



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033
425.587.3800 www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dave Snider, P.E., Capital Projects Manager
Pam Bissonnette, Interim Public Works Director

Date: May 8, 2014

Subject: Billy Creek Ravine Stabilization Phase 2 Project
Authorize Condemnation

RECOMMENDATION:

It is recommended that City Council approves the attached Ordinance authorizing staff to proceed with acquisition of a permanent construction and maintenance easement, and associated property rights, through eminent domain (condemnation) for a portion of private property along the limits of the Billy Creek Ravine Stabilization - Phase 2 Project.

BACKGROUND DISCUSSION:

The design of the Billy Creek Stabilization Project was completed in early 2011 by King County personnel; however, the improvements were not constructed before Kirkland's annexation of this part of the City in June of that year. At their regular meeting of September 20, 2011, City Council was informed of the Project's transfer and authorized the use of \$150,000 from the City's Surface Water Construction Reserve to supplement the \$60,000 that King County had available for construction of the improvements. At that same September meeting, City Council also authorized the City Manager to sign a Professional Services Agreement with King County allowing the County's Rivers Group to construct the improvements – work began immediately after that authorization and was completed in November, 2011. At the close-out of the Phase I Project, \$24,000 was returned to the City's Reserve.

The Project, as originally scoped, was not able to be fully completed though because the County had been unable to secure a construction and maintenance easement on property owned by Mr. and Mrs. Scott Jones ("Jones Property"), located at 12737 89th Place NE (Attachment A). As a result, the Project was modified into a multi-phased one; the Phase 1 Project stopped approximately 70 lineal feet short of the original design length with the Phase 2 Project being created to complete the original scope of work.

The Billy Creek Ravine Stabilization - Phase 2 Project is an approved Kirkland 2013-2018 Capital Improvement Program project with all project elements scheduled to be complete in 2014; the currently approved budget for the Project is \$67,400. The plans, specifications and permits are now ready to advertise for contractor bids. At this point, however, City staff has also been unable to obtain the required permanent construction and maintenance easement on the Jones Property, as needed to complete the remaining 70-feet of pipe extension (Attachment A).

This last section of pipe installation is necessary to help reduce erosion that regularly occurs in Billy Creek, resulting in silts and silt-laden water being deposited on downstream neighboring properties and Juanita Neighborhood streets during heavy rain events.

In order to maintain the Project's schedule, staff began discussions and attempted property rights negotiations with Mr. & Mrs. Jones starting in December, 2013, without success (Attachment B). At this point, the City must begin the condemnation process as the judicial course can take several months or longer. Staff will continue to work with the property owners in an attempt to address any expressed concerns and to work out a fair market value for the easement. The mechanics of the Ordinance will provide an opportunity to obtain the property rights through judicial process if continued negotiations are unsuccessful.

RCW 8.12 authorizes and empowers cities to condemn land and property for public improvements such as those proposed for this Project. Condemnation authority is not granted to public entities as a coercive measure; instead, its purpose is to allow for the progress of improvements that are in the public interest. The statutes prevent unreasonable demands being placed on public entities, as well as affording property owners a fair market value for granting certain property rights to the City. Passing the Ordinance does not preclude agreements being reached with the property owners prior to the actual condemnation proceedings taking place, but it will enable the City to move toward construction in the event an impasse is reached with the property owners. A best-case scenario would be to resolve the easement transactions without instituting condemnation proceedings.

Public Works staff has worked closely with the City Attorney's Office in preparing the attached Ordinance to comply with the requirements of the eminent domain process (Attachment C, Exhibits A & B).

