native vegetation in Critical Area buffers and integrate suitable native plants in urban landscape development.

EN-71. Preserve a proportion of the significant trees throughout the city in order to sustain fish and wildlife habitat.

IV. EFFECT OF INTERPRETATION

Pursuant to LUC 20.30K.150, an interpretation of any Land Use Code provision issued under Chapter 20.30K LUC shall have the same effect as any provision of the Land Use Code. An interpretation of the Land Use Code remains in effect until or if rescinded in writing by the Director. LUC 20.30K.155.

V. APPEAL

An Interpretation of the Land Use Code under Chapter 20.35.015 is a Process II administrative land use decision made by the Director. Pursuant to LUC 20.35.250, Process II decisions may be appealed to the Hearing Examiner by providing a written statement of appeal and the appeal notification form to the City Clerk not later than 5:00 p.m. on the 14th day following the date of publication of the decision of the Director.