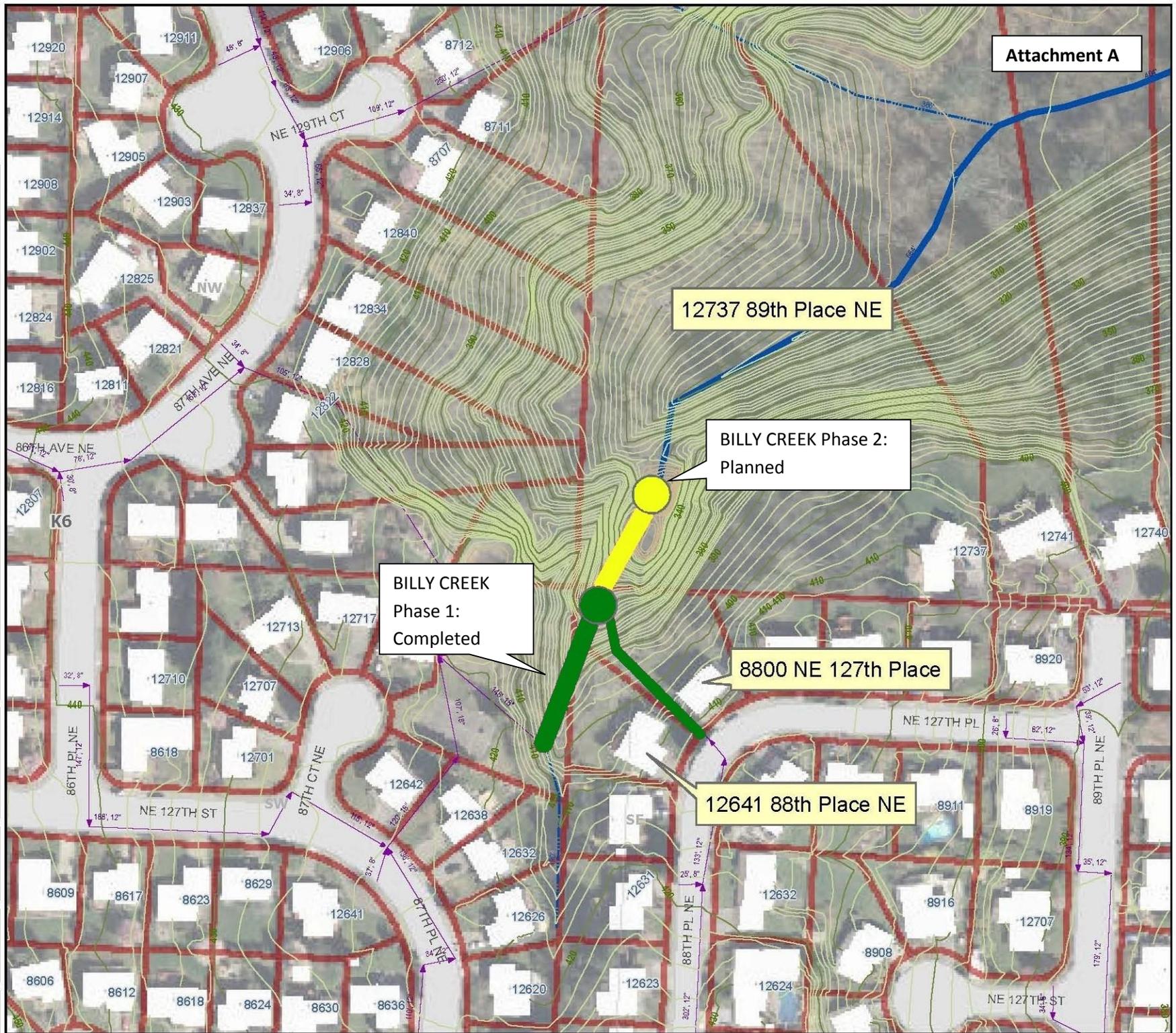


Billy Creek Ravine

- Attachment A – Vicinity Map
- Attachment B – Contact Log
- Attachment C – Ordinance w/Exhibits

Billy Creek Ravine Project Closeup

Attachment A



BILLY CREEK Phase 1: Completed

12737 89th Place NE

BILLY CREEK Phase 2: Planned

8800 NE 127th Place

12641 88th Place NE

Produced by the City of Kirkland
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Author: Jenny Gaus
Name: Billy Creek July 2011
Date Saved: 10/4/2011 2:47:00 PM

ATTACHMENT B

Summary of Resident Contact

December 18, 2013 - Verbal contact with Scott Jones via telephone.

December 30, 2013 - Voicemail for Scott Jones, no response.

January 10, 2014 - Voicemail for Scott Jones, no response.

January 24, 2014 - Letter sent to Mr. & Mrs. Jones regarding Phase 2 Project. Requested response either by email or telephone by 1/31/14.

February 14, 2014 - Kirkland Project Engineers Aaron McDonald and Patrick Herbig met with Scott & Karen Jones at 4:30-5:30 PM. The meeting seemed productive and minutes were taken and distributed.

March 27, 2014 - Project Engineer Patrick Herbig spoke with Scott Jones on the telephone. Mr. Jones agreed to the meeting minutes verbally on the phone (10AM on 3/27/2014). He inquired as to having the old concrete pipe removed as part of easement agreement. Mr. Jones was told that the current plans and permit call out removing the old concrete pipe.

Mr. Jones subsequently inquired as to a cash compensation for the easement. He asked that a calculated offer be sent via email, indicating that he would be available to discuss further after receipt.

March 27, 2014 - An offer letter was sent via email to Mr. & Mrs. Jones. The offer was \$1,152 for a 20' x 80' (1600 square feet) easement area. The offer was based on the 2014 King County Assessed values on a per square foot basis. The value was reduced by 50% to reflect the fact that the property is currently encumbered and is in the bottom of a ravine.

April 1, 2014 - A brief telephone conversation with Mr. Jones occurred at 10 AM. Mr. Jones stated he was busy and would call back in the afternoon to discuss the offer.

April 2, 2014 - Voicemail left for Mr. Jones at 2 p.m., no response.

April 3, 2014 - Voicemail left for Mr. Jones at 3:30 p.m., no response.

April 4, 2014 - Voicemail left for Mr. Jones in afternoon, no response.

April 9, 2014 - Sent email to Mr. Jones inquiring about the offer, no response.

April 11, 2014 - Based on consultation with the City Attorney's Office, the process for requesting a condemnation ordinance began.

April 23, 2014 - Registered letter sent to Mr. and Mrs. Jones; receipt signed April 30.

May 4, 2014 - Registered return receipt received

ORDINANCE O-4444

AN ORDINANCE OF THE CITY OF KIRKLAND AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF INTERESTS IN LAND FOR THE PURPOSE OF THE BILLY CREEK RAVINE STABILIZATION PHASE 2 PROJECT WITHIN THE CITY OF KIRKLAND, PROVIDING FOR THE COST OF PROPERTY ACQUISITION AND AUTHORIZING THE INITIATION OF APPROPRIATE EMINENT DOMAIN PROCEEDINGS IN THE MANNER PROVIDED FOR BY LAW.

WHEREAS, the Billy Creek Ravine Stabilization Phase 2 Project ("Project") is an approved and funded project in the City's Capital Improvement Program ("CIP"); and

WHEREAS, the Project improvements are necessary to improve the City's storm-water drainage system and prevent erosion and deposit of silt and sediment on downstream properties and City streets; and

WHEREAS, the City Council finds that the public health, safety, necessity, and convenience require construction of the Project and acquisition of the property described in this Ordinance; and

WHEREAS, the City has provided notice to affected property owners of this final action authorizing condemnation pursuant to RCW 8.25.290;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The land and property rights within the City of Kirkland, King County, Washington, described in Exhibit A & Exhibit B attached to this Ordinance and which description is hereby incorporated by reference, necessary for public storm drainage purposes, is hereby condemned, appropriated and taken for such public purposes, subject to the making or paying of just compensation to the owners thereof in the manner provided by law.

Section 2. The Project is fully-funded and the expense of acquiring said property rights shall be paid for from the appropriate funding source within the city's portion of general current revenue for each CIP project.

Section 3. The City Attorney is authorized to begin and prosecute legal proceedings in the manner provided by the law to purchase, condemn, take, appropriate, and otherwise acquire the lands and other property rights and privileges necessary to carry out the purposes of this Ordinance.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and

publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2014.

Signed in authentication thereof this ____ day of _____, 2014.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT "A"

BILLY CREEK
LEGAL DESCRIPTION: DRAINAGE EASEMENT

TRIAD JOB # 14-064
APRIL 29, 2014
REVISED MAY 8, 2014

THAT PORTION OF THE NE ¼ OF THE NW ¼ OF SECTION 30, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WITHIN A STRIP OF LAND 20.00 FEET IN WIDTH, LYING 10.00 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE NORTHWEST CORNER OF LOT 16, PANORAMA ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 91, PAGE 43 RECORDS OF KING COUNTY, WASHINGTON;

THENCE, ALONG THE NORTH LINE OF SAID LOT 16, SOUTH 87°08'29" EAST 43.91 FEET TO THE TRUE POINT OF BEGINNING OF THIS CENTERLINE.

THENCE NORTH 29°56'25" EAST 80.00 TO THE TERMINUS OF SAID CENTERLINE.

THE SIDE LINES OF SAID STRIP OF LAND TO BE EXTENDED OR SHORTEND TO TERMINATE ON THE NORTH LINE OF SAID PLAT OF PANORAMA ESTATES.



5/8/14

WRITTEN: ETH
CHECKED: BTF



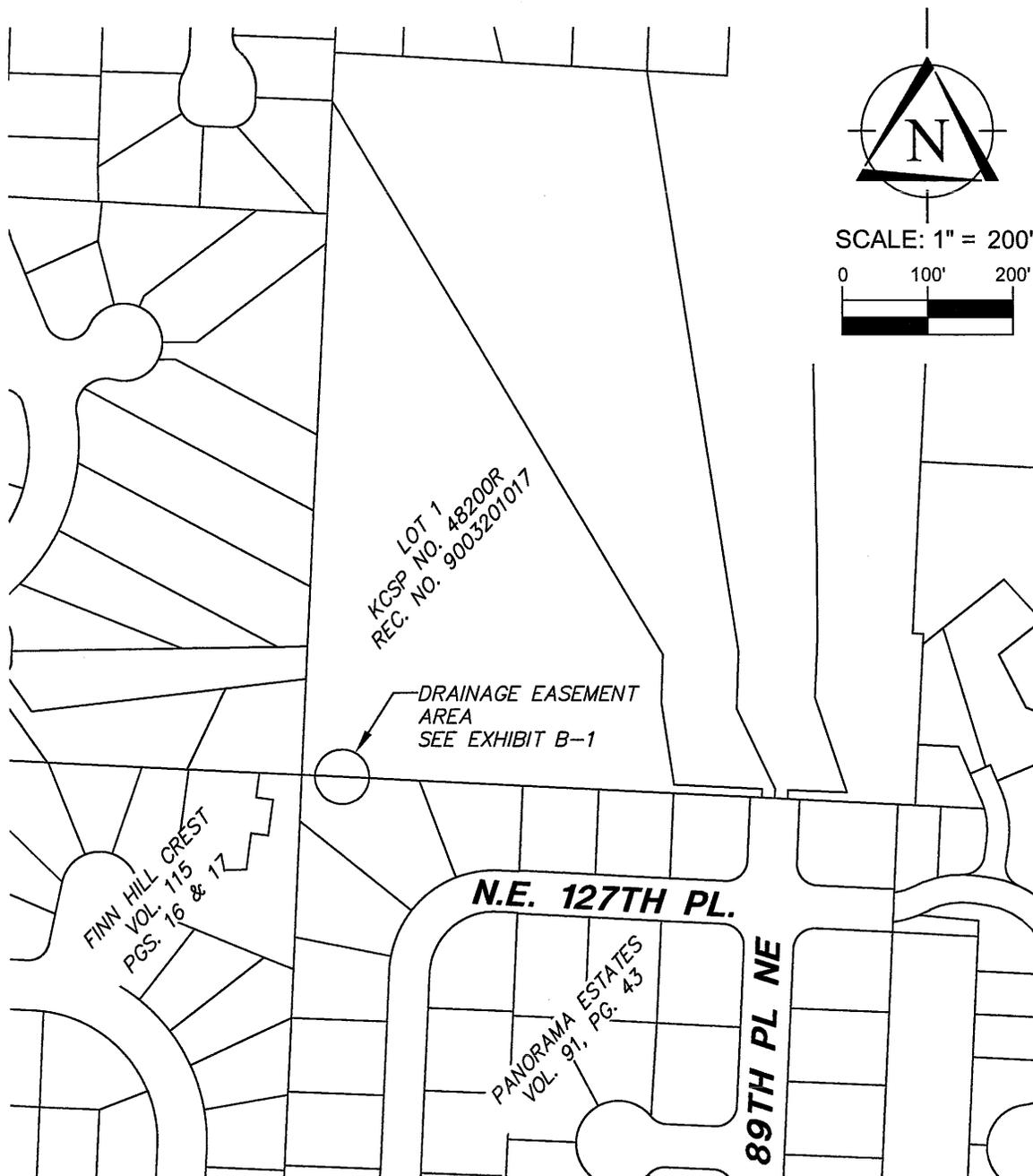
12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 · 800.488.0756 · Fax 425.821.3481
www.triadassociates.net

Land Development Consultants

EXHIBIT B

BILLY CREEK
DRAINAGE EASEMENT

TRIAD JOB #14-064
MAY 07, 2014



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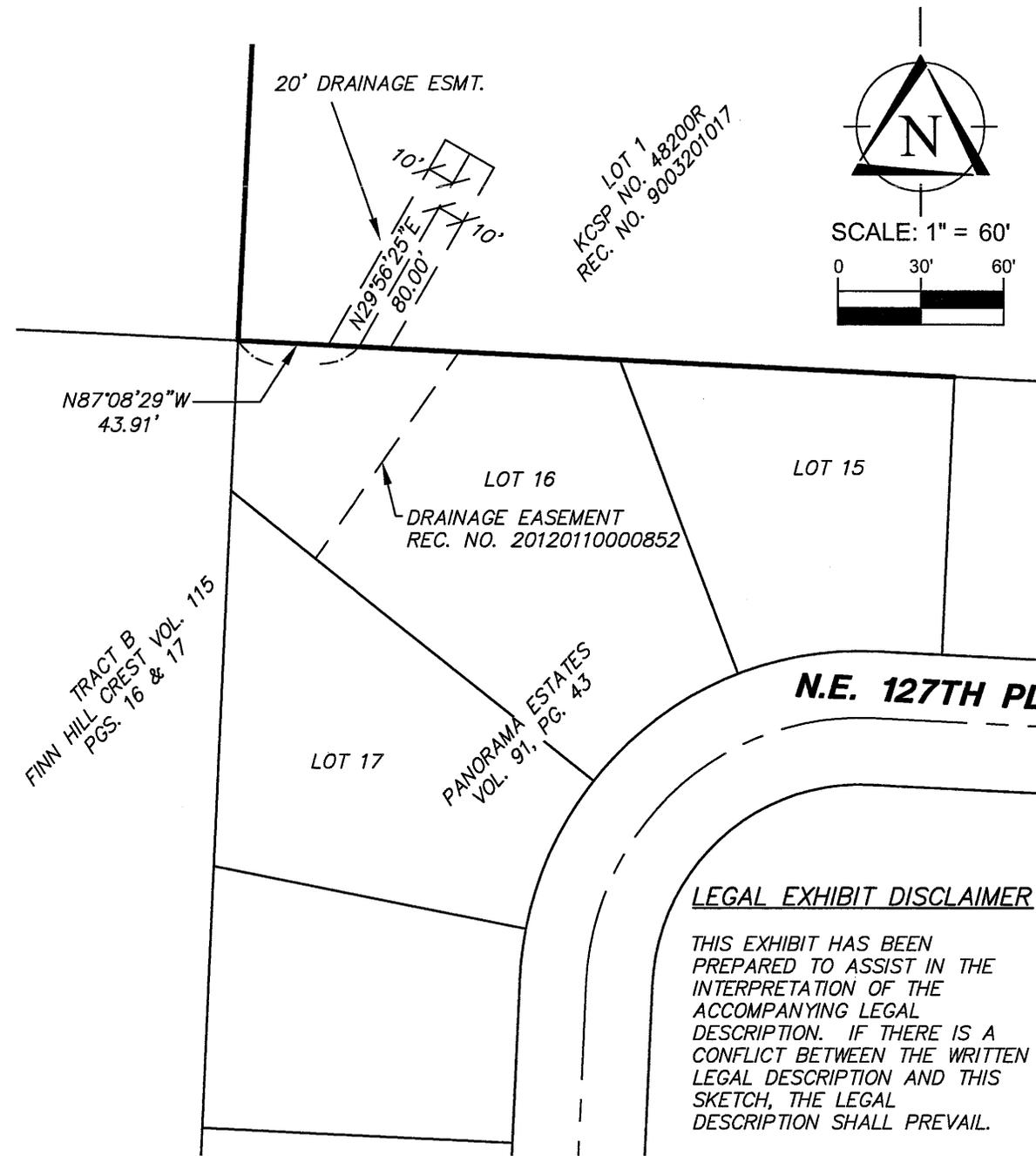
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Land Development Consultants

EXHIBIT B-1

BILLY CREEK
DRAINAGE EASMENT

TRIAD JOB #14-064
MAY 07, 2014



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PUBLICATION SUMMARY
OF ORDINANCE O-4444

AN ORDINANCE OF THE CITY OF KIRKLAND AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF INTERESTS IN LAND FOR THE PURPOSE OF THE BILLY CREEK RAVINE STABILIZATION PHASE II PROJECT WITHIN THE CITY OF KIRKLAND, PROVIDING FOR THE COST OF PROPERTY ACQUISITION AND AUTHORIZING THE INITIATION OF APPROPRIATE EMINENT DOMAIN PROCEEDINGS IN THE MANNER PROVIDED FOR BY LAW.

SECTION 1. Authorizes condemnation of property necessary for the Billy Creek Ravine Stabilization Phase II Project ("Project").

SECTION 2. Provides that the Project is fully funded and that the expense of acquiring the property shall be paid for from the appropriate funding source within the city's portion of general current revenue for each CIP project.

SECTION 3. Authorizes the City Attorney to initiate condemnation proceedings to acquire the property necessary for the Project.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2014.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk