



CITY OF KIRKLAND

CITY COUNCIL

James Lauinger, Mayor • Joan McBride, Deputy Mayor • Dave Asher • Mary-Alyce Burleigh
Jessica Greenway • Tom Hodgson • Bob Sternoff • David Ramsay, City Manager

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AGENDA

KIRKLAND CITY COUNCIL MEETING

City Council Chamber

Wednesday, July 5, 2006

6:00 p.m. – Study Session – Peter Kirk Room

7:30 p.m. – Regular Meeting

COUNCIL AGENDA material is available for public review at the Public Resource Area at City Hall or at the Kirkland Library on the Friday afternoon prior to the City Council meeting. Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (587-3190) or the City Manager's Office (587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 587-3190, or for TTY service call 587-3111 (by noon on Monday) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

1. *CALL TO ORDER*
2. *ROLL CALL*
3. *STUDY SESSION*, Peter Kirk Room
 - a. Emergency Preparedness
4. *EXECUTIVE SESSION*
5. *SPECIAL PRESENTATIONS*
 - a. Recreation and Parks Month Proclamation
 - b. Kirkland Concours d'Elegance
6. *REPORTS*
 - a. *City Council*
 - (1) Association of Washington Cities (AWC) Municipal Achievement Awards
 - (2) Regional Issues
 - b. *City Manager*
 - (1) Kirkland Performance Measures Guidebook
 - (2) Calendar Update
7. *COMMUNICATIONS*
 - a. *Items from the Audience*

EXECUTIVE SESSIONS may be held by the City Council to discuss matters where confidentiality is required for the public interest, including buying and selling property, certain personnel issues, and lawsuits. An executive session is the only type of Council meeting permitted by law to be closed to the public and news media

ITEMS FROM THE AUDIENCE provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

CONSENT CALENDAR consists of those items which are considered routine, for which a staff recommendation has been prepared, and for items which Council has previously discussed and no further discussion is required. The entire Consent Calendar is normally approved with one vote. Any Council Member may ask questions about items on the Consent Calendar before a vote is taken, or request that an item be removed from the Consent Calendar and placed on the regular agenda for more detailed discussion.

GENERAL CORRESPONDENCE

Letters of a general nature (complaints, requests for service, etc.) are submitted to the Council with a staff recommendation. Letters relating to quasi-judicial matters (including land use public hearings) are also listed on the agenda. Copies of the letters are placed in the hearing file and then presented to the Council at the time the matter is officially brought to the Council for a decision.

ORDINANCES are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

RESOLUTIONS are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

PUBLIC HEARINGS are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

P - denotes a presentation from staff or consultant

b. Petitions

8. CONSENT CALENDAR

- a. Approval of Minutes:* (1) June 15, 2006
(2) June 20, 2006

b. Audit of Accounts:

Payroll \$

Bills \$

c. General Correspondence

- (1) Mark Dinwiddie, Regarding NE 85th Street Corridor Improvements Project

d. Claims

- (1) Francis Thee

e. Authorization to Call for Bids

f. Award of Bids

- (1) Award Bid for Kirkland Avenue Sewer Main and 3rd Street Manhole Replacements to Shoreline Construction Company and Request Additional Funding

g. Acceptance of Public Improvements and Establishing Lien Period

- (1) 2005 Emergency Sewer Construction Program

h. Approval of Agreements

- (1) Northshore Utility District Geographic Information System (GIS) Interlocal Agreement

i. Other Items of Business

- (1) Resolution R-4581, Relinquishing the City's Interest in a Portion of Unopened Alley
- (2) Resolution R-4582, Relinquishing the City's Interest in a Portion of Unopened Alley

9. PUBLIC HEARINGS

10. UNFINISHED BUSINESS

- a. Proposing Amendments to Existing Reasonable Use Process - P*

b. Regulations Implementing the North Rose Hill Neighborhood Plan – P

c. King County Wastewater Contract – 2006 Update 1

NEW BUSINESS consists of items which have not previously been reviewed by the Council, and which may require discussion and policy direction from the Council.

11. *NEW BUSINESS*

- * a. Resolution R-4583, Approving the Subdivision and Final Plat of Highlands 25 and Setting Forth Conditions - P

12. *ANNOUNCEMENTS*

13. *ADJOURNMENT*



CITY OF KIRKLAND
Fire & Building Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager
From: Helen Ahrens-Byington, Deputy Fire Chief
Date: June 26, 2006
Subject: Emergency Preparedness – Study Session

RECOMMENDATION:

The Council reviews the attached materials in preparation for training during the study session.

BACKGROUND DISCUSSION:

It's important to maintain a good understanding of your role in a disaster situation. Meeting training requirements for all levels of disaster responders is critical for the effective response and recovery when faced with natural or man-made disasters.

The July 5th study session will focus on Council's role in disaster preparedness; in order for Council to better address the needs of our community during and after emergencies. The following topics will be covered during the session:

- Council members Burleigh and Sternoff will report out on training attended at the AWC conference.
- Personal disaster preparedness
- Status of the City's Emergency Preparedness efforts
- FEMA National Incident Management System/Incident Command System training (NIMS/ICS)
- Communications with the Public
- Comprehensive Emergency Management Plan (CEMP) – Council's role in disaster
- Emergency Operation Center (EOC) formerly Emergency Coordination Center (ECC)
- Disaster Recovery

For a detailed status of emergency preparedness, please refer to the white paper included in the council retreat packet; if you need another copy, please let us know. There are three major issues identified in the emergency preparedness status white paper that need to be addressed in order for our preparedness to be most effective. They are:

- Funding of an Emergency Preparedness Coordinator
- Upgrading the EOC to meet minimum safety/security needs
- Funding for a citizen awareness and preparation training

There is a federal requirement to adopt and train to the National Incident Management System (NIMS); we will be bringing a resolution forward on July 18th for Council's approval. Adopting NIMS will assist us in meeting our emergency needs through federal assistance during disasters, grants and training programs provided at little or no cost.

Given the time constraints of the study session, an overview of these topics will be given and further training will be focused on a more in depth approach to each of these areas. The intent at this study session will be to provide some basic tools should a disaster strike in the near future. Ongoing training will better prepare the city council, staff and citizens to work in coordination during emergencies.

Anytime you have a question about how to prepare for emergencies, please contact Chief Blake or me for assistance. You don't have to wait for the next training session, to feel better prepared for disaster.

National Incident Management System FY 2006 Compliance Activities

Homeland Security Presidential Directive - 5 directed the development of the National Incident Management System (NIMS) and the National Response Plan (NRP) ...

National Incident Management System ... is a consistent nationwide approach for federal, state, tribal and local governments to work effectively and efficiently together to prepare for and respond to all hazards, including acts of terrorism.

National Response Plan ... is built on the template of the National Incident Management System. It provides the structure and mechanisms for coordinating federal support to state, local and tribal incident managers ... provides for exercising direct federal authorities and responsibilities, and Incidents of National Significance.

Development of NIMS and NRP ... involved extensive coordination with federal, state, local and tribal agencies, NGOs. Private-sector, first responders and emergency management ... also DHS Preparedness Directorate, Office of Grants and Training coordination with state, local and tribal organizations. The NIMS was released March 2004. The NRP was released January 2005.

What NIMS is about

Common incident management principles, practices and doctrine and ...

- * Use of ICS
- * Flexible response operations
- * Common terminology for ordering, tracking resources
- * Plans for staging and allocating equipment, supplies and assistance
- * Effective communications

Components of NIMS

- * Command and Management
- * Preparedness
- * Resource Management
- * Communications and Information Management
- * Supporting Technologies
- * Ongoing Management and Maintenance

Implementation and Compliance

FY 2005 States and territories must meet minimum FY 05 NIMS implementation requirements. Tribal and local governments are encouraged to start implementing the NIMS.

Self Certification: The state must certify that, taken as a whole, it met the minimum FY05 requirements.

State certification is required to receive FY06 preparedness funds.

FY 2006 States, territories, tribes and local governments must meet the FY06 NIMS implementation requirements.

Self Certification: The state (including its local jurisdictions) has met the minimum FY06 requirements. State certification required to receive FY07 preparedness funds

FY 2007 and beyond: Full NIMS compliance is required for all federal preparedness funds. States, success of the NIMS.

State certification of ongoing NIMS compliance continues to be required to receive federal preparedness funds.

Implementation Activities: FY05 - States and Territories

- * Incorporate NIMS into training, exercises
- * Use preparedness funds to support state, local and tribal NIMS implementation
- * Incorporate NIMS into EOPs
- * Promote intrastate mutual aid agreements
- * Provide technical assistance to locals
- * Institutionalize the use of ICS
- * Submit self-certification that the state, as a whole, has met '05 requirements

Implementation Activities: FY05 Local and Tribal Jurisdictions and States should ...

- * Complete IS-700, NIMS training
- * **Formally adopt NIMS**
- * Establish NIMS baseline
- * Institutionalize use of ICS
- * Develop implementation strategies

The Role of the States, '06 and Beyond

- * Establish infrastructure to support NIMS implementation
- * Encourage a regional approach to implementation
- * Establish planning process to ensure NIMS implementation
- * Communicate requirements to locals
- * Measure progress and facilitate implementation reporting

Implementation Activities: FY06 - States and Territories

State Adoption and Infrastructure

- * Monitor formal adoption of NIMS by tribal and local jurisdictions
- * Establish a planning process to ensure communication and implementation of NIMS statewide
- * Designate a single POC to coordinate NIMS implementation

- * Ensure federal preparedness funding is linked to NIMS implementation

Implementation Activities: FY06 - States and Territories

Command and Management

- * Use ICS for all incidents
- * Use integrated Multi-agency Coordination Systems
- * Institutionalize NIMS Public Information System

Implementation Activities: FY06 - States and Territories

Preparedness Planning, Training, Exercises

- * Establish NIMS baseline against FY05 and FY06 requirements
- * Update plans and SOPs to include NIMS and NRP
- * Leverage facilities for NIMS training
- * IS-800 NRP: An Introduction
- * ICS-100 and ICS-200
- * Incorporate NIMS into exercises
- * Participate in all-hazards exercises based on NIMS
- * Utilize corrective actions

Implementation Activities: FY06 - States and Territories

Resource Management, Communication and Information Management

- * Inventory state response assets using resource typing
- * Develop plans for resources in NRP Catastrophic Incident Annex
- * Ensure standards are incorporated into acquisition procedures
- * Use plain English

Implementation Activities: FY06 - Tribal and Local Jurisdictions

- * Complete IS-700 NIMS Introduction
- * Adopt NIMS principles and policies
- * Establish a NIMS baseline
- * Institutionalize the use of ICS
- * Develop strategy and timeline for full NIMS implementation

Implementation Activities: FY06 - Tribal and Local Jurisdictions

Command and Management

- * Use ICS for all incidents
- * Use integrated Multi-agency Coordination System
- * Use JIS and JIC to communicate public information

Implementation Activities: FY06 - Tribal and Local Jurisdictions Preparedness Planning, Training

- * Update plans, SOPs with NIMS
- * Intrastate and interagency mutual aid
- * IS-700 NIMS Introduction
- * IS-800 NRP Introduction
- * ICS-100 and ICS-200

Implementation Activities: FY06 - Tribal and Local Jurisdictions Preparedness Exercises, Resource Management, Communication

- * Incorporate NIMS and ICS into all training and exercises
- * Participate in all-hazards exercise programs based on NIMS
- * Inventory community assets using resource typing
- * Ensure standards are incorporated into acquisition procedures
- * Use plain English

The NIMS Integration Center

- * Strategic direction for and oversight of NIMS and the NRP
- * Support NIMS implementation through ...
- * Mutual aid, resource management, credentialing
- * NIMS National Standard Training Curriculum
- * Guidance and evaluation tools
- * NIMS Advisory Committee
- * Guides for Elected Officials
- * EOP Guidance for States/Locals
- * NIMS Communications

The NIMS Integration Center

- * Gil Jamieson, Director
- * Web Page: www.fema.gov/nims
- * E-Mail: NIMS-Integration-Center@dhs.gov
- * NIMS Training: www.training.fema.gov/emiweb/IS/is700.asp
- * NRP Training: www.training.fema.gov/emiweb/IS/is800.asp
- * ICS Training: www.training.fema.gov/emiweb/
- * Main Number: 202-646-3850
- * Mailing Address: NIMS Integration Center, 500 C Street SW, Suite 706, Washington, DC 20472

The NIMS Integration Center
DHS/FEMA
Washington, DC
01/10/2005

NIMS Frequently Asked Question's

WASHINGTON - The NIMS Integration Center's five most frequently asked questions, which are posed primarily via e-mail, focus on required NIMS training, lost or delayed NIMS/ICS training certificates, and NIMCAST temporary passwords.

In the interest of providing the information most relevant to our audiences we have decided to repeat those questions and our answers in this NIMS Alert. We also would like to urge you to check our FAQ site, which is directly accessible from the NIMS Homepage at www.fema.gov/nims; it is updated frequently based on your questions.

Who has to take NIMS and ICS training?

All federal, state, local, tribal, private sector and non-governmental personnel with a direct role in emergency management and response must be NIMS and ICS trained. This includes all emergency services related disciplines such as EMS, hospitals, public health, fire service, law enforcement, public works/utilities, skilled support personnel, and other emergency management response, support and volunteer personnel, as follows:

Entry Level

- * FEMA IS-700: NIMS, An Introduction
- * ICS-100: Introduction to ICS or equivalent

First Line, Single Resource, Field Supervisors

- * IS-700, ICS-100 and ICS-200: Basic ICS or its equivalent

Middle Management: Strike Team Leaders, Division Supervisors, EOC Staff, etc.

- * IS-700, IS-800 NRP, ICS-100, ICS-200 and in FY07, ICS-300

Command and General Staff; Area, Emergency and EOC Managers

- * IS-700, IS-800, ICS-100, ICS-200 and in FY07, ICS-300 and ICS-400

What about elected officials?

The NIMS Integration Center strongly recommends that all elected official who will be interacting with multiple jurisdictions and agencies during an emergency incident at the minimum, complete **IS-700: NIMS**, An Introduction and **ICS-100**: Introduction to ICS. These courses provide a basic understanding of the National Incident Management System and the Incident Command System. Everyone directly involved in managing an emergency should understand the command reporting structures, common terminology and roles and responsibilities inherent in a response operation.

Appendix 1

DIRECTION, CONTROL, AND COORDINATION

The Division of Emergency Management within the Fire Department is the City of Kirkland's 24-hour crisis monitoring agency. As emergency or disaster situations threaten or actually occur, the Emergency Services Director (Fire Chief) or his/her designee may convene the "Crisis Action Team" or activate the Emergency Coordination Center (ECC) to facilitate either evaluation of the threat and/or incident planning. The Crisis Action Team (policy group) may possibly activate the ECC or implement emergency functions and resources under the provisions of this Plan. Certain near instantaneous events may trigger immediate full ECC activation through first responder department recommendations, such as the Police, Fire and Public Works departments. The Emergency Coordination Center (ECC) will be central to successful emergency and disaster operations in the City of Kirkland. The Coordination Center Concept ensures that decision makers, policy makers and coordinators will be located in close proximity to make sure that personnel and resources can be used efficiently. Face to face communication and direct coordination of activities helps minimize duplication of efforts and provides immediate feedback mechanisms within the emergency organization

I. PURPOSE

The purpose of this Appendix is to provide for overall guidance and policy in the direction, control and coordination of emergency operations under the provisions of this comprehensive plan, as established and promulgated through the City of Kirkland's Municipal Code and the Revised Code of Washington (RCW 38.52) Statute:

Kirkland Municipal Code = KMC

- KMC 3.20.050 Emergency Mgmt. Plan.
 - City Manager is responsible to see that the City executes its plan in accordance with what is recorded in that plan.
- KMC 3.20.060 ECC
 - The plan calls for activation of the Emergency Coordination Center and/or the Crisis Action Team and designates options for the Incident Commander.
- KMC 3.20.070 Emergency Powers
 - Allows the broadest authority and greatest discretion consistent with Washington law.
- KMC 3.20.080 Task Force
 - Identifies the composition, function and operation of the local emergency management task force.
- KMC 3.20.090 Ratification of Actions
 - Allows the city manager to take action on behalf of the city council and/or mayor pursuant to the Emergency Management Plan.
- KMC 3.20.120 Search and Rescue
 - Identifies the Chief of Police as responsible for search and rescue in the city.

Revised Code of Washington = RCW

RCW 38.52.070 Emergency Powers

- Each political subdivision of the state is authorized and directed to establish a local organization in accordance with the state emergency management plan and program.

RCW 38.52.400 Search and Rescue

- Identifies the Chief Law Enforcement Officer of each political jurisdiction as responsible for search and rescue activities in accordance with state and local Operating plans.

Sub functions and tasks that may be developed, maintained, and/or performed in support of this Appendix for the City of Kirkland include:

- Emergency Coordination Center (ECC) Procedures Manual.
- Guidelines for the Crisis Action Team (CAT)
- Emergency Communications System structure and procedures.
- Emergency Public Information system structure and access procedures.
- Mobile Command Post Procedures and Guidelines.
- Joint Information Center Procedures Manual.

II. POLICY

- A.** It is the policy of the City of Kirkland to establish overall direction, control and coordination through a Crisis Action Team (CAT) or an Emergency Coordination Center (ECC) to support the City's response to a disaster or major emergency.

- B.** It is the policy of the City of Kirkland that each Municipal department designate a primary and alternate location from which to establish direction and control of department activities during a major emergency or disaster. Some departments such as Public Works may have alternate locations for directing functions outside the ECC. Departments with separate control and work stations shall keep the ECC informed as to: what has happened; what they are doing about it; and what they need.

- C.** The City of Kirkland will utilize the Incident Command System (ICS) as the organizational basis for response to any emergency or disaster.

- D.** It is assumed that Police and Fire Department personnel have sufficient authority to take immediate life or property saving actions as necessary at individual emergency scenes, irrespective of a Mayoral or City Manager proclamation.

III. ORGANIZATIONS INVOLVED

The following departments, agencies and organizations have responsibilities and essential functions in direction, control and coordination.

Primary:

- A. City Council / Mayor
- B. City Manager
- C. Executive Policy Group (CAT)

Other:

- D. Administration & Finance Department
- E. Fire and Building Department - Emergency Management Division
- F. Information Technology
- G. KOMO Radio
- H. Lake Washington School District
- I. Parks and Recreation Department
- J. Planning and Community Development Department
- K. Police Department
- L. Public Works Department
- M. Puget Sound Energy
- N. Red Cross
- O. Other Local, State and Federal Government Agencies

County / State / and/or Federal

During the response and recovery phase of any disaster situation, other local jurisdictions, County, State and Federal agencies may provide life and property saving assistance, additional coordination and/or administrative support under the direction and control of the City of Kirkland emergency Operating structure.

IV. RESPONSIBILITIES

In the broadest context, the responsibilities outlined in this Appendix assume a full Emergency Coordination Center (ECC) activation. In the interest of time and efficiency, the departments/agencies involved with this function may or may not be utilized in smaller scale situations. During a situation that the Crisis Action Team (CAT) is activated, the Division of Emergency Management and /or other CAT members can liaise directly to the departments and/or agencies with resources and capabilities in order to expedite resource response and other needed services. If the situation grows in complexity and scope, each department may be called upon to fulfill some or all of its stated responsibilities through, or in direct coordination with the ECC.

A. City Council/Mayor: (Also see Executive Policy Group [CAT] this section)

1. Provides for Policy oversight and feedback for all emergency functions undertaken by the City as identified by this document.
2. Serve as oversight and policy focus for the citizens of Kirkland.
3. Extend or curtail emergency declarations (i.e. States of Emergency) in consultation with the City Manager and other Policy Group members.
4. Adopts emergency ordinances and/or resolutions.
5. Provides assistance, oversight and a feedback mechanism to the Policy Group or Crisis Action Team for change, revision, or assessment of existing policies or consideration of new policy issues.

B. City Manager (and Assistant City Manager in his/her absence)

1. Provides overall direction and control for the City during disaster and major emergency situations.
2. Chief of staff and advisor for the Mayor and City Council during disasters or major emergencies.
3. Ensures that the City of Kirkland continues to function administratively.
4. Proclaims and administrates, in consultation with the Mayor and City Council, a "State of Emergency" when necessary.
5. Serves as the Executive Policy Group Leader and Chairman of the Crisis Action Team (CAT) convened during activation of the ECC.
6. Issues emergency rules and proclamations, in consultation with the Mayor and City Council that have the force of law during proclaimed emergency periods.
7. Disseminates public policy statements to the media and through departmental information officers.
8. Disseminates emergency information and instructions to the general public.
9. Establishes clear lines of succession in all aspects of city responsibilities and functions.
10. Establishes and maintains a public information center in coordination with the ECC.

C. Executive Policy Group (Same individuals as Crisis Action Team - CAT)

1. This group evaluates, reviews, enforces, terminates, and considers new options for policy that directly affects all aspects of the City of Kirkland during emergency and disaster operating.
2. It is comprised of the City Manager, Assistant City Manager, the Police Chief, and the Directors of Administrative Services, Finance, Public Works, Fire and Building Services, Information Technology, Planning and Community Development and Parks & Community Services .
3. All members will maintain phone, radio, pager or cellular capability for immediate notification and/or consultation for potential crisis or hazardous situations that might occur in the City of Kirkland.

D. Administration & Finance Department

1. Provides a representative to and manages the "Human Resources Branch" of the Emergency Coordination Center (ECC) Logistics Section.
2. Staffs the ECC "Safety Officer" position (risk management).
3. Provides a representative to the ECC Plans Section.
4. Provides a representative to the Utilities Branch within the Public Works Operating Section that maintains liaison with Verizon, U.S. West and other communications contractors in the City.
5. Director, Administration & Finance (or designee) serves as an alternate Policy Group Leader for the City in formulating, administering or supervising public policy during disaster or emergency Operating in the ECC.
6. Director of Administration & Finance (or designee) serves as the ECC Administration/Finance Section Chief during designated major emergencies or disasters.
7. Staffs the ECC Administration/Finance Section.
8. During the recovery phase of a disaster or major emergency, provide direct support to the Emergency Management Division and Planning and Community Development in the compilation of damage assessment, and preparation of documents being submitted to state and federal agencies as well as establishing Disaster Assistance Centers.
9. Establishes and maintains a single cost center system whereby emergency/disaster costs are identified and accumulated for state and federal reimbursements.
10. Establishes and maintains a system to meet payroll and other payment obligations during emergencies and disasters.

E. Fire and Building Department and Emergency Management Division

FIRE

1. Activates or recommends activation for Crisis Action Team and the ECC.
2. Fire Chief (or designee) normally functions as the ECC Incident Commander during predesignated types of major emergencies or disasters.
3. Fire Chief serves as an active member of the Kirkland Crisis Action Team for decision making and the Executive Policy Group for policy formulation in the City.
4. The Director of Fire and Building Services (the Fire Chief) serves as the Director of Emergency Services and as such, is directly responsible to the City Manager for the organization, administration and operation of Emergency Management within the Fire Department.
5. Staffs the "Operating and Plans Section Chief" position in the ECC.
6. Staffs the "Fire Operating Branch" within the Operating Section in the ECC.
7. Normally assumes role of Incident Commander of hazardous materials incidents. If incident requires state/federal unified plan activation, may provide a representative to staff the local on-scene coordinator or liaison position, while there is an immediate threat to public safety.

BUILDING

1. Fire and Building Department Director (Fire Chief) serves as an active member of the Kirkland Crisis Action Team for decision making and policy formulation for the City.
2. Staffs the "Facilities Branch" within the Logistics Section of the ECC
3. Staffs the "Situation Status" (Disaster Analysis Function) positions in the Plans Section of the ECC.
4. Coordinates issues pertaining to permits and temporary code variances as per City policy during recovery and restoration phases of disaster or major emergency.
5. Provides staff assistance for coordinating hazard mitigation activities as they relate to land use, resource management, enforcement of codes, the inspection process and the issuing of permits.

EMERGENCY MANAGEMENT DIVISION

1. Activates the Crisis Action Team (CAT) and the ECC when necessary.
2. Facilitates the development of, and maintains the City of Kirkland's Comprehensive Emergency Management Plan (CEMP).
3. Provides direct liaison, coordination and networking among local, state, federal, private and volunteer organizations.
4. Ensures that the ECC is organized, equipped and is ready to become functional within an hour of activation notification.
5. Prepares Emergency Proclamations (in draft form) for the City Attorney, City Manager and/or the Mayor and Council.
6. Coordinates requests for emergency assistance.
7. Ensures coordination for the release of information through the Emergency Alert System and KOMO Radio.
8. Maintains liaison with Emergency Management personnel in King County, Redmond, Bellevue, Bothell, Medina and the City of Seattle.
9. Monitors existing and/or potential situations for the Crisis Action Team and acts as the central coordination point for that body.
10. Coordinates area hospitals and/or medical facilities to ensure they have access to and functional capability on the Hospital Emergency Action Radio net (HEAR).
11. Serves as the alternate and/or backup function to the Emergency Services Director.
12. Serves as the Technical Advisor to the Executive Policy Group, City Manager and Mayor/Council on all matters pertaining to major emergency and disaster management.

F. Information Technology Department

1. Takes all action necessary to protect data, and provide a working computer and communications network for all City of Kirkland departments.
2. Provides GIS mapping as needed.
3. Provides direct technology support when ECC and Message Center has been activated with set-up and support roles.

G. KOMO, KIRO Radio

1. Provides periodic tests of the local Emergency Alert System (EAS).
2. Conducts periodic communication checks with City of Kirkland ECC.
3. Serve as primary point of contact for the Eastside Emergency Alert System.

H. Lake Washington School District

1. Provides a representative to the ECC for consultation on all matters concerning use of school assets for shelter, transportation or mass feeding.

I. Parks and Community Services Department

1. The Parks and Community Services Director serves as an active member of the Kirkland Crisis Action Team for decision making and policy formulation for the City.
2. Staffs the Logistics Section "Services and Support Branch Director" positions in the ECC.
3. Provides for the coordination and logistical support to City Police and the King County Medical Examiner for body identification, including designating and setting up of temporary morgue sites during and just after mass casualty situations.

J. Planning and Community Development

1. Acts as the lead department for coordinating hazard mitigation activities as they relate to land use planning, resource management, enforcement of codes, the inspection process and the issuing of permits that relate to zoning, new development and environmental assessment.
2. Assumes support responsibility with Parks and Community Services for management, planning and assistance for special populations within the City to include the disabled, handicapped, elderly, critical care and non-English speaking populations.

K. Police Department

1. Activates or recommends activation for Crisis Action Team and the ECC.
2. Police Chief (or designee) will normally function as the ECC Incident Commander during predesignated major emergencies or disasters that require significant essential department functions and management by Police, (i.e. civil disorder, terrorist situations, search and rescue, etc.).
3. Police Chief serves as an active member of the Kirkland Crisis Action Team for decision making and the Executive Policy Group for policy formulation in the City.
4. Staffs the "Operations and Planning Section Chief" positions in the ECC.
5. Staffs the "Law Enforcement" Branch of the Operations Section in the ECC.
6. Plans, orders and conducts evacuations when necessary to save lives and property.
7. Coordinates all law enforcement activities in the affected area(s) to include maintenance of law and order; crowd control; traffic control; and curfew enforcement if established.
8. Advises Mayor/City Council and Emergency Coordination Center Policy Group on need for curfews, area closures, and other considerations.

L. Public Works Department

1. The Public Works Director (or designee) will function as the Emergency Coordination Center (ECC) Incident Commander during predesignated major emergencies or disasters that require significant essential department functions and management by Public Works, (i.e. flooding, power outages, etc.).
2. The Public Works Director serves as an active member of the Kirkland Crisis Action Team for decision making and policy formulation for the City.
3. Staffs the "Operations, Planning and Logistics Section Chief positions as primary or alternate for shift changes in the ECC.
4. Staffs the "Public Works Branch" within the ECC "Operating Section."
5. Supervises and coordinates outside assistance resources, including volunteers that have been requested for repair and restoration of utilities and services within the City.
6. Implements and enforces water conservation programs to conserve dwindling supplies up to and including rationing and curtailment of specific water related activities (i.e. washing of cars, irrigation of yards, etc.), if necessary.
7. Establishes priority assessment, repair, restoration and purification of water sources throughout the City in coordination with other water utility organizations in the surrounding greater Kirkland area.
8. Establishes priority assessment, repair, and restoration of other utility services throughout the City to include sewer and storm drain service, sanitation facilities and other utility service in coordination with Puget Sound Power and Light and Washington Energy Services.
9. Staffs the "Fleet Services Branch" within the Logistics Section of the ECC to ensure vehicle support for City needs.

M. Puget Sound Energy

1. Notifies the Division of Emergency Management and the King County Department of Health in the event of extended utility failure.
2. Coordinates public information releases with the ECC and City Information Center.

N. Red Cross

1. Ex-officio member of the Crisis Action Team.
2. Provides liaison and coordination work with the Logistics Section on shelter, mass care and human welfare problems.
3. Provides setup and staffing of shelters, and provides emergency feeding, lodging, and individual assistance.

O. Other Local, state and Federal Government Agencies

1. Other local jurisdictions, County, State and Federal agencies may provide life and property saving assistance, additional coordination and/or administrative support under the direction and control of the City of Kirkland emergency Operating structure.

V. PROCEDURES: OPERATIONAL CONCEPTS

A. Direction and Control

1. The City Manager, through the Division of Emergency Management and the City of Kirkland Department Directors, are responsible for the direction, control, and coordination of emergency management activities in the City of Kirkland.
2. The City Manager's responsibility for the preparation, and carrying out of emergency functions to mitigate, prepare for, respond to, and recover from major emergencies or disasters; and the authority for direction and control of the organization, administration and operation of the City of Kirkland emergency management program is found in Federal Civil Defense Act of 1950 (as amended), the Federal Disaster Relief Act of 1974 (as amended), Washington State Statute; RCW 38.52 and the City of Kirkland Municipal Code, Chapter 3.20.
3. In accordance with the City of Kirkland Municipal Code 3.20 the emergency management organization of this City is the responsibility of the City Manager. The emergency management organization consists of all departments and resources of the City government and applicable volunteer and private resources. In accordance with Kirkland Municipal Code 3.20.090, the City Manager may use City resources and employees as necessary, and alter functions of departments and personnel as well. In addition if State and/or Federal resources are made available to the City, they will be under the operational control of the City Manager or his/her designee.
4. All City of Kirkland departments and their personnel are part of the City emergency management organization as outlined in this plan. This plan will be utilized to guide response to emergencies/disasters or the imminent threat thereof, and to guide Crisis Action Team (CAT) support to field Operating.
5. Each City of Kirkland department is directed to establish a primary location and alternate location from which to establish direction and control of its respective activities in an emergency or disaster. This may be from the Emergency Coordination Center (ECC), or other location, depending upon circumstances. If it is from another location, the department will keep the ECC informed as to what has happened, what the department is doing about it, and what the department's needs are in the near future.
6. In accordance with Kirkland Municipal Code, the City Mayor/Council or City Manager may curtail or extend emergency declarations, and may adopt emergency ordinances in accordance with the Kirkland Charter.

B. Emergency Proclamation

1. A local Emergency Proclamation is the legal means by which the City can take extraordinary measures to meet emergencies or disaster problems. A proclamation allows for the emergency use of resources, the bypassing of time-consuming requirements such as hearings and the competitive bid process, and activates the extraordinary measures outlined in this Plan. A proclamation is usually a prerequisite for State assistance and is made at the onset of a disaster to allow the municipality to do as much as possible to help itself.

2. In preparing a proclamation, a description of the event and the necessary emergency authorizations need to be documented. The Washington State Emergency Management Division in Olympia should be informed, and a news release made as soon as possible when an Emergency Proclamation is signed. This emergency proclamation shall terminate in 48 hours unless it is extended by resolution of the Mayor/City Council. The City Manager, as the liaison with the Mayor/City Council will ensure that a resolution extending the proclamation is, if appropriate, duly passed.
3. The City Manager may declare a civil emergency under Kirkland Municipal Code 3.20.090, to expedite access to local resources needed to cope with the incident. If the needed response exceeds local capabilities, a disaster has occurred.
4. Any proclamation issued pursuant to Kirkland Municipal Code 3.20.090 has the force of law and supersedes any conflicting provision of law during the period of the declared emergency or disaster. The Assistant City Manager is responsible for ensuring that any emergency proclamation is published in accordance with Kirkland Municipal Code.
5. The City Manager, acting on behalf of the Mayor/City Council, may declare a disaster or emergency conditions under Washington State Statute RCW 38.52. He/she may further ask for a gubernatorial declaration to include State and Federal assistance.
6. City of Kirkland Assistant City Manager ensures that all City department employees are notified of the emergency proclamation to include, but not limited to: conditions, length of time in effect, expected impact to business, citizens, etc. and that the proclamation is published and recorded in accordance with municipal code.

C. Requests for Assistance

1. If the situation is beyond local capability, a request for State assistance, and/or Federal assistance may be in the original proclamation or included in a second proclamation presented to the Governor of Washington through the Washington State Emergency Management Division. Protocols normally require that the process also go through King County. The "Local Proclamation" and the "Request for Assistance" are two separate actions, although they may be combined. Part of this proclamation includes the Mayor/City Manager proclaiming the City a "disaster area." Although there is no statutory basis for this designation, it is suggested by State and Federal policies, and fulfills public expectations that local leadership is responding to the situation.

D. Coordination

1. The Division of Emergency Management in the Kirkland Fire Department is the lead organization for facilitating coordination among local, state, federal and private sector organizations within the City of Kirkland.
2. The King County Local Emergency Planning Committee (LEPC) ensures an adequate emergency plan is in existence in accordance with the Federal Emergency Planning and Community Right to Know Act of 1986. Implementation of this Federal legislation and corresponding State laws provides for hazardous and toxic chemical emergency planning, training and public education and also incorporates community input in the planning process.

4. The Coordinator for the Division of Emergency Management serves as the key element in emergency planning, the primary coordinator/advisor for the City Manager/Mayor/City Council and the Crisis Action Team during emergency Operations.
5. During a full ECC activation and operation, all ECC representatives are expected to coordinate directly with their functional counterparts in the other local, state and federal government and private sector positions.

E. Facilities

1. Emergency Coordination Center (ECC) locations.
 - a. Emergency Coordination Centers (Primary and secondary locations)

The Emergency Coordination Center (ECC) is located on the first floor of City Hall at 125 Fifth Avenue in Kirkland. The Alternate ECC for the City is located in Station 26 at 9930 124th Avenue N.E. The third alternate location for the ECC is the Public Works Maintenance Facility located at 915 8th Street in Kirkland. See attached floor plans for each respective facility.

2. On-Scene Emergency Coordination Center
 - a. If a major emergency situation occurs in a specific isolated area, or if the sheer numbers of resources on-scene require extensive face to face coordination, and adequate communication can be provided, an on-scene Emergency Coordination Center (ECC) may be established. It may also fill the function of an on-scene command post, depending on the needs at the scene and the Incident Commander's perspective.

F. Communications

1. Contact between the ECC staff and their departments will be maintained through telephone, radio and electronic networks.
2. All departments are responsible to ensure that communication systems are in place between their respective departments and the ECC.
3. Coordination / Dispatch Centers
 - a. Emergency response departments with field personnel involved in disaster operations will maintain coordination and/or dispatch centers that will control the functioning of the emergency forces under their control.
 - b. Whenever possible, these centers will utilize existing facilities and will be in contact with the ECC through direct redundant communication, such as telephone and radio. Existing centers include:
 1. Public Works Maintenance Facility located at 915 8th Street.
 2. Police dispatch located on the first floor of City Hall at 123 Fifth Avenue.
 3. Fire dispatch located at Bellevue Fire Department, Station 3.

G. Crisis Action Team (CAT).

1. The Division of Emergency Management in the Fire Department is the City of Kirkland's 24-hour crisis monitoring agency. The Division provides an on-going independent analysis of incoming information provided by such agencies and systems as:
 - The National Warning System
 - Washington State Division of Emergency Management
 - National Weather Service
 - Puget Sound Energy
 - King County Emergency Management
 - Kirkland Police Department
 - Kirkland Fire Department

The Division of Emergency Management will normally activate or alert the Crisis Action Team (CAT) whenever needed.
2. The Crisis Action Team is a flexible, supporting and coordinating function that could be activated in any of several ways:
 - One individual sitting at home facilitating the coordination of personnel and resources to an incident scene.
 - Several members convening in the Emergency Coordination Center or on scene to assist an Incident Commander as needed.
 - Several members conversing on the phone about courses of action or options.
 - All members asked to meet for consensus on new policies, strategies, or options.
3. When an emergency or disaster situation either occurs or threatens, the Director of Emergency Services (Fire Chief), or designee, may convene the "Crisis Action Team" to facilitate the process of evaluation and incident planning, consider new policy, implement activation of selected emergency functions or mobilize needed resources. The Crisis Action Team will also be used to support incident commanders in field situations.
4. Any City of Kirkland Department could be called upon to provide a representative at the convening of the Crisis Action Team. Exactly who is called and ultimately how many will participate in the meeting is dependent upon the situation and the functions that will be activated.
5. In full activation of the ECC, the Director of the City Department that is most heavily impacted will normally serve as the ECC Incident Manager.
6. Additionally, the Kirkland Police and Fire Department Communications Centers will notify the Emergency Services Director (Fire Chief) or representatives of the Division of Emergency Management for possible activation of the Crisis Action Team when certain events have reached pre-defined levels, such as:
 - A major earthquake within 60 miles of the City of Kirkland of magnitude 6.0 or higher.
 - Power outages, suspected to be out for more than 5 hours, 100 plus homes affected, and temperatures of 25 degrees F. or colder.
 - Major fire or potential conditions similar that require emergency shelter for victims.
 - Weather warnings and/or advisories, i.e. wind, excessive snow, torrential rain, bitter cold etc.
 - Incidents that require coordination of 3 or more City Departments.
 - Mass casualty incidents involving 10 or more patients.

- Release of hazardous materials sufficient to cause an evacuation of any kind.
- Any existing condition or imminent hazard that could cause loss of life or property within the City of Kirkland.

H. Emergency Coordination Center (ECC) Activation

1. The Emergency Coordination Center (ECC) and Kirkland's emergency organization may be fully activated by the decision of the Crisis Action Team (CAT), the Fire Chief, Police Chief, Public Works Director, the Division of Emergency Management or the City Manager.
2. As a practical matter in the field, any Incident Commander can request a Crisis Action Team or ECC activation.
3. Depending on the situation and the response required, other City department heads may activate the emergency organization in consultation with the Division of Emergency Management and the Emergency Services Director.
4. When the decision is made to activate the ECC, either the Police Department Dispatcher or the Division of Emergency Management will notify the appropriate staff members to report to the ECC. The ECC management staff will take action to notify and mobilize the appropriate organizations and Operating centers which they are responsible for coordinating.
5. Departments and organizations assigned to an ECC function will do the following when notified:
 - a. Initiate a call out to all department personnel assigned to the ECC as per their department policy, and instructions.
 - b. Activate and check to see that all department communications systems are functional as per their standard procedures. (This is particularly appropriate for those personnel who work in departments with separate dispatch centers.)
 - c. Activate their checklists, procedures and policies and be prepared to carry out responsibilities as indicated in this plan, the ECC Procedures Manual (separate document), and individual department instructions.

I. Emergency Coordination Center (ECC) - Operating and Staffing (See ECC Procedures Manual - separate document)

1. Overview:
 - a. The Emergency Coordination Center (ECC) is organized and will function according to the National Interagency Incident Management System (NIIMS) Incident Command System (ICS) principles.
 - b. Incident Command System (ICS) is intended to be flexible and should be tailored by the ECC Manager and the Section Chiefs, to meet the demands of any particular situation.
 - c. In this system, the Mayor/Council exercise their authority through the City Manager who acts as the Executive Policy Group Leader and provides overall policy and guidance for developing the strategic objectives necessary in the management of any emergency or disaster.

- d. The ECC Incident Manager will be responsible to the City Manager and Executive Policy Group. He/she will have overall management responsibility for the incident and see that policy directives are implemented.

NOTE: The term ECC Incident Manager is used instead of Incident Commander (per the ICS) to avoid confusion with the Incident Commanders in the field.

2. ECC Incident Manager and Staff

The ECC Incident Manager is the interface between the City Manager, the Executive Policy Group and the ECC, and is in charge of the ECC and is responsible for making decisions necessary to meet the demands presented by the emergency or disaster.

- The direct management staff for the ECC includes Administrative Support Leader, Public Concerns Leader, the Emergency Management Coordinator, and the Section Chiefs for each of the respective functional areas of Operations, Planning, Logistics and the separate single function of Administration/Finance.
- Using the basic premise of an optimum span of control, there will be three or four functional sections in the ECC, depending on whether or not Administration/Finance is activated. Each of these sections will have branches that will also be functionally oriented. The size and function of this organization will be dictated by the magnitude and nature of the emergency or disaster.
- The Public Information Officer for the jurisdiction will fall under the organizational structure of the Policy Group Leader which for the most part will be the City Manager or his/her representative.
- The Emergency Management Coordinator in the Kirkland Fire Department will facilitate efficient Emergency Operations in the ECC and trouble shoot for the ECC Manager as a liaison and point of coordination for the other departments.
- The level of activation for the ECC will depend upon the situation and the need for coordination and support. The ECC Incident Manager will schedule shifts and staffing levels as necessary.
- Individual department heads should exercise direction and control of their respective department operations from whatever site they designate in their respective operational procedures. Coordination will be accomplished through department representatives who have the responsibility to staff the ECC.
- Site security for the ECC may be necessary to ensure unauthorized people do not interfere with staff personnel or other vital functions being performed in the facility. The Logistics Chief may request the Police Department provide a uniformed police officer for each shift to maintain security.

- When fully activated for a major situation or disaster, the ECC will operate on a two 12 hour shift basis with one half hour planned for briefing and debriefing at shift change.

3. Overview of Key Emergency Coordination Center (ECC) Functions

NOTE: See ECC Procedures Manual for detailed position checklists and functions.

a. Policy / Executive Group

- This group is chaired by the City Manager, also functions as the Crisis Action Team and consists of the Assistant City Manager, Director of Administration & Finance, Public Works, Fire and Building Services, Information Technology, Planning and Community Development, Parks and Community Services, the Chief of Police and the City Attorney. This group will develop policy and strategy, provide interface to the media and the public, and liaison with state and federal officials as required.
- The Mayor/City Council, acting through the City Manager, will disseminate policy guidance and direction through the ECC Incident Manager who will be located in the ECC facility.
- The City Manager, acting in consultation with the ECC Incident Manager and On-Scene Incident Commanders will provide overall management direction and priority actions within the City to save lives, protect property and recommend/instigate population protection and recovery actions. Within the concept of the Crisis Action Team, all resources available will be identified and mobilized as necessary. Tasks will be prioritized and resources used within this priority framework.

b. Emergency Coordination Center General Staff.

1. The ECC Incident Manager. (ECC Command) Responsible to the City Manager and the Executive Policy Group for the safety of city personnel, the overall management of disaster or major emergency activities including the development and implementation of strategic decisions, and approving the ordering and releasing of resources as needed in the City. This function in the ECC may require additional staff to perform or support the management function as an overhead team, and could include personnel for Safety, Information, Liaison and Emergency Management Coordination.
2. The staff includes the Public Information Officer, Safety Officer, various Liaison Officers, and Emergency Management Coordinator.

3. The "Public Information Officer" will serve on the Emergency Coordination Center (ECC) Incident Manager's staff, as well as advise the Policy/Executive Group.
4. The (ECC) Incident Manager may also add "Liaison Officers" to be the point of contact with other agencies and levels of government.
5. The "Safety Officer" will advise the (ECC) Incident Manager on all operational safety issues.
6. The "Emergency Management Coordinator" will facilitate efficient (ECC) Operations, and 'trouble shoot' for the ECC Incident Manager.

c. Sections.

1. Using the basic premise of an optimum span of control, there normally will be three or four sections as follows: Operations, Planning, Logistics, and when required, Administration/Finance.
2. Each of these sections will have branches that will be functionally oriented. The size and complexity within each Section will be dictated by the magnitude and nature of the situation and the demand for organizational personnel using the optimum 5 to 1 supervisory ratio.

(a) ECC Operations Section. (See Organizational Chart for Emergency Operations).

- Responsible for overall command and coordination of incident response assets.
- The Operations Chief position will be staffed by the Police Chief, Deputy Fire Chief and the Director of Public Works.
- The Operations Section consists of the following branches:
 - Fire Operations Branch, staffed by the Fire Department.
 - Police Operations Branch, staffed by the Police Department.
 - Public Works Operations Branch, staffed by Public Works (PW).

(b) ECC Planning Section. (See Organizational Chart for Emergency Operations).

- Collects, evaluates, disseminates, and documents information about the disaster or emergency, the status of resources and develops the Incident Action Plans.

- The Plans Chief position will be staffed by the Deputy Fire Chief, the Police Operations Lieutenant and the Public Works Operations and Maintenance Engineer.

The Plans Section consists of following units:

- The Resource Unit - status and availability of resources (all types)
- The Situation Unit - situation status (growing, stable, declining)
- Demobilization Unit - demobilizing the entire operation
- Recovery Unit - getting back to everyday business as usual

(c) ECC Logistics Section. (See Organizational Chart for Emergency Operations).

- Responsible for providing all support needs and will order all resources, and provide facilities, supplies, and services.
- The Logistics Chief position will be staffed by the I.T. Director and the Parks and Maintenance Manager.
- The Logistics Chief Section consists of the following branches:
 - Service Branch
 - Support Branch
- The Service Branch consists of the following Units:
 - Communications – radios, telephones and electronic networks
 - Medical - medical services, transport and liaison with hospital facilities
 - Food/shelter - city staff as well as citizens
- The Support Branch consists of the following units:
 - Supply
 - Facilities
 - Ground support
 - Morgue

(d) ECC Administration/Finance Section. (See Organizational Chart for Emergency Operations).

- Responsible for monetary, financial, and related administrative functions.
- The Administration/Finance Section consists of the following units:
 - Time
 - Procurement
 - Compensation/claims
 - Cost
 - Documentation

d. ECC Continuity of Operations.

1. The Emergency Coordination Center (ECC) may be required to operate on a 24 hour basis for the duration of an incident or disaster.
2. During a 24 hour operation, shifts will normally be 12 hours in length.
3. Each position in the Emergency Coordination Center (ECC) must have a total of at least three people designated for manning during 24 hour Operations.

e. ECC Operating Procedures.

1. The ECC Procedures Manual is maintained by the Emergency Management Division and updated annually on the anniversary of this plan, or when needed.

f. On-Scene Management Incident Command System (ICS).

1. On-Scene response to emergencies follows the concept of the NIIMS Incident Command System (ICS). Some improvisation may be necessary to accommodate special circumstances, so the structure of on-scene management may vary.
2. The person in charge at the incident is the on-scene Incident Commander who is responsible for ensuring each agency on scene can carry out its responsibilities. ICS is virtually always used by responding departments within Kirkland when responding to emergency situations such as hazardous materials spills, flooding, or multiple alarm fires.
3. Upon arriving at an incident scene, the Incident Commander should:
 - Assess the situation and identify hazards.
 - Develop objectives (tasks to be done).
 - Ensure appropriate safety and personnel protective measures.
 - Develop an action plan and priorities.
 - In coordination with the Emergency Coordination Center (ECC), or dispatch, contact appropriate agencies or personnel with expertise and capability to carry out the incident action plan.
 - Coordinate, as appropriate, with other first responders.
4. When more than one agency is involved at an incident scene, the Department that has assumed the Incident Command function works together to ensure that each department's objectives are identified and coordinated.
 - Team problem solving facilitates effective response. Other agency personnel (outside jurisdictions, county, etc.) working in support of the Incident

Command Agency will maintain their normal chain of command, but will be under control of the on-scene Incident Commander.

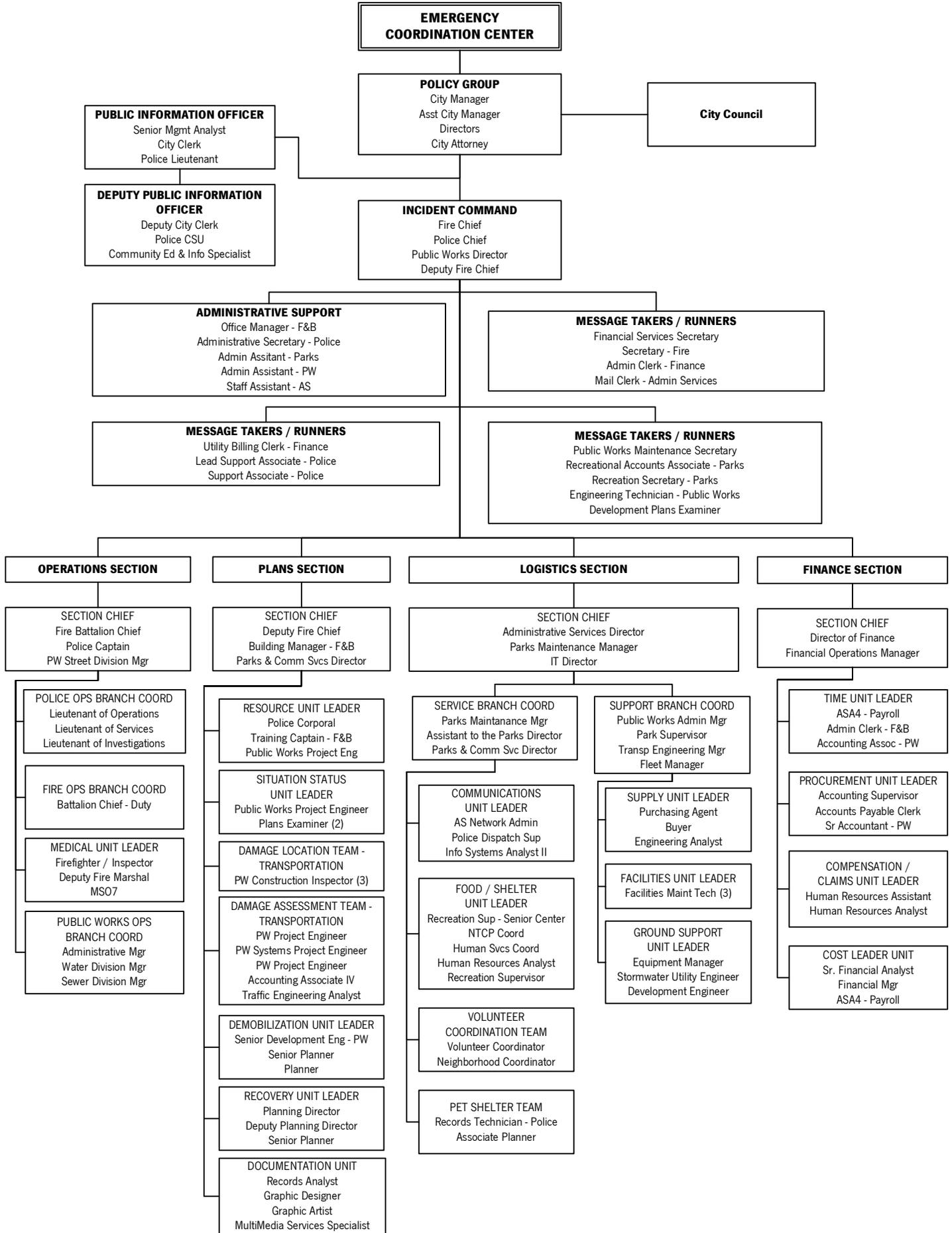
- Other responding agencies will respond to tasks through local command personnel or the Emergency Coordination Center (ECC).
5. The on-scene Incident Commander may designate a Public Information Officer to work with the news media at an incident. This may include coordinating agency media releases and arranging contacts between the media and response agencies. If additional support is needed, a Crisis Action Team (CAT) may be activated or the City Manager may be contacted.
 6. The following list includes, but is not limited to, tasks within the Incident Command System (ICS) organization:
 - Incident Commander: In charge, sets incident objectives.
 - Safety Officer: Identification of hazards and directions of safety operating.
 - Public Information: Media relations and emergency public information.
 - Plans: Situation reports, resources, documentation, and technical advisors.
 - Operations: Perimeter control, hazard reduction, emergency operations, evacuation, rescue, cleanup, emergency medical, and decontamination.
 - Logistics: Communications, contracting, transportation, supplies, and special equipment.
 - Finance / Administration: Time recording, cost analysis, compensation and claims.

FIGURES (ATTACHED)

1. Emergency Operations Organizational Chart
2. ECC Staffing Chart
3. ECC Layout – Command Center
4. ECC Layout
5. City of Kirkland Area Map
6. Emergency Support Function Responsibility Matrix

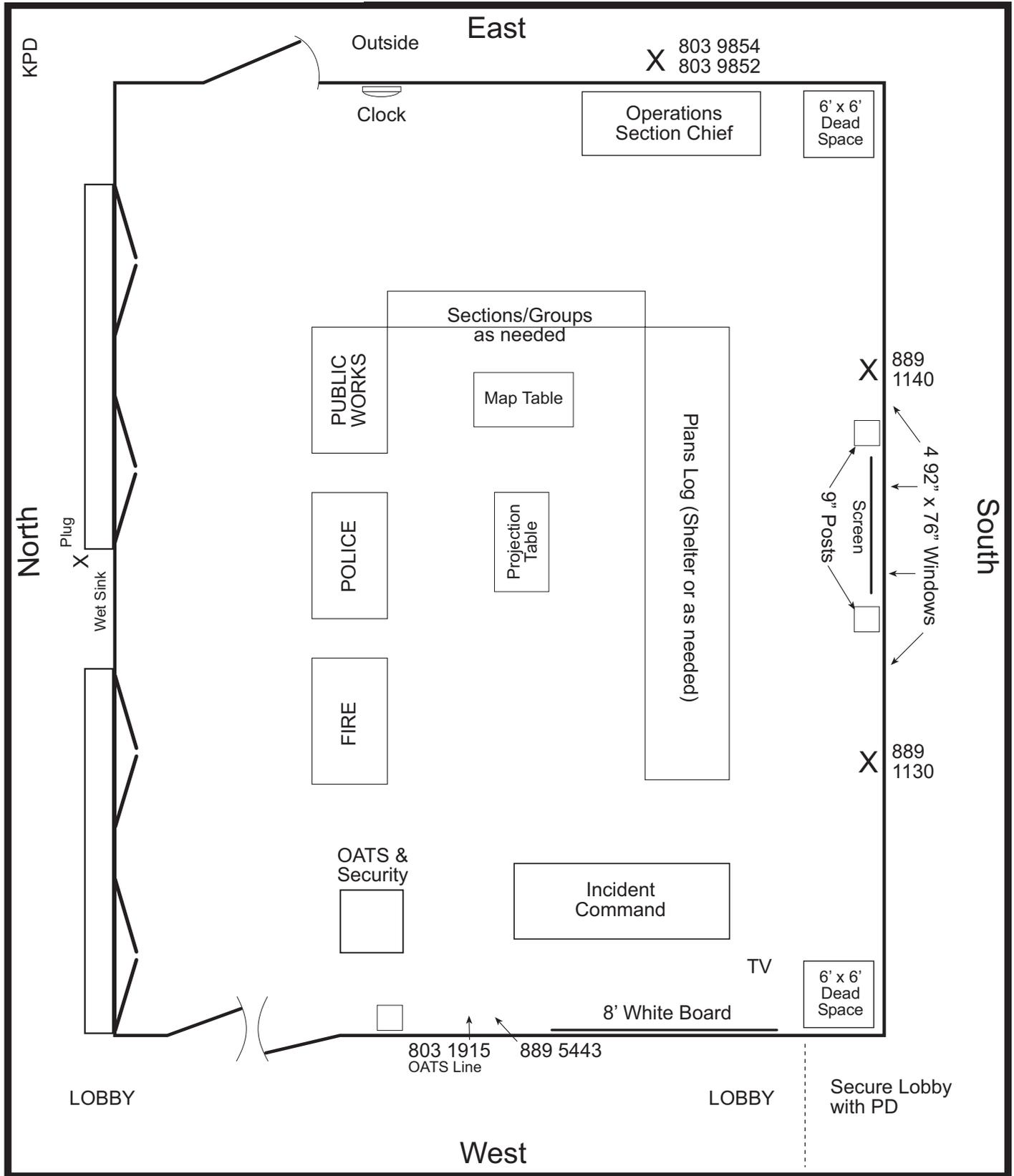
EMERGENCY COORDINATION CENTER

STAFFING CHART



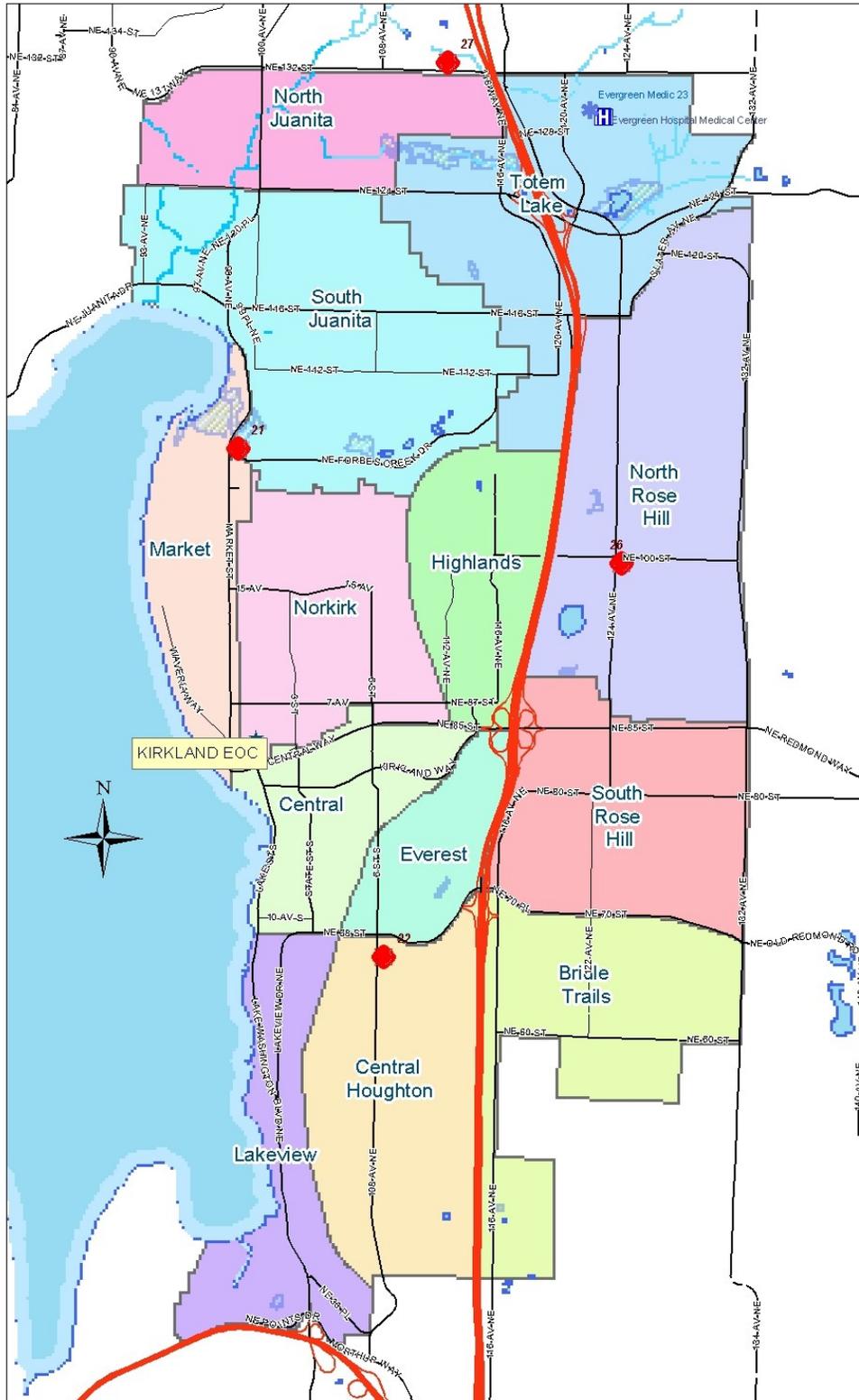


PETER KIRK ROOM ECC OPERATIONS & PLANS



DRAFT NOT TO SCALE

Appendix 1 – Figure 3 CITY OF KIRKLAND AREA MAP



Appendix 1 – Figure 3

City of Kirkland Emergency Function & Planning Responsibility Matrix

P = Primary Responsibility

S = Support or Secondary

Emergency Functions

Department/Organization	Emergency Functions																							
	1	2	3	4	5	6	7	8	9	10	11	12	21	22	23	24								
Administration & Finance		S		P		S	P		S		S		P											
AREAS		S				S										S								
Building		S	S	P		S	S	P	P	P		S												
City Manager													S				S							
Emergency Mgmt.				P							S	S												
Fire		S				S	S	P	P	P						P	S							
GTE & U.S. West		S																						
Hospitals				S				S																
Information Technology		P			S								S											
King Co. Emerg. Mgmt								S	S		S					S	S							
King Co. Health								S		S														
King Co. Med. Ex.								S																
King Co. Sheriff										S				S										
Lake WA School Dist.								S									S							
Mayor & City Council													S				S							
METRO		S		S				S									S							
Chaplaincy Program						S																		
Parks		S		S		P	S		S		P													
Planning													S			S								
Police		S	P		S		S	S	S					P	S	P								
Public Information Officer					S	S			S	S	S						S							
Public Works		P		P	S				S		P	P					S							
Puget Sound Energy												S												
Red Cross						S					S						S							
WSDOT		S		S					S								S							
Washington State Emerg. Mgmt					S			S		S							S							
Washington State Patrol		S		S						S				S										



Basic Plan

Part V: Direction and Control

A. General

1. In accordance with Kirkland Municipal Code, Chapter 3.20.050, implementation of this plan and execution of its contents shall be the responsibility of the City Manager acting on behalf of the Mayor and City Council. The emergency management organization in Kirkland consists of all departments and their subdivisions and the entire resource inventory of the City as well as volunteer and private resources committed to assist under the provisions of this plan. In addition, if Regional, State and/or Federal resources are made available to the City, they will be under the operational control of the City Manager or his/her designee.
2. City of Kirkland departments and divisions are part of the emergency management organization as outlined in this plan. This Plan will be utilized to guide response to emergencies/ disasters, or the imminent threat thereof, and to guide the Policy Group in their support of field operations.
3. The Mayor or City Manager may declare a civil emergency under Kirkland Municipal Code 3.20.070 to expedite access to local resources needed to cope with the incident. If the needed response exceeds these local capabilities, a disaster has occurred. Upon termination of the emergency declaration, the emergency organization will be deactivated.
4. If the situation is beyond local and regional capability, a request for State, and/or Federal assistance may be in the original proclamation or included in a second proclamation presented to the Governor through the King County Emergency Management Agency.
5. The Emergency Preparedness Services in the Kirkland Fire Department is the City's 24 hour a day "Crisis Monitor." The Emergency Preparedness Coordinator will provide an on-going independent analysis of incoming information. As emergency situations threaten or occur, Emergency Management personnel may convene the Policy Group to facilitate the process of evaluation and incident planning. This potentially could result in possible activation and implementation of certain emergency functions and resources including the Emergency Coordination Center. The Policy Group will also be used to support "Incident Commanders" in field situations.
6. The ECC may be activated by the City Manager, Assistant City Manager, any Department Director, Deputy Fire Chief, Police Captain and duty Lieutenant, Duty Battalion Chief, or duty Public Works Manager. When the decision is made to activate the ECC, either the Kirkland Police Dispatcher or Emergency Preparedness Services will notify the appropriate staff members to report to the ECC. The initial ECC management staff will take action to notify and mobilize the appropriate organizations and operational personnel that they are responsible for alerting.

B. Priorities

The following list of management priorities, listed in order of importance, are provided to guide City policy and decision makers before, during, and after any emergency or disaster events of major magnitude:

1. Protect life.
2. Alert and inform citizens.
3. Evacuate citizens to a safe place.
4. Protect public and private property as it relates to the economic base.
5. Protect the environment.
6. Assess the situation.
7. Restore essential services.
8. Document and record decisions, costs, lessons learned etc.
9. Provide support and guidance for rebuilding.
10. Take steps to mitigate future disasters.

C. Coordination and the ECC

The Emergency Coordination Center (ECC) is central to successful emergency and disaster operations. Decision makers, policy makers and coordinators located in close proximity ensure that personnel and resources can be used efficiently. Adequate, direct communications between all levels and key players also ensures better coordination of activities to accomplish objectives and minimize duplication of effort.

It is the City of Kirkland's policy to establish overall direction, control and coordination through an Emergency Coordination Center (ECC) to facilitate the community's response to disaster or major emergency. This will include coordination between all departments, divisions and levels of City Government to ensure continuity of operations and continuation of essential government services.

D. Controls

1. The City's emergency organization, once activated, directs and controls a response to an emergency or disaster. It is organized and will function according to the standards and principles established in the National Interagency Incident Management System's (NIIMS) Incident Command System (ICS).
2. Either the Kirkland Fire Chief (Director of Emergency Services), the Police Chief, the Director of Public Works, or the City Manager acting unilaterally, may activate this emergency organization. They also may delegate this authority. Depending on the situation and the response required, other City department managers may also activate the emergency organization.
3. The City Manager will be notified and briefed by the ECC Incident Commander as soon as possible. Consistent with the modular component of the NIIMS Incident Command System, the ECC may be activated to coordinate support for an on-scene incident commander, without activating the full City emergency or disaster organization. (See Direction, Control and Coordination Appendix). Contact between ECC staff and their respective departments will be maintained through telephone and radio networks, if operating.
4. During the effective period of any declared emergency or disaster, the ECC Incident Commander directs and controls all emergency response activities and employs all necessary emergency resources according to the provisions of this plan.

5. To ensure a line of succession, each key emergency position has three designated representatives.

E. Facilities

1. The Emergency Coordination Center (ECC) is located in the Peter Kirk Room on the lower level of City Hall at 123 Fifth Avenue in Kirkland. The Alternate ECC for the City is located in Station 26 at 9930 124th Avenue N.E. The third alternate location for the ECC is the Public Works Maintenance Facility located at 915 8th Street in Kirkland.
2. The Emergency Alert System (EAS) communications link to Radio Station KIRO is located in the King County ECC. The secondary location is in the Bellevue Communications Center. (For additional information see the Communications and Warning Emergency Support Function.)
3. All departments and their subdivisions are responsible to ensure that communication systems are in place between ECC department representatives and their respective departments or divisions.
4. For the most part, emergency service and/or response oriented departments will maintain operations or dispatch centers that will control the operations of the emergency resources under their control (example: Police and Public Works). Wherever possible, these control centers will utilize existing facilities and will be in contact with the ECC through redundant communications such as telephone and radio.

F. Emergency Public Information

Rapid dissemination of information is essential and vital for health and safety protection during and just after major emergencies and disasters. The primary means to do this is by direct contact with the media and by use of the Emergency Alert System (EAS).

G. Continuity of Government

1. **Mayoral and City Manager Succession.** The line of succession to the Mayor and the City Manager is prescribed in Kirkland Municipal Code, Chapter 3.20.
2. **Succession to offices and positions appointed by the City Manager.**
 - a. The line of succession to the Emergency Services Director will be determined by the City Manager, or the successor to that office pursuant to Kirkland Municipal Code, Chapter 3.20.040.
 - b. The line of succession to all other offices or positions appointed by the Mayor or City Manager shall be specified in that department's procedures, and/or instructions and policies.
3. **Preservation of Records.** All City departments will develop procedures, instructions and policies to guarantee the preservation of vital records, to include their reconstitution if necessary, during and after emergencies and disasters. In general, vital public records include those:
 - Considered absolutely essential to the continued operation of City government.
 - Considered absolutely essential to the City's ability to fulfill its responsibilities to the public.
 - Required to protect the rights of individuals and the City as a whole.
 - Essential to restoration of life support services.

H. Plan Maintenance

1. The Director of the Fire and Building Department ensures that necessary changes and revisions to the plan are prepared, coordinated, published and distributed.
2. The plan will undergo revision whenever:
 - It fails during emergency or disaster situations.
 - Exercises, and/or drills reveal deficiencies.
 - Key personnel change.
 - There is a change in governmental structure.
 - There is a change in the structure of emergency organizations.
 - Community situations change.
 - New hazards are identified
 - State and/or Federal requirements change.
3. The basic plan and the hazard-specific Emergency Support Function Appendices are the responsibility of the City of Kirkland's Emergency Planning Team. (Ref. II.A.4 -Basic Plan) This Planning Team is coordinated through Emergency Preparedness Services in the Kirkland Fire Department. Primary and supporting responsibilities for the Plan's Emergency Support functions are indicated in the "City of Kirkland Primary/Secondary Responsibility Matrix" attached to this Basic Plan.
4. The King County Local Emergency Planning Committee (LEPC), as an extension of State and Federal requirements is responsible pursuant to Washington Statute WAC 118.40 Title III for procedures required to enable local responders to safely manage a hazardous substance release. The LEPC may utilize applicable portions of this plan and adopt subsequent changes or develop companion plans to meet State and Federal requirements. The Title III, Local Emergency Planning Committee, as a state advisory arm, will review applicable portions.
5. Emergency Preparedness Services is responsible for coordinating the preparation and continuous updating of the plan and the compatibility of the plan with State of Washington planning documents and any other governmental plans to which the City may be signatory or with whom the City may have mutual aid agreements.
6. The Division of Emergency Management will maintain a list of individuals and organizations which have controlled copies of the plan.
7. Only those with controlled copies will automatically be provided updates and revisions. Plan holders are expected to post and record these changes.
8. Revised copies will be dated and marked to show where changes have been made.



Concept of Operations

The Kirkland Emergency Coordination Center (ECC) is designed to support local response to an emergency or disaster. Personnel from any department involved in local response to a major emergency or disaster should attempt to maintain regular communications with the ECC. This enables the ECC to coordinate the departments' response with the overall priorities and direction of the City.

Policy Group

The “Policy Group” is a leadership body of city government personnel with the flexibility to convene:

1. In the office (in the Norkirk Room)
2. In the Emergency Coordination Center (ECC)
3. By conference call at home

To:

- Discuss issues or policies
- Provide direct assistance to the Incident Commander as needed.
- Issue policies and directives.

Core members of the Policy Group include:

City Manager, David Ramsay

Assistant City Manager, Lynn Stokesbary

Director of Finance & Administration, Marilynne Beard

Director of Fire/Building, Jeff Blake

Director of Parks and Community Services,
Jennifer Schroder

Director of Planning, Eric Shields

Police Chief, Stan Aston

Director of Public Works, Daryl Grigsby

Director of Information Technology, Brenda Cooper

City Attorney, Robin Jenkinson

Director of Human Resources, Bill Kenny

Activation of the Emergency Coordination Center

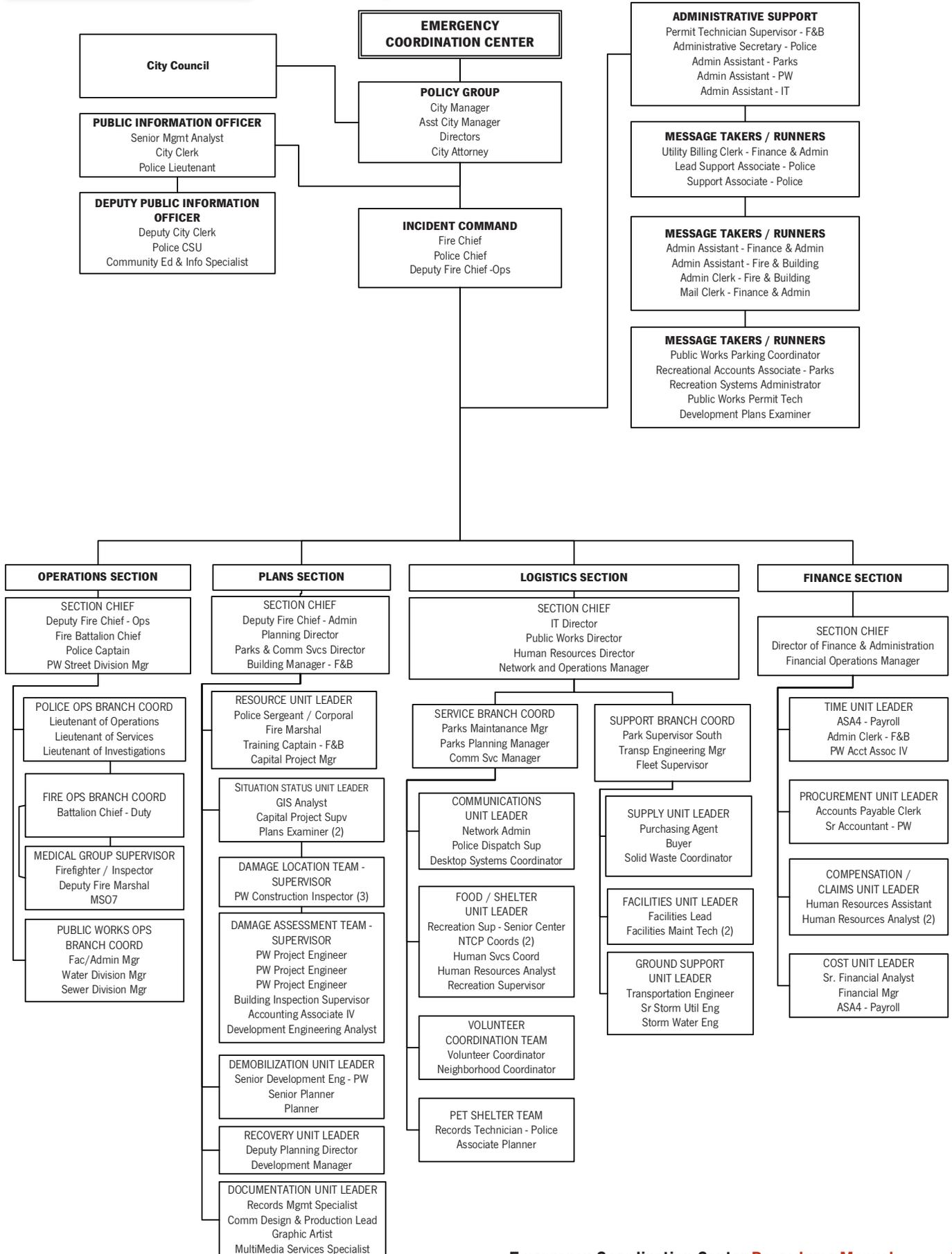
The Emergency Coordination Center may be activated by decision of the Policy Group, the Fire Chief, the Police Chief, Emergency Preparedness Office, or by order of the Mayor. Activation may be acted upon by a number of personnel who have direct knowledge of, and access to, field information.

The level of activation will depend upon the situation and the need for coordination and support. The ECC Incident Commander will schedule shifts and staffing levels as necessary.

Individual department heads should exercise direction and control of their respective agency operations from whatever site they designate in their respective operational procedures. Coordination will be accomplished through agency representatives who have the responsibility to staff the ECC.

Site security for the ECC may be necessary to ensure that unauthorized persons do not interfere with staff personnel or other vital functions being performed in the facility. The Logistics Chief may request that the Police Department provide a uniformed police officer for each shift to maintain security.

When fully activated for a major situation or disaster, the ECC will operate on a two 12-hour shift basis with one half hour planned for briefing and debriefing at shift change.





CITY OF KIRKLAND
Department of Parks & Community Services
505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Jennifer Schroder, CPRP,
Director of Parks and Community Services

Date: June 19, 2006

Subject: Parks and Recreation Month Proclamation

RECOMMENDATION:

It is recommended that Mayor James L. Lauinger proclaim the month of July "*Recreation and Parks Month.*"

BACKGROUND DISCUSSION:

Since 1985, the National Recreation and Parks Association has designated the month of July as "*Recreation and Parks Month.*" Recreation facilities and parks across the country annually use July to celebrate the kick-off of summer programming as well as a time to pull their communities together to volunteer, get involved in outdoor physical activities and advocate for parks and recreation.

As part of this month's celebration Kirkland Parks and Community Services is planning activities to keep the community active and involved including the Concert Series at Marina Park Pavilion, Kirkland Steppers, Juanita Bay Wildlife tours, Learn to Swim classes, and many more programs and classes!

Chuck Bartlett, Chair of the Kirkland Park Board, will accept the proclamation.



A PROCLAMATION OF THE CITY OF KIRKLAND

Designating the month of July, 2006 as “Parks and Recreation Month” of the City of Kirkland

WHEREAS, parks, recreation activities, and leisure experiences provide opportunities for young people to live, grow and develop into contributing members of society; and

WHEREAS, parks and recreation create lifelines and continued life experiences for older members of our community; and

WHEREAS, parks and recreation generate opportunities for people to come together and experience a sense of community through fun, recreational pursuits; and

WHEREAS, park and recreation agencies provide outlets for physical activities, socialization, and stress-reducing experiences; and

WHEREAS, parks, playgrounds, ballfields, nature trails, open spaces, community and cultural centers, and historic sites make a community attractive and desirable places to live, work, play, and visit thus contributing to our ongoing economic vitality; and

WHEREAS, parks, greenways, and open space provide a welcome respite from our fast-paced, high-tech lifestyles while protecting and preserving our natural environment; and

WHEREAS, parks and recreation agencies touch the lives of individuals, families, groups, and the entire community in ways which positively impact the social, economic, health and environmental quality of our community.

NOW, THEREFORE, I, James L. Lauinger, Mayor of Kirkland, do hereby proclaim July as “**Recreation and Parks Month**” and encourage all citizens to celebrate by participating in their choice of pleasurable activities with family, friends and neighbors.

Signed this 5th day of July, 2006.

James L. Lauinger, Mayor



CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Sheila Cloney, Special Project Coordinator

Date: June 23, 2006

Subject: Kirkland Concours d'Elegance – Special Presentation

RECOMMENDATION:

Receive a report from Ben Lindekugel on behalf of the Concours d'Elegance organization regarding the event and its impact on the Kirkland community. In addition review and consider a request to refund admissions tax generated by the event to the Concours d'Elegance charity.

BACKGROUND DISCUSSION:

The Kirkland Concours d'Elegance was founded in 2003 by four local business people whose mission was to give back to the community by creating a unique event that could not be duplicated in the Pacific Northwest. The event provides a venue to see some of the finest and most unique cars in the world while at the same time raising money to help seriously ill children. The inaugural event in 2003 raised \$63 thousand dollars and in 2004 \$134 thousand was raised with an additional \$16,374 of in-kind contributions. While the 2005 event was held in the rain, seriously limiting attendance, the Concours continued to grow, raising over \$180 thousand, plus \$40 thousand of in-kind contributions, for charities.

City staff and Concours organizers recently met to discuss how the city might increase its involvement with the event. Based on those discussions Concours organizers will be submitting grant applications for Community Agency and Tourism funding support in 2007. The tourism program currently includes the Concours d'Elegance in the ongoing marketing of events.

The attached document from Kirkland Concours d'Elegance includes a request for a refund of the admissions tax collected at the 2006 event. Organizers estimate that given good weather they will collect approximately \$3000 in admissions tax.

Organizations that charge admission to an event are required to make application for a certificate of registration with the City's Finance Department. The admission tax due is based on the established ticket price at a rate of five percent. Following the event the admissions tax is remitted to the city and by approval of the council the amount collected may be passed on to the charity of the applicants choice. In this case Coucours organizers would like to have the admissions tax go to Evergreen Hospital's Women and Children's program as part of Evergreen Hospital's fifty percent share of the proceeds from the event.

There is precedent for the refunding of admissions tax as the City supports the mission of the Kirkland Performance Center in this way. In 2003 Council approved a request for a refund of admissions tax from Concours d'Elegance in the amount of \$1865.25.

Kirkland Concours d'Elegance Presentation to Kirkland City Council

July 5, 2006

Purpose

The purpose of this document and of the presentation to the Kirkland City Council on July 5 is twofold: To inform Council members about the Concours and the benefit it brings to the Kirkland Community; and To invite the City of Kirkland to become more involved in this important event.

History

The Kirkland Concours d'Elegance or, "Contest of Elegance", is patterned after the Pebble Beach Concours d'Elegance which is perhaps the most celebrated classic and vintage collector car event in the world and has enjoyed the participation of some of those in leadership positions at Pebble Beach. Like Pebble Beach, the Kirkland Concours d'Elegance is a celebration of the classic art of automobile design. Invited vehicles are grouped into classes and judged based on their rarity, quality, presence, and most of all their elegance. The most deserving vehicles are celebrated at the conclusion of the event at the "Circle of Champions" award ceremony.

The Kirkland Concours d'Elegance was founded in 2003 by four local business leaders who wanted to give something back to the community by creating a unique event that could not be duplicated in the Pacific Northwest. It provides a venue to see some of the finest and most unique cars in the world while at the same time raising money for to help seriously ill children.

The inaugural event in 2003 showed 83 cars (mostly local), raised \$63 thousand and was supported by mostly local interests, including the Kirkland Auto Dealers Association, the Presenting Sponsor. Even though it was the Kirkland Concours' first year, the promise of the event and the gorgeous Kirkland setting allowed us to attract significant national attention; we were able to attract car enthusiast, Emmy and Tony winning actor, and Pebble Beach Master of Ceremonies Edward Herrmann who continues to "volunteer" as the Kirkland Concours MC every year.

In 2004 the Kirkland Concours raised \$134 thousand and an additional \$16,374 of in-kind contributions. Sponsorship became more regional with support from AAA of Washington, Phil Smart Mercedes-Benz, and Cutter & Buck. The Kirkland Concours also hosted one of the largest gatherings of Duesenberg vehicles ever seen on the west coast as the feature class of cars.

While the 2005 event was held in the rain, seriously limiting attendance, the Concours continued to grow, raising over \$180 thousand, plus \$40 thousand of in-kind contributions, for our charities, while growing to true regional stature with national recognition. The event continued to attract top local and regional companies but also saw national organizations—Sports Car Market Magazine, Hagerty—Collector Car Insurance, and RM Auctions—join the ranks of more than 40 corporate sponsors. The event also attracted the attendance of many of the biggest names in car collecting from throughout the United States and was supported by the Blackhawk Museum and Collection out of Danville California. In 2005 the Kirkland Concours branched out, adding classic wooden boats and vintage motorcycles to the event.

2006—Continuing to Grow

Interest in the 2005 event has been enormous with over 50 corporate sponsors signed up and pledging more than \$240 thousand to date plus an additional \$21 thousand in in-kind support. Nationally recognized sponsorship has also increase including the LeMay Museum who is now the Presenting Sponsor of the 4th Annual Phil Smart Mercedes-Benz Kirkland Concours

d'Elegance. Discussions are also underway with many other impact sponsors. Other highlights of the 2006 event are:

- Participants in the 2006 Kirkland Concours will be coming from across the United States and Canada;
- The Classis Car Club of America has announced it will launch its Fall Tour from the site, displaying an additional 60+ vehicles on the grounds;
- The Pacific Northwest Chapter of the Porsche Club of North America will sponsor the Porsche Sports and Racing Class, and display 30 of their finest vehicles;
- The 2006 Kirkland Concours will feature what is believed to be the largest gathering of Custom Dietrich bodied cars ever held in the United States;
- As part of the Antique Class this year, the Kirkland Concours will present a few steam vehicles which will be driven onto the grounds to announce the opening of the event;
- Glenn Mounger, Past Co-Chairman of the Pebble Beach Concours has agreed to be the Kirkland Concours Head Judge;
- The Peterson and Nethercutt Museum's, two of the worlds premier automobile museums, located in Los Angeles will be participating in 2006;
- The very popular Vintage Wooden Boat and Motorcycle displays are back again this year, with the boat class attracting participants from as faraway as California;
- This year, the Kirkland Concours will initiate the Junior Judges Award—an award highlighting the important fact that all proceeds from the event help seriously ill children. The Concours has worked closely with Lake Washington School District to identify eight young people who will judge and present the award. The Award is sponsored by Talaris Research Institute, a non-profit founded by Bruce and Jolene McCaw to improve the healthy development of children from the prenatal period through age five.

Community Benefit

One hundred percent of the proceeds from the Kirkland Concours d'Elegance go to support Evergreen Hospital's Women and Children's program and Children's Hospital and Regional Medical Center's uncompensated care program. This means that in the three years since its inception, the Kirkland Concours has contributed over \$375 thousand to helping sick children. The goal for 2006—a goal which is very much in sight—is to contribute another \$250 thousand. It goes without saying that the residents of Kirkland benefit greatly from having available to them the fine services of Evergreen Hospital and Children's Hospital and Regional Medical Center.

The entire event is planned and carried out by volunteers, with literally hundreds of individuals joining forces to ensure a quality, successful event. Not only does this community largesse literally make the event possible, it also provides an opportunity for local and regional residents to contribute to a very important cause.

Besides this most significant community benefit of providing care for seriously ill children, there are many other benefits, among them:

- Puts the "elegance" of Kirkland on the map. Well known and well respected individuals from the Puget Sound region and the nation now know the beauty of Kirkland;
- Organizers CHOSE Kirkland as the venue for the event in spite of offers from other venues;
- Advertising of the Kirkland Concours is nationwide, drawing attention to the community;
- The event is held on private property with minimal impact on residents;

- Economic advantages include literally thousands of dollars brought into the local economy by people staying at local hotels, eating at local restaurants, shopping in local stores and galleries, etc.
- Link from Kirkland Concours website to Kirkland Prospector website creates the possibility of business development.

It is clear that even though the real benefit to the local community is the support of two fine medical facilities and the children they serve, there are many other benefits to Kirkland. Clearly, the Kirkland Concours d'Elegance provides economic benefits and, in general, adds value to the Kirkland "brand", and it does so with minimal cost or disruption to the city or its residents.

Keeping Costs Down to Increase Community Benefit

Because all net proceeds from the Kirkland Concours d'Elegance go to support Evergreen and Children's Hospitals, the Concours Board works continuously to find ways to reduce costs and do things more efficiently. Examples include:

- Contract with the Kirkland Chamber of Commerce to carry out essential administrative functions rather than hire staff; clearly the cost was lower to "buy" the services from the Chamber than to incur the cost of hiring and maintaining staff;
- Administration of the fundraising effort during the formative years was done by Evergreen Healthcare Foundation at no cost. If the Board had had to hire fundraising experts, that would have reduced the amount of money available to support the hospitals;
- Extensive (and growing) in-kind contributions reflect the biggest benefit. If those services—ranging from transportation to printing to parking to advertising—all had to be bought at full cost, the hospitals' benefit would have been reduced by several thousand dollars.

Recently, we met with City staff to explore ways in which the City might increase its involvement with the Kirkland Concours by reducing or eliminating various costs which the Kirkland Concours pays the city (thereby increasing the funds available to care for children). Based on those discussions, we will be submitting grant applications to both the Community Agency grant program (for funds to offset costs for such things as police, banner hanging fees, etc.) and the Lodging Tax grant program (to support the cost of advertising and other related items). We will be submitting these grant applications for support for next year.

A Request

Finally, we would like to request that the City Council take action to refund to the Kirkland Concours d'Elegance (a bona fide 501 (c) (3)) the amount of the Admissions Tax. We estimate that that amount in 2006 (assuming good weather) will be around \$3000.

Thank You

It is clear that the Kirkland Concours d'Elegance provides significant benefits to the residents of Kirkland. This has been possible because of the significant contribution of time and money by a number of people inside and outside of Kirkland. We very much appreciate the opportunity to hold this event in a City as lovely as Kirkland and we very much appreciate the partnership with City in this important enterprise.



CITY OF KIRKLAND

City Manager's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3001

www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Marilynne Beard, Assistant City Manager

Date: June 26, 2006

Subject: MUNICIPAL ACHIEVEMENT AWARDS

RECOMMENDATION:

City Council receives award plaques from the Association of Washington Cities.

BACKGROUND DISCUSSION:

The Association of Washington Cities sponsors an annual award for outstanding achievements of their member cities. The awards recognize cities that demonstrate best practices and innovative programming. The City of Kirkland was honored with four awards in 2006.

- The Parks and Community Services Department received a **Gold Award for the Senior Council program**. The Senior Council is the first of its kind in the state and works to ensure that Kirkland remains a great place for people 50 and older. The group is staffed by Dana LaRue, Senior Services Supervisor.
- The Information Technology Department received a **Silver Award for their fiber consortium** project. The Kirkland Information Technology Department formed a consortium with Evergreen Hospital, the University of Washington, the Lake Washington School District, the City of Bellevue and the Bellevue School District to build a fiber optic network that runs from the University of Washington into Kirkland and Bellevue. Each of the agencies contributed funding to install the fiber with Kirkland's project coordination provided by Donna Gaw, Kirkland's Network and Operations Manager. The fiber project allowed us to provide high speed connectivity to City facilities that would have otherwise been cost prohibitive to install.

- The E-Gov Alliance's **"MyBuildingPermit.com"** project was also honored with a **Gold Award**. The project provides the ability to apply for simple building permits from any of the participating cities on-line through one internet site. The City of Bellevue submitted the award application and all of the participating cities were recognized.
- Finally, **Kirkland was again awarded the "Well City Award"** that recognizes wellness programs that consistently meet established criteria.



CITY OF KIRKLAND

City Manager's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3001

www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tracy Burrows, Sr. Management Analyst

Date: June 21, 2006

Subject: Kirkland Performance Measures Guidebook

RECOMMENDATION:

It is recommended that the City Council review the Kirkland Performance Measures Guidebook and provide direction on further development of the City's performance management efforts.

BACKGROUND DISCUSSION:

Kirkland has produced the 2006 Performance Measures Guide as the initial product of our developing performance management program. The Guide includes two years of performance measurement data for six key service areas. For each service area, the data is accompanied by a narrative vignette that illustrates a Kirkland customer's experience with the service delivery that is being measured. The primary audience for this guidebook is the City Council and the general public. The guidebook will be distributed widely and will be available on the City web-site to give residents information about the results of the city's investments of its resources.

In 2005, the City of Kirkland initiated an effort to collect and report on key performance measures in the six service areas of: Parks and Recreation; Police Services; Fire and Emergency Medical Services; Information Technology; Streets and Highways; and Recycling. To assist in this effort, the City joined the International City Manager's Association (ICMA) Center for Performance Measurement. The Center is dedicated to helping local governments measure, compare, and improve municipal service delivery.

Over years of experience with performance measures, ICMA has identified core local government measures for each service area and has defined a consistent methodology for collecting the data for each of the core measures. Kirkland's program adopts many of ICMA's core performance measures and includes other Kirkland-specific measures that are tailored to the priority services that the City provides. We are continuing to refine the measures so that they provide meaningful information upon which to base management decisions. For example, Brenda Cooper is leading a regional effort to define core Information Technology measures. This effort was needed in part because the ICMA measures for Information Technology are not particularly helpful.

Results

The real value of a performance measurement system is in monitoring the data trends over time to see whether the City is gaining or losing ground in a particular measure. With only two years of data collected, it is hard to draw conclusions about any particular service. However, the performance measures collected to date do raise a number of interesting management questions that should be explored. Among these questions are:

- Kirkland spends significant resources on street sweeping and roadway rehabilitation. However, the citizen's perception of the quality of the street maintenance is not reflective of these efforts. Is this an anomaly based on this year's Central Way street project, or would residents prefer that the City make changes to its maintenance program be either increasing or reprioritizing the resources devoted to it?
- Kirkland's residential recycling rates are climbing, but so is the tonnage of garbage going to the landfill. Is this an anomaly in the data? If not, should the City be focusing on commercial and multi-family recycling rates? Or should the focus be on reducing packaging and/or consumption of highly packaged goods?
- What is the relationship between Fire response time and confining fires to the room of origin? Kirkland is very effective at confining the damage of fires. The improvement in this category in 2005 appears to be unrelated to response time.
- E-commerce has been introduced with great success in Kirkland. Do we want to increase the percentage of recreation customers that register on-line? Have we reached a plateau in that area and, if so, how can we encourage customers that are slower to adopt new technology to try on-line registration?

As the City's performance measurement program evolves, managers will be able to use the data collected to identify these types of emerging issues and to shape management decisions about resources and priorities.

Future of Performance Measures Program

The Performance Measures Guidebook is a first step toward a more comprehensive performance management program. An important next step would be to align the performance measurement effort with the City Philosophies and Council-defined goals. This may result in additional service areas and measures that should be tracked to determine whether we are making progress in achieving the City's overall goals. However, since this effort is moving forward within our existing staffing resources, it is important that the program stay focused on a manageable number of core measures that are tracked annually.

Once the performance measures are aligned with the overall philosophies and goals of the City, the program should provide a useful management tool that the City Council and Department leadership can use: to identify emerging issues and trends in service delivery; to pinpoint service delivery areas that would

benefit from process improvements; and to inform decision-making about the allocation of City resources. For example, the measures could be integrated into the budget process to give perspective on the cost-effectiveness of programs and initiatives. Staff will continue to work with the City leadership to develop this program.



performance measures
City of Kirkland • July 2006

city of kirkland performance measures guide - 2006

Beginning in 2004, the City of Kirkland has been monitoring key performance measures in six service areas: Parks and Recreation; Police; Fire and Emergency Medical Services; Information Technology; Streets and Highways; and Recycling. This guide book includes a report on the key performance measures for each of these service areas along with a portrait of the customers that we serve. As we continue to monitor these key measures over time, we will have a good indicator of how much progress the City is making in meeting our goals for providing high quality services in a cost-effective way. The booklet is intended to show the citizens of our community how we are doing on the following goals:

kirkland's core performance measurement goals

Parks and Recreation:

Enrich and enhance Kirkland's quality of living by effectively managing our public lands and serving the leisure needs of all residents.
Key measures: Citizen rating of the City's parks and recreation programs and citizen enrollment in recreation classes.

Police:

Reduce crime and increase the community perception of safety through high quality law enforcement services.
Key measures: Crime rates and citizen ratings of safety in their neighborhoods.

Fire and Emergency Medical Services:

Preserve lives and protect property through high quality response to fire and emergency medical incidents.
Key measures: Emergency Response Times and Effectiveness in Containing Fires

Information Technology (IT):

Proactively provide cost effective, reliable, standardized, and current information technology tools, systems, and services including customer focused support.
Key measures: Share of the City's business that is conducted through E-Commerce and rating of IT services

Streets and Highways:

Construct and maintain the public infrastructure of the City and ensure efficient and reliable public streets to Kirkland residents.
Key measures: Pavement condition rating and citizen rating of street maintenance.

Recycling:

Reduce waste generated by Kirkland residents and businesses by recycling, reducing, and reusing materials.
Key Measures: Citizen rating of recycling services and tons of recycling material collected.



key findings

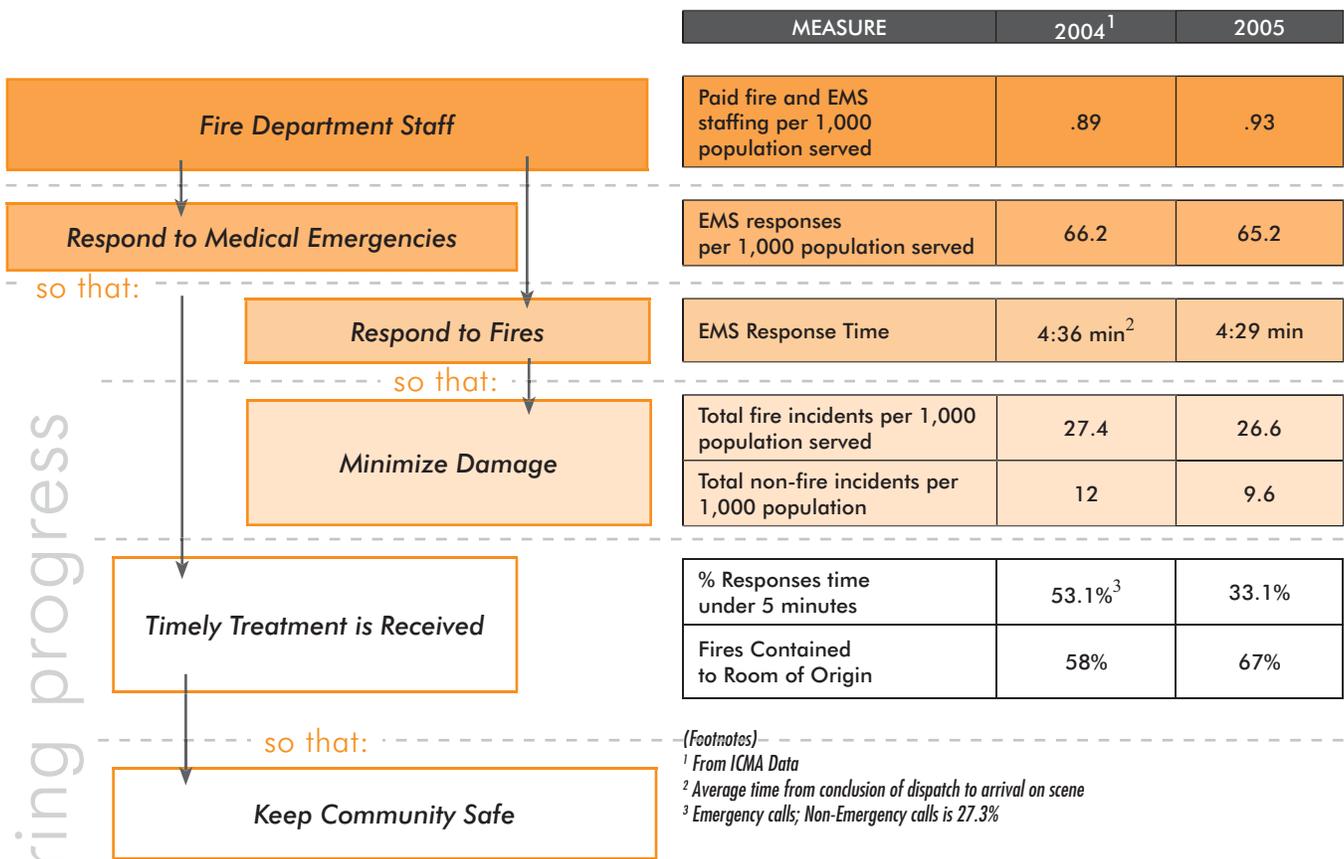
Some notable findings of the Performance Measures Guide are:

- Residents overwhelmingly feel safe in their neighborhoods, particularly during the day. 89% felt “very safe” walking in their neighborhood during the day and 54% felt “very safe” at night.
- When asked to “grade” Kirkland’s parks (“Like they do in school”, from “A” to “F”), 52% of City residents awarded the park system an “A”, and overall, parks received a 3.43 average on the 4-0 scale.
- Within single family residences in Kirkland, 60% of waste is recycled -- significantly reducing the amount of garbage that is going to the landfill.
- Kirkland’s customers enjoy the convenience of on-line recreation registration and on-line building permits. Since 2004, when on-line recreation registration was initiated, approximately 1/3 of registrations have been completed on-line.
- The Kirkland Fire Department has been very effective at containing the damage caused by fire. In 2005, 67% of fires were contained to the room of origin.
- While 90% of the City’s roadways were assessed as satisfactory or better, Kirkland residents gave “street maintenance” a relatively low performance grade, with an average of 2.91 (“B”).

We hope you will find this guide a helpful tool for reviewing and understanding the services provided by the City of Kirkland.

fire and emergency management

goals When Fire and Emergency Management Services employees respond to fires and medical emergencies, they work to minimize the damage and ensure that citizens receive timely treatment. Their goal is to keep our community safe.

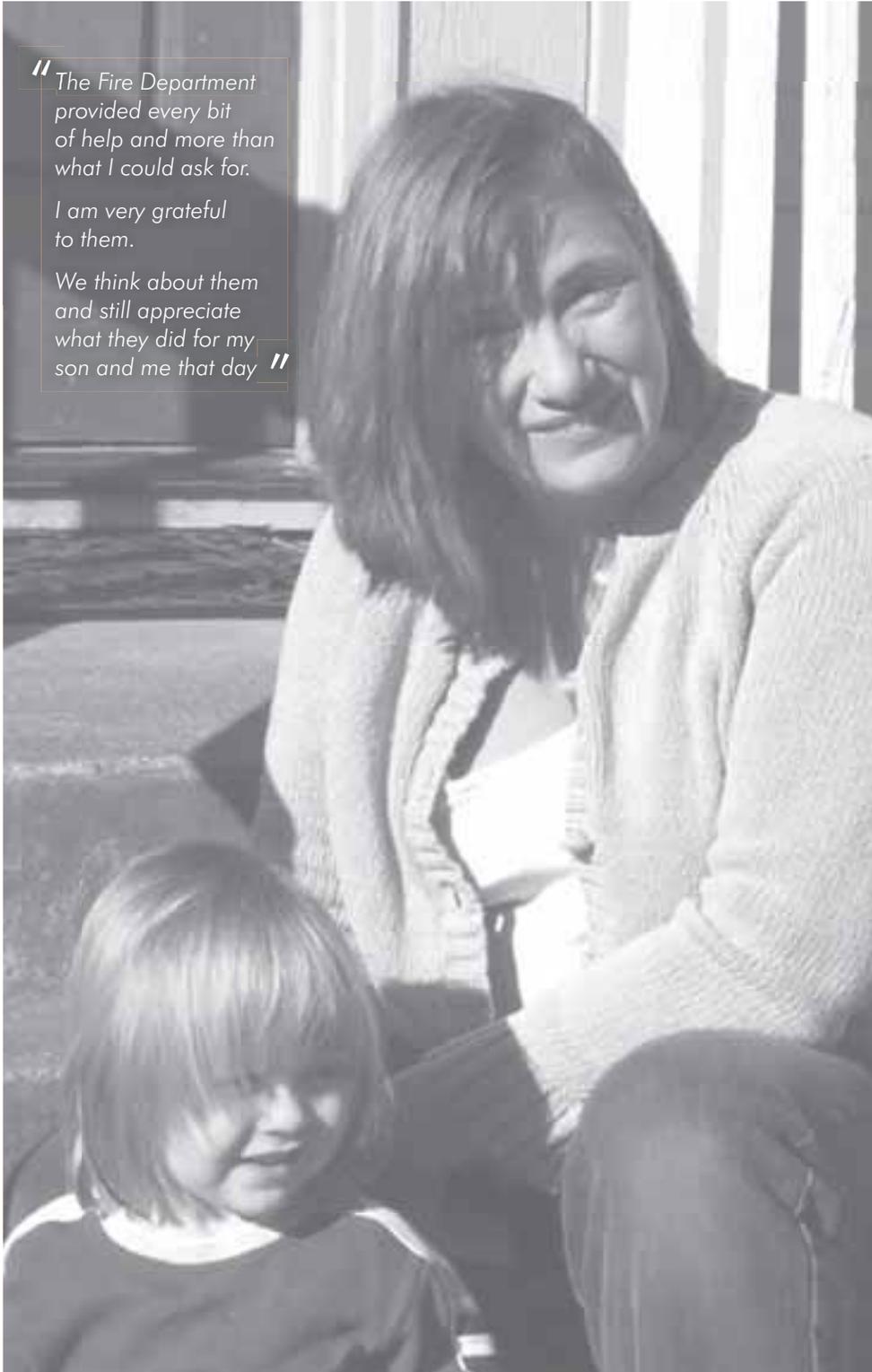


measuring progress

"The Fire Department provided every bit of help and more than what I could ask for.

I am very grateful to them.

We think about them and still appreciate what they did for my son and me that day "

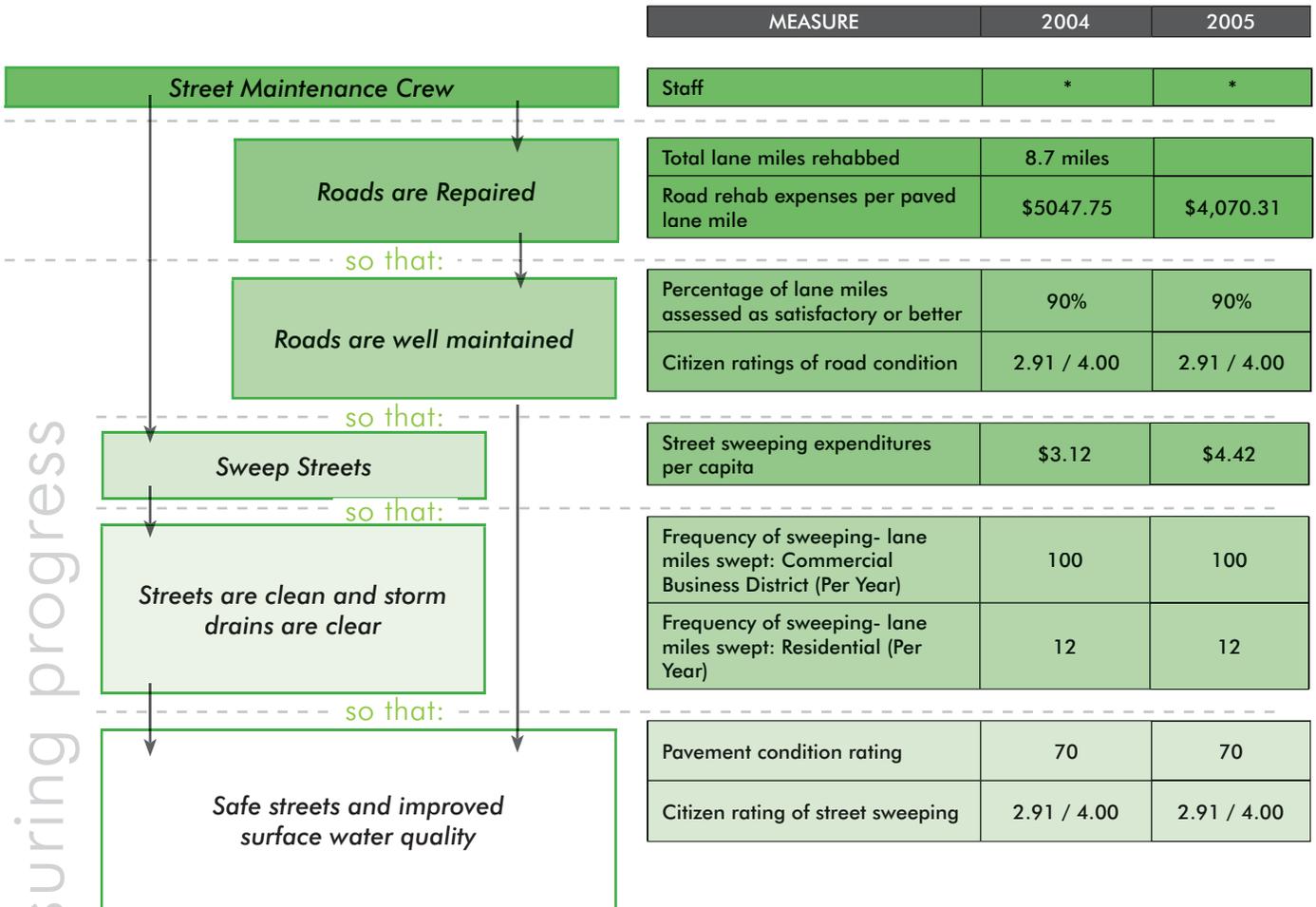


Minimizing Damage from Fire

After Linda Puddy brought her young son home from a long hospital stay, she faced the challenge of continuing his care at home, while catching up with mountains of laundry. When the dryer's internal wiring malfunctioned, the Kirkland Fire Department rushed to her rescue, preventing a laundry room blaze from growing into a disaster. Once the emergency passed, the volunteer firefighter's association stepped in to support her. As Linda describes, "The vacuum cleaner had been destroyed. They found a used vacuum cleaner and brought it the same day to clean up the mess. They gave us a gift certificate for Fred Meyer so I could go and replace my son's bedding and clothing.

highways and roads

goals Street maintenance crews work hard to keep roads repaired, streets swept, and storm drains clear. They want to provide safe streets and improved water quality for the community.





“The roads seem in reasonable shape. When I see something, I call in and it gets done.”



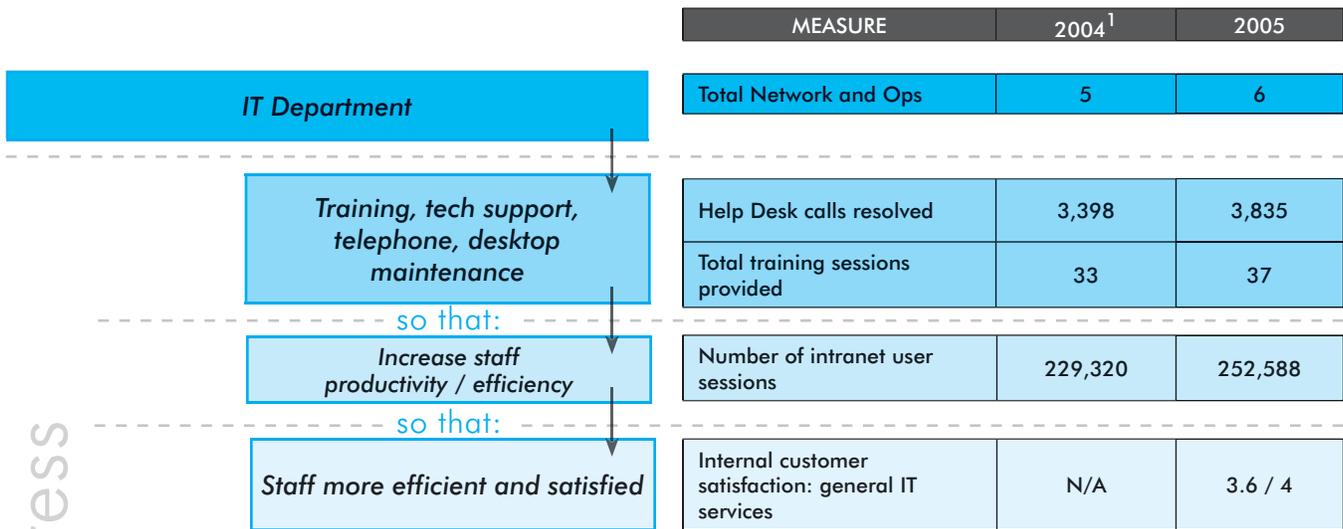
Bicycling on Kirkland's Roads

When Doug Burgess uses his bicycle to commute to work and for pleasure, he reduces congestion and pollution for the rest of us. To stay safe, he depends on smooth road surfaces. As Doug says, “Most of the roads are in pretty good repair. I know typically if there’s an issue, if I call up, it gets taken care of. Someone is usually out in a day or two to take care of the problem.” Kirkland’s goal to maintain road surfaces in satisfactory condition or better makes a difference to bicyclists like Doug.

information technology services

goals

To serve the community effectively, the City uses technology in a variety of important ways. The City's Help Desk offers employees the assistance that they need so that they can deliver the best possible service to the community.



¹ From ICMA Data

measuring progress



“ They teach me how to do things that make me more productive ”



Supporting Staff Productivity

Karen Vander Hoek's fast-paced day includes supporting the Kirkland City Council and city staff in her position as administrative associate in the City Manager's Office. To keep projects moving along on schedule, Karen often contacts the Information Technology Department's "Help Desk" to bring someone from the team to fix any problem.

Karen notes, "I call them an average of twice a week. Yesterday alone I talked to them twice in one day. I would not have been able to do any work if they hadn't come- and if they hadn't come immediately. That really makes a difference with productivity. I also ask them questions - how to do things, not necessarily equipment problems. They teach me how to do things that make me more productive. They're always friendly and quick. They email me right away to let me know that they got my message, and that it's going to work again."

information technology services

goals *The City wants to make it easy for citizens to access services, so it provides useful online options.*

		MEASURE	2004 ¹	2005
measuring progress	IT Department	Total Applications Staff	4.5	5
	↓	Average weekly hours updating site	15	15
	Usability of website	Number of user sessions per year	367,388	452,560
	so that:	Percentage of building permits applied for online that are available online	N/A	30%
	Citizens & business informed, access to government anytime and anywhere	Percentage parks & recreation registration online that is available online	28%	30%
		E-Gov transactions dollar amount	\$318,569	\$434,469
	so that:	Number of citizens who have visited the website	38%	56%
	Citizens satisfied with City website			

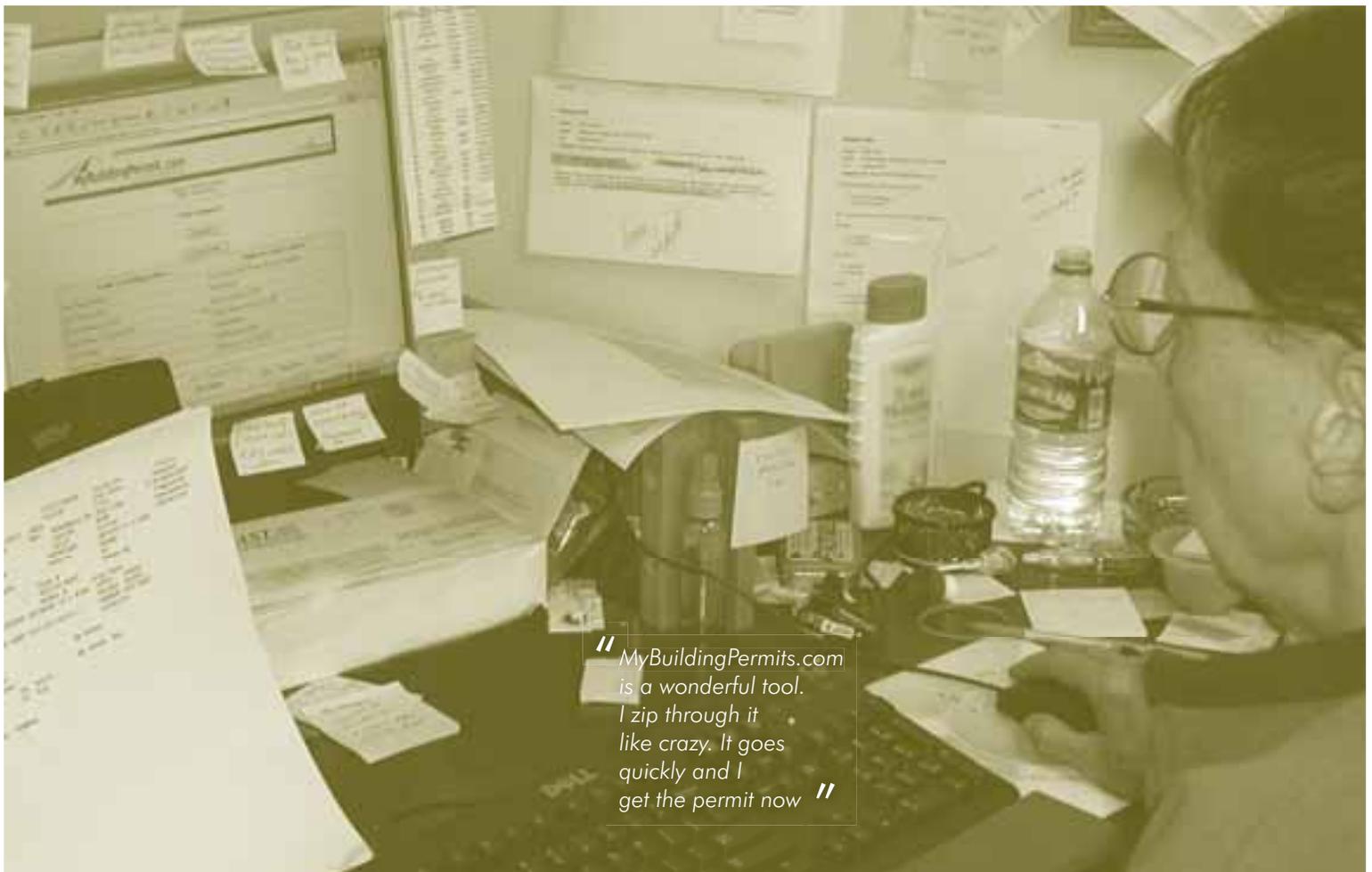
¹ From ICMA Data



Easy Access to Government Services

As President of the Fast Water Heater Company, Jeff depends on his staff to provide quality service quickly. In his busy company's offices, employee Pamela makes sure that homeowners have permits for their new water heaters. She uses the City's online MyBuildingPermit.com service to obtain permits at her convenience.

"As far as I'm concerned," says Pamela, "it's the best thing since apple pie. It goes quickly- and I get the permit now. I don't have to do it the hard way like we used to, by mail or going in person."

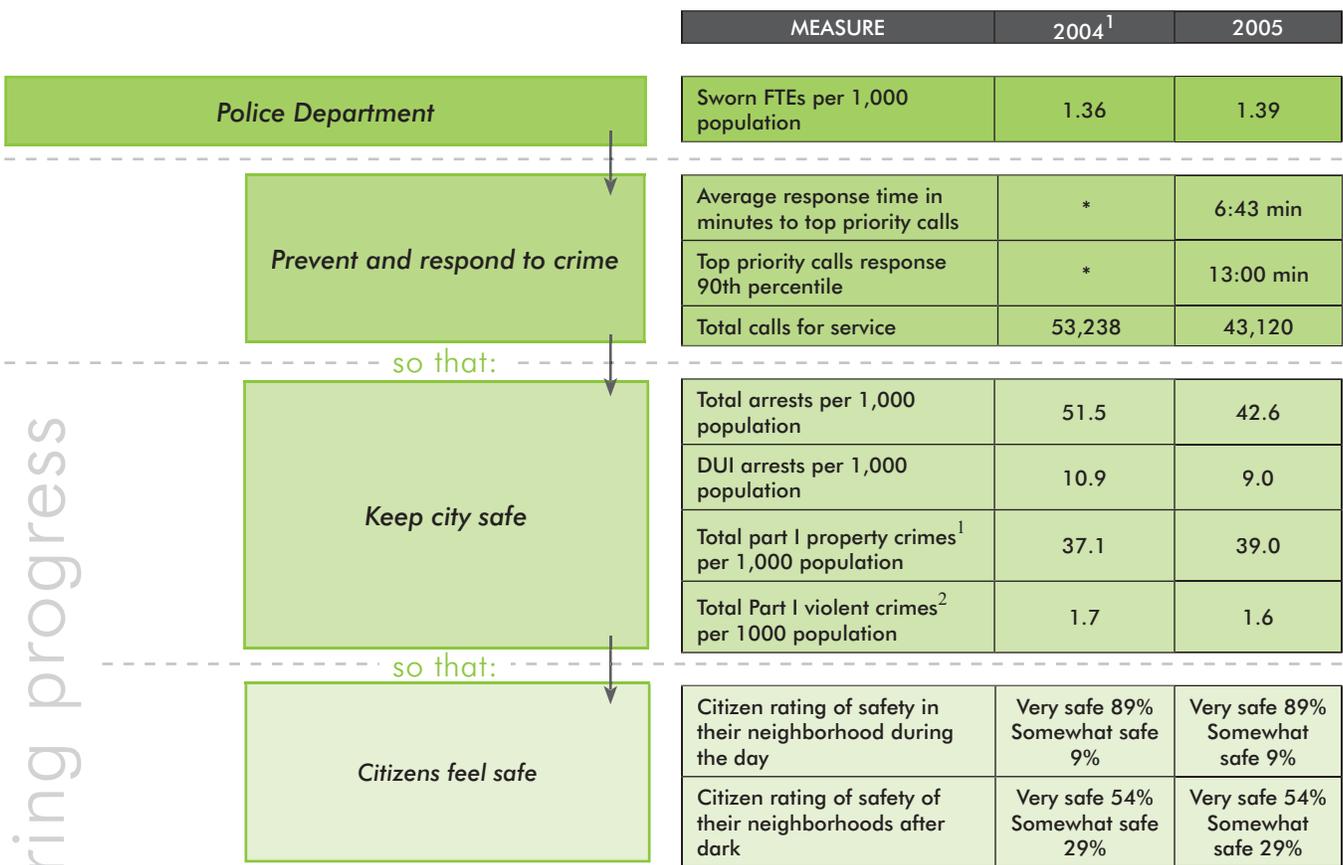


police services

goals

The Police Department prevents and responds to crime so that Kirkland remains safe for all community members.

The Police Department's goals include making sure that citizens feel safe in their neighborhoods during the day and evenings.



measuring progress

* NOTES: Data for "Average Response Time in Minutes to Top Priority Calls" and "Priority Calls Response time 90th Percentile" in 2004 is not congruent with measuring methods for 2005

¹ Part I property crimes include: burglary, larceny-theft, motor vehicle theft and arson

² Part I violent crimes include: murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault



Feeling Safe on City Streets

Margaret Carnegie walks regularly for exercise, especially enjoying the pathways that connect neighborhoods with each other. Before retiring this past year, Margaret worked full day as a classroom teacher. She arrived home after six in the evening, and then headed out for her daily walk, even during the winter months. As Margaret comments, "In winter it's always dark, miserable, and rainy." She watched her steps to avoid stumbles on the damp pavement, but she felt protected from dangerous strangers. "'People safety' never concerned me at all."

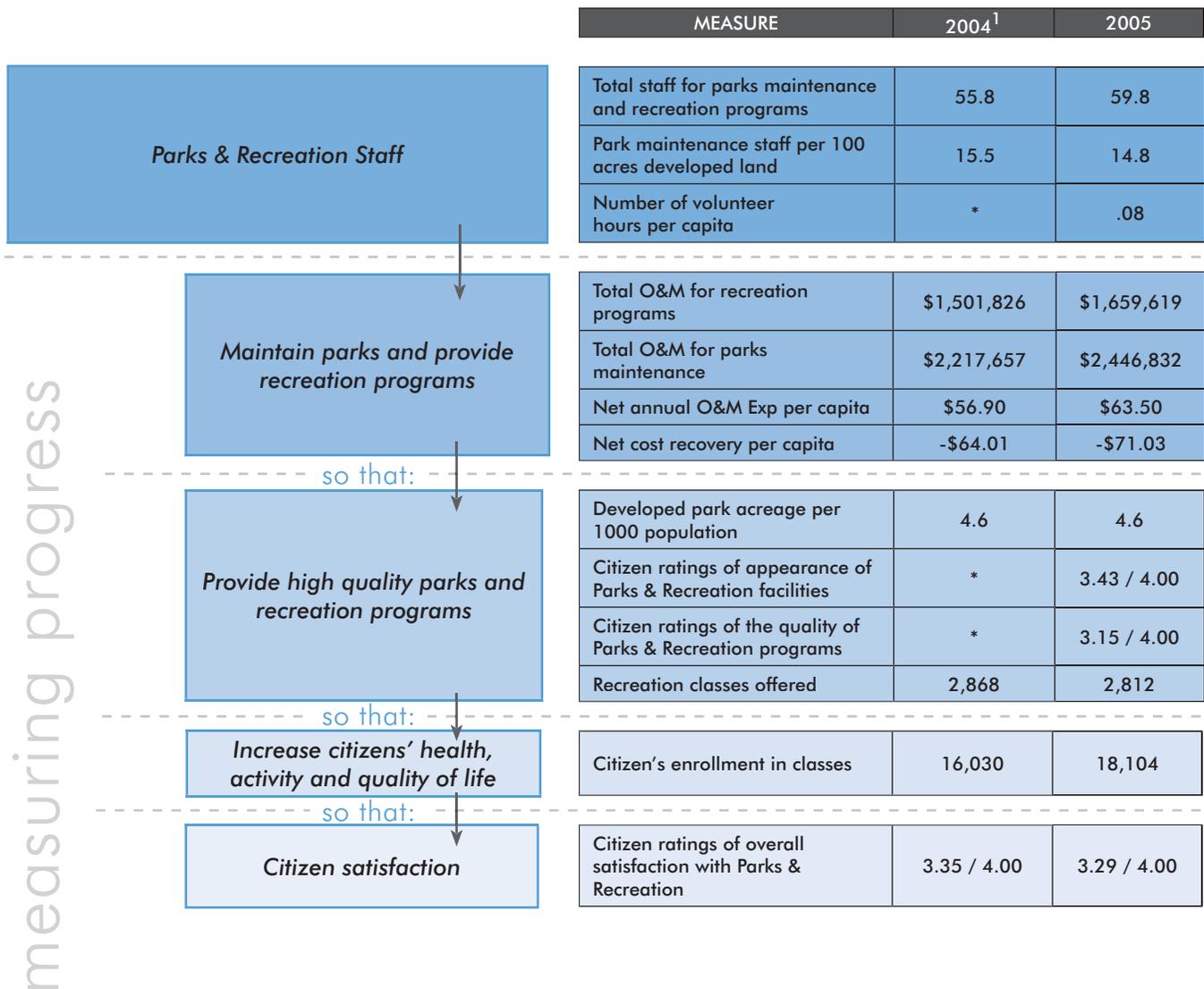


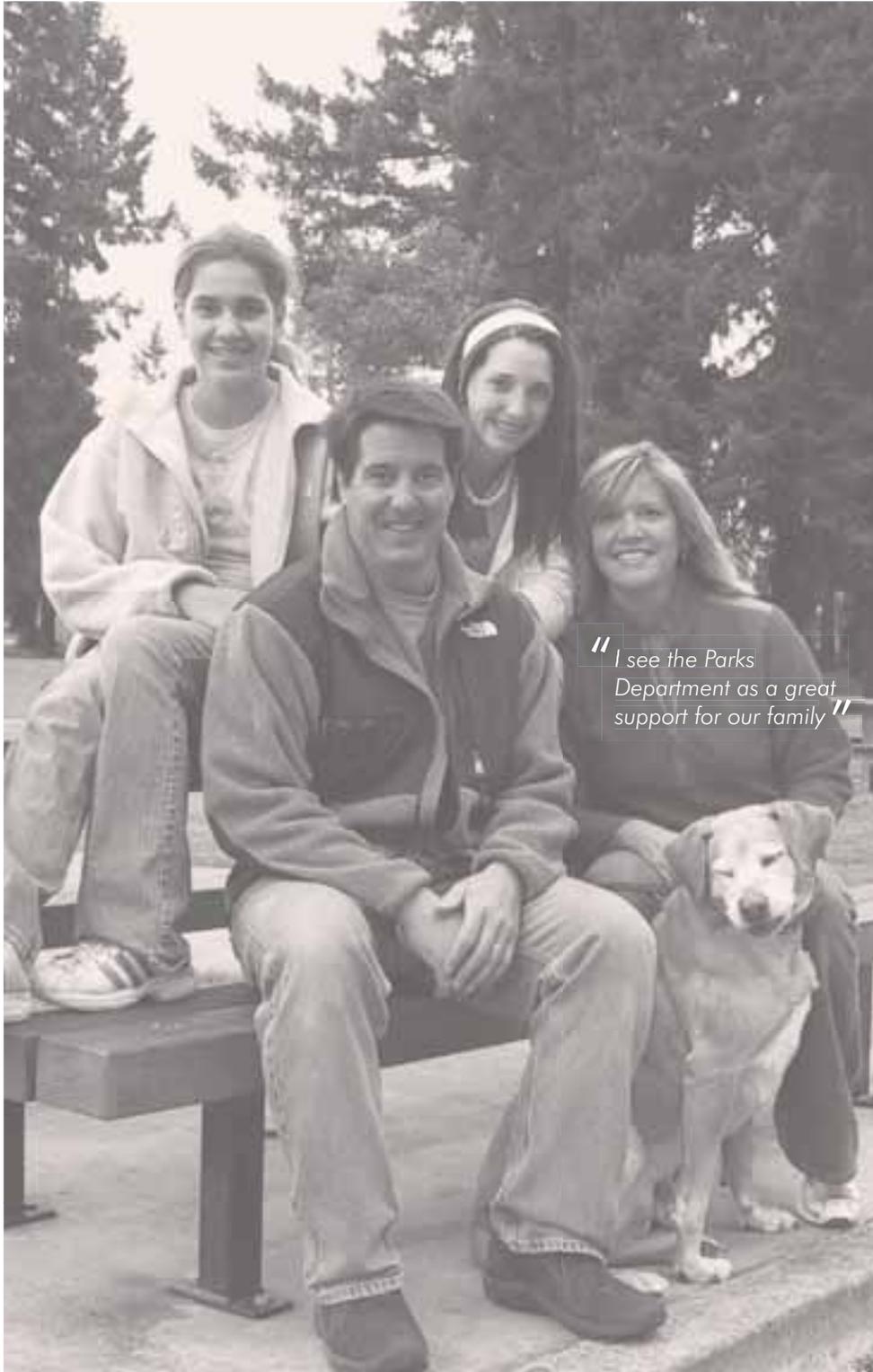
"What I enjoy most is the pathways through the neighborhoods"

parks and recreation

goals The City strives to provide high quality parks, facilities, and programs to support citizens in increasing their health and activity.

The City wants citizens to feel satisfied with the Parks and Recreation programs available to the community.





"I see the Parks Department as a great support for our family"



A Family Enjoys Classes and Parks

Julie Filips, her husband, and their two daughters enjoy the opportunities provided by the Kirkland Parks and Community Services department. As Julie says, "I see the Parks Department as a great support for our family. It's a real support for physical fitness and a great social outlet."

As the girls keep in shape with swim, tennis and dive team instruction, the parents relax with dance lessons. Classes match all ages and stages: Starting with "Mommy and Me" classes as a toddler, their oldest daughter now joins Teen Center activities.

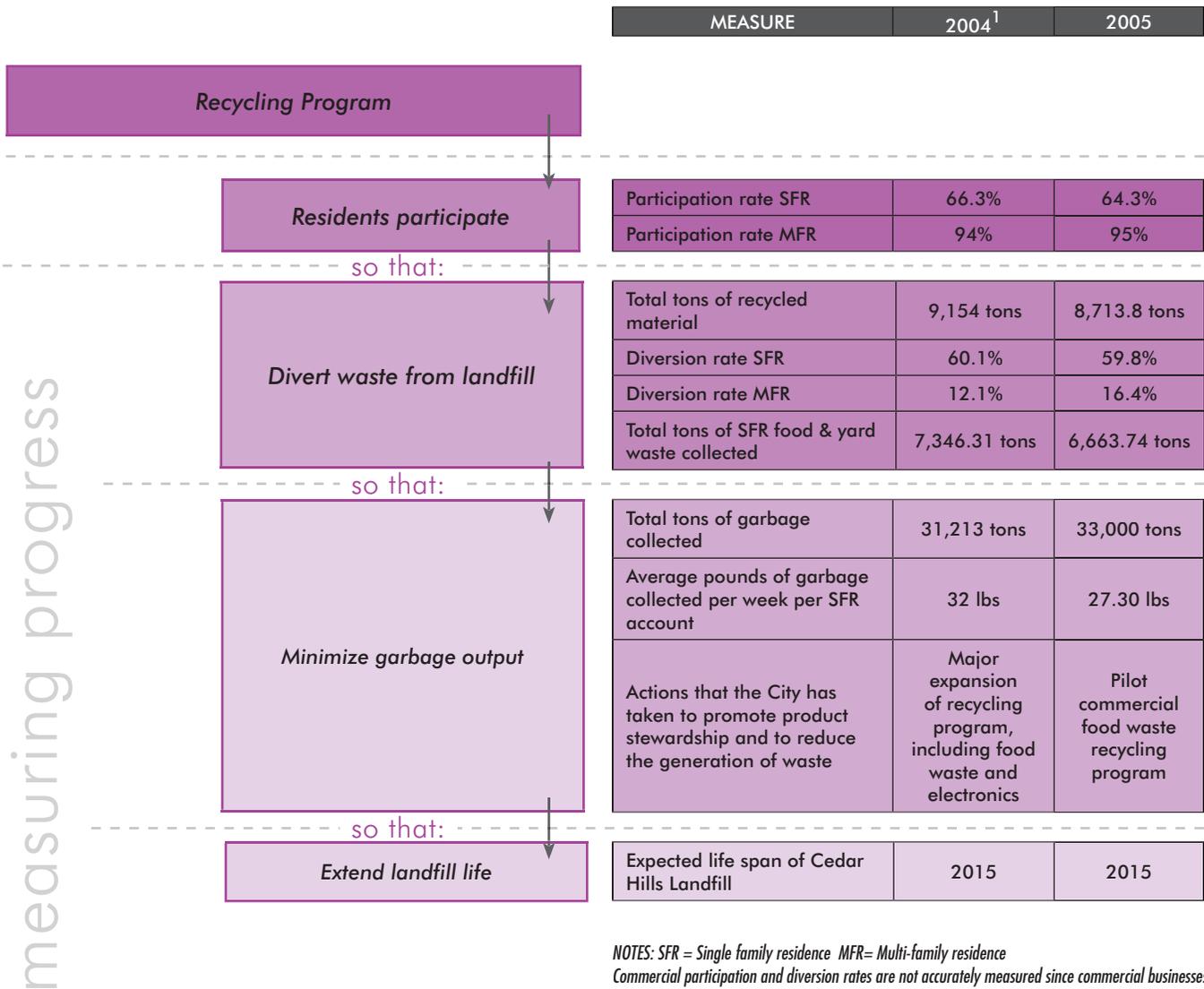
From gaining confidence and skills during lessons in the pool to getting regular exercise on park trails, the family looks to Kirkland's services for a healthy lifestyle.

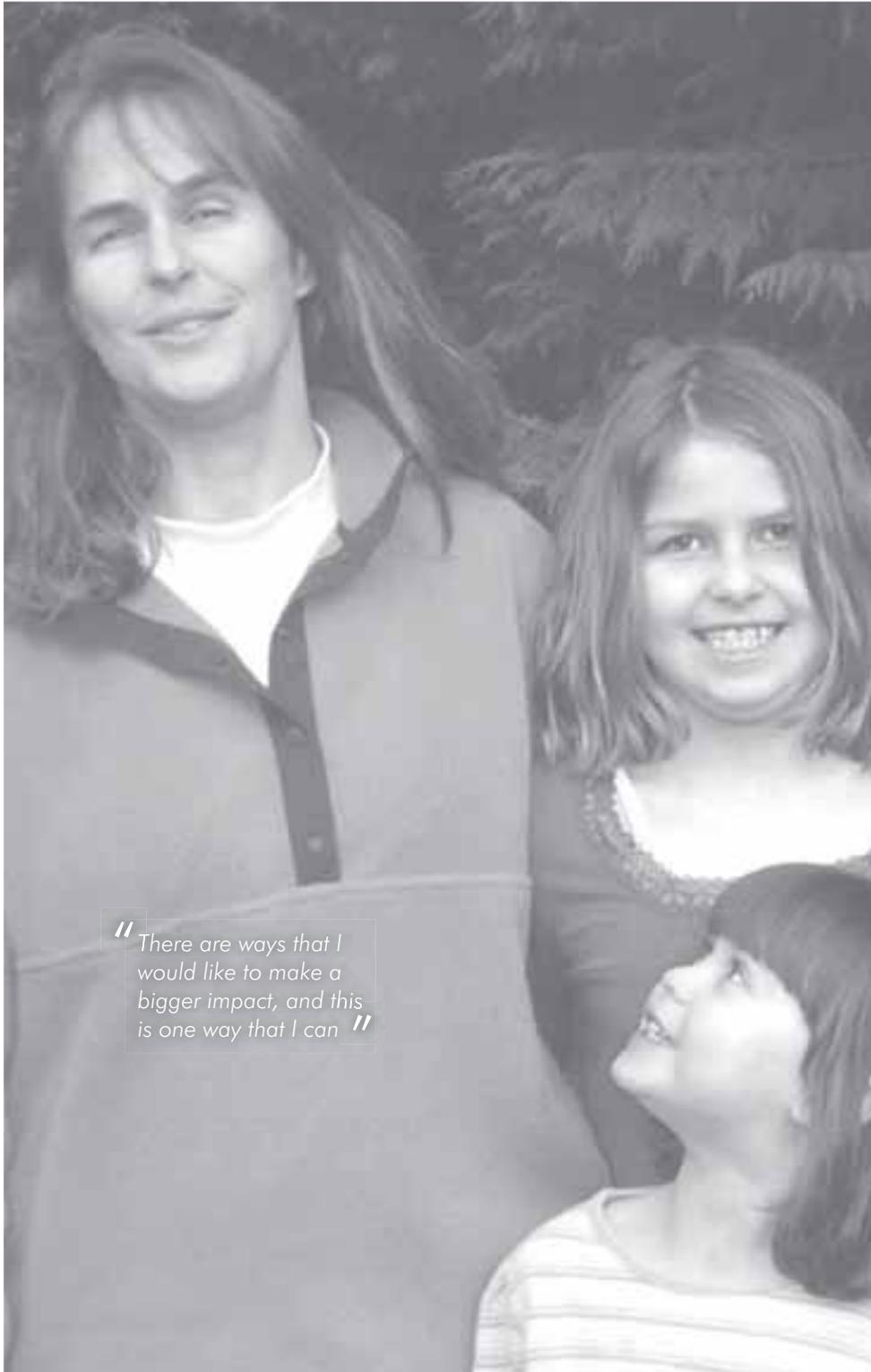


recycling

goals

The City encourages residents to participate in recycling. Recycling reduces the amount of garbage that the community produces so that the life span of our local landfill can be extended. Recycling can help protect the environment and reduce the costs of garbage disposal.





“There are ways that I would like to make a bigger impact, and this is one way that I can”



A Family Works Together to Protect the Environment

Kris Solem, husband David, and their two young daughters see the value of recycling. They recycled paper products before, but now that the food scrap program started, they've managed to reduce waste to one garbage bag a week, recycling all of the rest.

Even four-year old Rachel can help. As her mother reports, "Rachel asks 'Mom, where does the banana peel go?' She's sorting."

Kris explains why she's helping her children learn how to recycle. "The big thing is to get them to do it. Then when they grow up, the world won't be as depleted for them. My hope is that they'll help spread the word to friends."





KIRKLAND CITY COUNCIL SPECIAL STUDY SESSION MINUTES
June 15, 2006

1. CALL TO ORDER
2. ROLL CALL

ROLL CALL:

Members Present: Mayor James Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Jessica Greenway, Councilmember Tom Hodgson, Councilmember Bob Sternoff, and Councilmember Mary-Alyce Burleigh.

Members Absent: None.

3. STUDY SESSION

Joining Councilmembers for discussion were City Manager Dave Ramsay as well as Interim Director of Finance and Administration Gwen Chapman and Financial Planning Manager Sandi Miller who presented information and responded to questions.

- a. 2006 Mid-Year Budget Review
 - (1) 2006 Mid-Year Financial Update
 - (2) 2006 Mid-Year Budget Adjustments
 - (3) Council Retreat Follow-up
 - (4) 2007-2008 Budget

4. ADJOURNMENT

The Special Study Session of June 15, 2006 adjourned at 8:20 p.m.



KIRKLAND CITY COUNCIL REGULAR MEETING MINUTES
June 20, 2006

1. CALL TO ORDER
2. ROLL CALL

ROLL CALL:

Members Present: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

Members Absent: None.

3. STUDY SESSION

- a. Joint Meeting with Parking Advisory Board

Joining Council for the discussion were members of the Parking Advisory Board including Chair Glenn Peterson, Marlene Blair, Kenneth Dueker, Joie Goodwin, Bonnie McLeod, John Torrance and Nathan Ware; as well as City Manager Dave Ramsay, Assistant City Manager Marilynne Beard and Public Works Director Daryl Grigsby.

4. EXECUTIVE SESSION
5. SPECIAL PRESENTATIONS
- a. Community Emergency Response Team (CERT) Graduates Recognition
6. REPORTS

- a. City Council

- (1) Appointment of Hopelink Board Member

Motion to appoint Andy Goerdel as Kirkland's representative on the Hopelink Board.

Moved by Deputy Mayor Joan McBride, seconded by Councilmember Mary-Alyce Burleigh

Vote: Motion carried 7-0

Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh,

Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

(2) Regional Issues

Councilmembers shared information regarding the Seattle Mental Health annual dinner; Letter Carriers annual food drive; King County Waste Comprehensive Plan process kickoff event; Kirkland Youth Council Spring Celebration; Eastside Human Services Forum; Woodlands Park Playground Project; New Orleans Library Book Drive at Lake Washington Methodist Church; State Route 520 Executive Committee meeting; Association of Washington Cities Resolutions Committee meeting; Eastside Transportation Partnership meeting; Juanita Neighborhood Association meeting; "Mountain Comrades" sculpture; Woodlands Playground Project; King County Executive's 2006 State of King County Report; Governor's Smart Communities Awards; and the Miracle League's "Throw Out a Pitch" event.

b. City Manager

(1) Transit Center Update

Public Works Capital Projects Manager Ray Steiger provided a report to Council.

(2) Calendar Update

7. COMMUNICATIONS

a. Items from the Audience

Thelma Shanks, 815 18th Avenue West, Kirkland, WA
Bill Anspach, 934 6th Street South, Kirkland, WA
Bea Nahon, 129 3rd Avenue, Kirkland, WA
Robert Stonefeldt, 901 1st Street, Kirkland, WA

b. Petitions

8. CONSENT CALENDAR

- a. Approval of Minutes: (1) June 6, 2006 City Council Special Meeting
(2) June 6, 2006 City Council Study Session and Regular Meeting

- b. Audit of Accounts:
 - Payroll \$ 1,738,045.21
 - Bills \$ 1,252,655.17
 - run # 605 check #'s 479131 - 479328
 - run # 606 check #'s 479329 - 479358
 - run # 607 check # 479361
 - run # 608 check #'s 479362 - 479512
- c. General Correspondence
- d. Claims
 - (1) Billie Boucher
 - (2) Diane Breithaupt
 - (3) Kathryn D. Campbell
 - (4) Diane M. Howell
 - (5) Westwind Condominium Owners Association
- e. Authorization to Call for Bids
- f. Award of Bids
- g. Acceptance of Public Improvements and Establishing Lien Period
 - (1) Maintenance Center Space Improvements Phase II
- h. Approval of Agreements
- i. Other Items of Business

Motion to Approve the Consent Calendar.

Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Jessica Greenway

Vote: Motion carried 7-0

Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

- 9. PUBLIC HEARINGS
- 10. UNFINISHED BUSINESS

a. NE 85th Street Corridor Improvements Project

Following a review of the project by Public Works Capital Projects Manager Ray Steiger, Council provided staff with direction to come back with options for funding undergrounding of overhead utility lines along the corridor.

Motion to authorize the City Manager to execute the Term Sheet for the project with Sound Transit.

Moved by Councilmember Jessica Greenway, seconded by Councilmember Mary-Alyce Burleigh

Vote: Motion carried 7-0

Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

b. Central Way Business Focus Group

Public Works Capital Projects Manager Ray Steiger and Economic Development Manager Ellen Miller-Wolfe reported on the results of the survey and discussions.

c. Discussing Potential Annexation

Following Planning and Community Development Director Eric Shields' review of the options for zoning, Council expressed support for staff's recommendation, option 3 in the staff report, in which the zoning map would convert King County zones into the closest equivalent Kirkland zones, with minor amendments to the Kirkland code to reflect key provisions of the County code.

Council recessed for a short break.

11. NEW BUSINESS

a. Market and Norkirk Neighborhood Plans Project Briefing

Planning and Community Development Director Eric Shields introduced Planning Commission member Janet Pruitt, who reviewed the plans' progress, with additional information supplied by Senior Planners Joan Lieberman-Brill and Angela Ruggeri, and Planning Commission member Karen Tennyson. Council responded with feedback and direction for staff and the Commission as they continue their work on the plans.

- b. Proposing Amendments to Existing Reasonable Use Process

This item was postponed to the July 5, 2006 Council meeting.

- c. Approving Correspondence to Sound Transit Recommending High Capacity Transit Technology Choice on the I-90 Corridor

Motion to Approve Correspondence to Sound Transit Recommending High Capacity Transit Technology Choice on the I-90 Corridor.

Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Jessica Greenway

Vote: Motion carried 7-0

Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

- d. Puget Sound Regional Council Vision 2020 Update

Council discussed the Suburban Cities Association plan to take a position on the draft Environmental Impact Statement for Vision 2020 plus 20, and the timeframe for the City's comments relative to that position.

12. ANNOUNCEMENTS

None.

13. ADJOURNMENT

The Kirkland City Council regular meeting of June 20, 2006 adjourned at 11 p.m.

City Clerk

Mayor



CITY OF KIRKLAND

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: June 22, 2006

Subject: Mark Dinwiddie response letter

RECOMMENDATION:

It is recommended that the City Council authorize the Mayor to sign the attached letter to Mr. Mark Dinwiddie.

BACKGROUND AND DISCUSSION:

Mr. Dinwiddie sent a letter to the City Council regarding the planning and design efforts of the NE 85th Street Corridor Improvements project, specifically to the timing of input from property owners as the design progresses toward a 90% milestone. Mr. Dinwiddie's comments were related to concerns that his input wouldn't be able to be incorporated into the final design, and that proposed medians would affect his business negatively.

Staff recently presented an update to Council on the design, schedule and budget issues with this project at the June 20th Council Meeting. Staff maintains that there has been, and will continue to be, opportunity for public input through outreach to neighborhood associations, the NE 85th Street Action Team, newsletters, direct mailings, and upcoming one-on-one property owner meetings. What has most noticeably taken longer than anticipated has been the collection of information toward covering the issue of underground of overhead utility lines, and the preparation of specific property information for over 90 private property parcels associated with this large public works project.

Attachments:

Attachment A, Dinwiddie Letter of June 12, 2006

Attachment B, Draft Response Letter

Attachment C, Schedule Details



June 12, 2006

Kirkland City Council
123 5th Avenue
Kirkland

Re: Center Turn Lane

Dear Gina Hortillosa,

In the fall of 2005 the members on the 85th Street Action Team were told the plan for the sidewalks and roadway were to be taken to 30% completion. At that point the city would meet individually with each business owner and discuss our concerns over the 30% completion of the NE 85th St. Improvement Project. The City told us that they would be meeting individually with the business owners in December.

It is now June and we have still not heard from the City. Not only have we not heard from the City, I was told yesterday by Gina Hortillosa that the Improvement Project is well past the 50% completion mark and on it's way to 90% completion. This has been my greatest fear. The City will take this plan to 90% completion and then go to the business owners and address our concerns. They will hear our concerns and tell us that it's already 90% completed and that our input is too late. Why go to 90% unless the City has already made up its mind? It is my opinion that City really doesn't care about the business/property owners concerns. Going to 90% completion and then going to the business/property owners for input proves my point. It is not what we were promised by the City. I don't want to hear that it took a long time to put the packages together. The City could have taken the 30% completion plan and gone door to door, if necessary, back in December. There is no excuse. I fear that the City is going to do what ever it wants regardless of our concerns.

My main concern is the landscape center turn lane in front of my business. I've talked to Dave Anderson and Gina over the last several months regarding the landscape center lane. Both have reassured me that nothing is final till the City meets with the property owners. Why waste the time and money in developing the Improvement Project to 90% only to have to revise the plans after talking to us? That's ass backwards. Either the City can't plan this out properly or it never intended to take our concerns seriously. Believe me, I'm extremely concerned.



The City's plan will have adverse effect on my business. If my customers cannot make a left hand turn out of my business then they will go to my competitor west of me. This will be money out of my pocket and will also depress the value of my business. The Council must understand that I cannot stand by and let this happen. But then again, who's there to hear my concerns?

Mark Dinwiddie

Mark Dinwiddie
Rosehill Car Wash
425-822-2280

cc. Jim Fitzgerald, Attorney
Eric Shields
Gina Hortillosa
Janice Soloff

July 5, 2006

DRAFT

Mr. Mark Dinwiddie
Rose Hill Car Wash
12633 NE 85th Street
Kirkland, Washington 98033

RE: NE 85th STREET CORRIDOR IMPROVEMENTS PROJECT

Dear Mr. Dinwiddie:

Thank you for your recent letter concerning the project planning and design of the NE 85th Street Corridor improvements project. Please know that the Council considers this project a high-priority investment for the Rose Hill business area and for the City at large, and we are highly attentive to the complex issues arising with this project.

During the scoping of the project last fall, it was decided to explore the possibility of relocating the above-ground utility lines to underground features. This study has had an impact on the project schedule discussed last fall, but it is felt that this is a critical aspect to the overall design.

In consultation with staff, I understand that the project is entering the right-of-way negotiation and acquisition phase. Staff is preparing to work with approximately 90 private property owners in order to gather additional specific input and to attempt to incorporate this input into the design. There is assurance that this process loop will feed back into the design and that the 90% plans will not be complete until meetings with property owners have occurred and issues which may arise have been resolved.

The specific concern you raise in your letter regarding center medians is one such issue, and in the design, business ingress and egress will be optimized while attempting to add other features such as landscaping and pedestrian amenities.

Additional schedule highlights for the project were presented to Council at the June 20th Council Meeting and are attached for your reference; public information outreach dates and events are listed. I also understand that you've had contact with project engineers in the Public Works Department regarding your frontage, and I'm confident that your concerns will be fully addressed through working with staff.

Letter to M. Dinwiddie

July 5, 2006

Page 2 of 2

If you have further questions about this project, please contact project engineer, Don Anderson in the Public Works Department at (425) 587-3826.

Sincerely,

KIRKLAND CITY COUNCIL

James L. Lauinger, Mayor

attachment: schedule details

cc: Daryl Grigsby, Public Works Director
Eric Shields, Planning Director
Ray Steiger, P.E., Capital Projects Manager
Janice Soloff, Planner
Don Anderson, P.E., Project Engineer
Gina Hortillosa, P.E., Project Engineer

ATTACHMENT C SCHEDULE DETAILS

Progress Milestones to Date:

Mar 2004	30% Design completed by Sound Transit
May 2004	Project transfer to City of Kirkland; City retains Garry Struthers Associations (GSA) as prime design consultant
Nov 2004	City of Kirkland initiates public outreach with properties and business owners impacted by the project with individual meetings with property owners
Dec 2004	Public open house, Sound Transit completes Environmental Process of original 30% design; negotiations for Interlocal Agreement between Kirkland/Sound Transit
July 2004	Newsletter
Sept 2004	Newsletter
Oct 2004	GSA Completes 50% Design 85 th A Team (50% submittal) Letters to Property Owners (update and meeting schedule) Letter to Business Owners (update and meeting schedule)
Nov 2005	85 th A Team Meeting (ROW Process); Updates for Highlands NA, NRNHA & SRNHA
Dec 2005	CoK requests PSE provide Cost Estimate for Under-grounding of Overhead Utility Lines per 50% Plans
Jan 2006	CoK re-requests PSE Cost Estimate
Feb 2006	CoK re-requests PSE Cost Estimate
May 2006	CoK receives PSE Cost Estimate. As Utilities often share poles, CoK now coordinates receiving Verizon Cost Estimate
Dec 2005 – Present	GSA continues design, progressing from 50% toward 90% design & preparation of Property Information Packets for Right-of-Way Phase. 93 Private Parcels are Impacted with this Project

Upcoming Milestones (assumes no under-grounding of overhead utility lines):

June – Sept 2006	Right-of-way Negotiation & Acquisition Phase (including Letters of Intent, Information Packets, and one-on-one property owner meetings) Art Committee Process for Art Determination
July 2006	SEPA Addendum Process Complete
Oct – Nov 2006	90% Design Complete, Review & Comment by City Staff
Oct 2006	Obtain Council Approval of Final Plans for new Median Islands, per Comp Plan Requirements
Nov 2006	Submit and obtain WSDOT Channelization Approval (SR-908)
Nov – Dec 2006	Newsletter to mailing list Presentations of 90% Design to: NE 85 th Street Action Team, NRHNA, SRHNA, Highlands NA
Jan – Feb 2007	Bid Period
Mar 2007 – Aug 2008	Construction Period

Notes:

- ROW Phase length is highly variable and dependent on actual negotiations; could extend the schedule an additional three months or more.
- Both design and construction schedules would take longer should the under-grounding effort be undertaken. Additional design coordination would be necessary; construction needs would include additional trenching by the City's contractor and coordination with under-grounding of private aerial lines.
- With the large number of properties involved in right-of-way acquisition (estimated 40 out of the 93), staff has prepared a draft Eminent Domain ordinance (see Attachment D).



CITY OF KIRKLAND
Department of Finance and Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager
From: Kathi Anderson, City Clerk
Date: June 28, 2006
Subject: CLAIM(S) FOR DAMAGES

RECOMMENDATION

It is recommended that the City Council acknowledge receipt of the following Claim(s) for Damages and refer each claim to the proper department (risk management section) for disposition.

POLICY IMPLICATIONS

This is consistent with City policy and procedure and is in accordance with the requirements of state law (RCW 35.31.(040)).

BACKGROUND DISCUSSION

The City has received the following Claim(s) for Damages from:

- (1) Francis Thee
11115 101st Place NE
Kirkland, WA 98033

Amount: \$86.55

Nature of Claim: Claimant states damage to fence resulted from Fire department response.



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: June 26, 2006

Subject: KIRKLAND AVENUE SEWER PROJECT – AUTHORIZATION TO AWARD CONTRACT

RECOMMENDATION:

It is recommended that the City Council award the construction contract for the Kirkland Avenue Sewer Project to Shoreline Construction Company of Woodinville, WA, in the amount of \$225,953.66. In addition, it is recommended that the Council authorize the use of \$139,000 from utility reserves for completion of the project.

BACKGROUND DISCUSSION:

The proposed scope of the project consists of replacing an aging sanitary sewermain and three existing manholes in two areas that are in close proximity of each other near the downtown area (Attachment A).

The Kirkland Avenue sewermain replacement element of the project came to be as a result of sewage effluent percolating to the surface and flowing down the street gutter in late 2005. A subsequent video inspection revealed a number of broken pipe joints and other pipe deficiencies along a 380-foot length of the sewermain which were previously unknown. Development activity adjacent to this section of Kirkland Avenue was proceeding and frontage improvements by the Developer were anticipated in the fall of 2006. Staff considered the option of requesting that City Council declare the situation an emergency, whereby a contractor could be hired immediately and the project constructed using a time and materials contract, however, the option of preparing a bid package seemed a more viable option given the time of the year. City Council authorized the use of \$130,000 utility reserves at their February 7, 2006 meeting for the design and construction of the sewermain replacement.

The manhole rehabilitation element of the project came about through maintenance activities in advance of the annual street preservation program. It was originally anticipated that manhole repairs would be done by the City crews in preparation for the overlay (Third Street is in the 2006 Overlay program). However, once the magnitude of the rehabilitation for these manholes was established, it became apparent that City crews did not have the size of excavation equipment necessary to complete the work. As a result, it was decided to utilize the annual manhole rehabilitation program to help offset the costs of the rehabilitation and to combine the manhole rehabilitation work with the Kirkland Sewer Project to take advantage of a larger project and to contract for the appropriately sized equipment.

At their meeting on June 6, 2006, Council authorized the Public Works staff to advertise for contractor bids on the project. On June 23, 2006, two bids were received and tabulated with the following results:

CONTRACTOR	KIRKLAND AVE SEWERMAIN (Sched A)	THIRD STREET MANHOLE REHAB (Sched B)	TOTAL
<i>Engineer's Estimate</i>	<i>\$130,000</i>	<i>\$50,000</i>	<i>\$180,000</i>
Shoreline Const.	\$162,067	\$63,887	\$225,954
Gary Merlino Const.	\$236,300	\$78,271	\$314,571

Based on the lack of interest in the subject project, as evidenced by the receipt of only two bids, it is apparent that the timing of the advertisement was not ideal. This can be attributed to the fact that it is the busiest time of the year for construction projects with all qualified contractors being busy. In other situations faced with a low number of bidders, Staff has recommended that City Council reject the bids and allow staff to advertise at a more competitive time of the year. Unfortunately, in this circumstance and despite the higher than anticipated bids, there are several compelling factors for moving forward with the overall project:

- The Kirkland Avenue sewermain is in disrepair, and it has been confirmed that effluent is coming to the surface from the main line.
- The new Trammel Crow condominium development, adjacent to the south side of the Kirkland Ave Sewer, will be installing curb and gutter and sidewalks and performing a half street overlay by the end of this summer.
- The Third Street manhole rehabilitations consist of the replacing manholes in 3rd Street which is also part of the 2006 Overlay Program; the aging manholes should be replaced prior to the overlay.

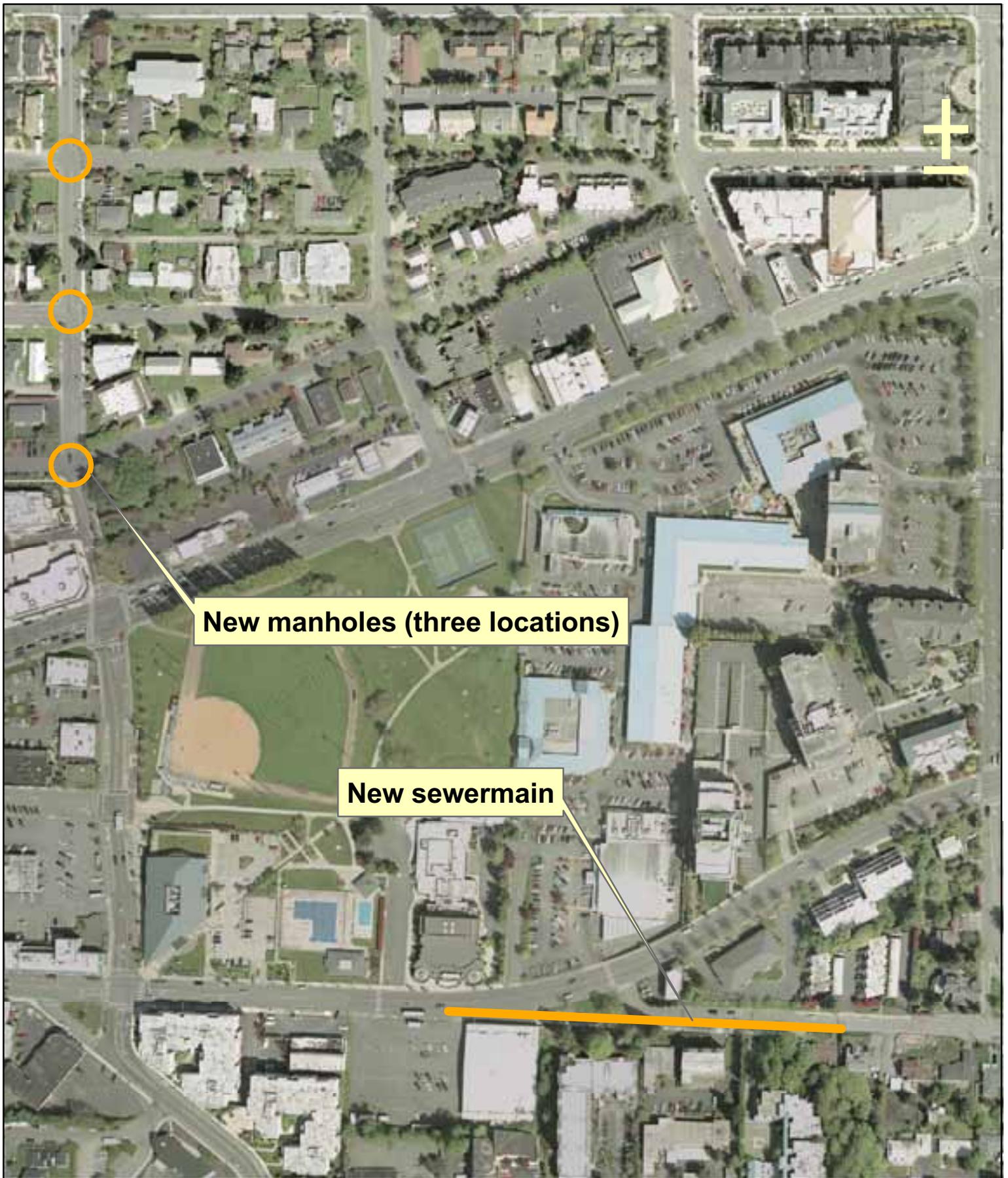
However, considering the impact on the utility reserve if, as staff recommends, both schedules are awarded (Attachment B), Staff has prepared three additional options for Council consideration:

- 1 a) Award contract "as-is" (Sched A & B) in the amount of \$225,953.66 and enter into a deductive change order negotiation with the contractor to reduce the number of manholes replaced under Schedule B; this option would result in a budget increase of between \$82,000 and \$139,000. Staff would report back on the final change order amount at a later date, and overlay of portions of Third Street would be delayed to another year.
- 1 b) Award the Kirkland Ave sewermain only (Sched A) in the amount of \$162,066.30. Between now and the July 20th Council meeting, staff will reduce the scope of the manhole rehab element and attempt to renegotiate a lesser contract amount with the low bidder. This option would result in a budget increase of \$82,000 to somewhat less than \$139,000; as in 1 a) portions of Third Street would be delayed.
- 2 Award the Kirkland Ave sewermain only (Sched A) in the amount of \$162,066.30, and defer the manhole rehab to 2007/2008. The scheduled overlay of this section of Third Street would be reduced or deferred until the manholes are replaced. This option would result in a budget increase of approximately \$75,000.

With Council approval, construction will begin in July and substantial completion is expected by the end of September, 2006.

Cc: Denise Pirola, P.E., Project Engineer

Attachments: (3)



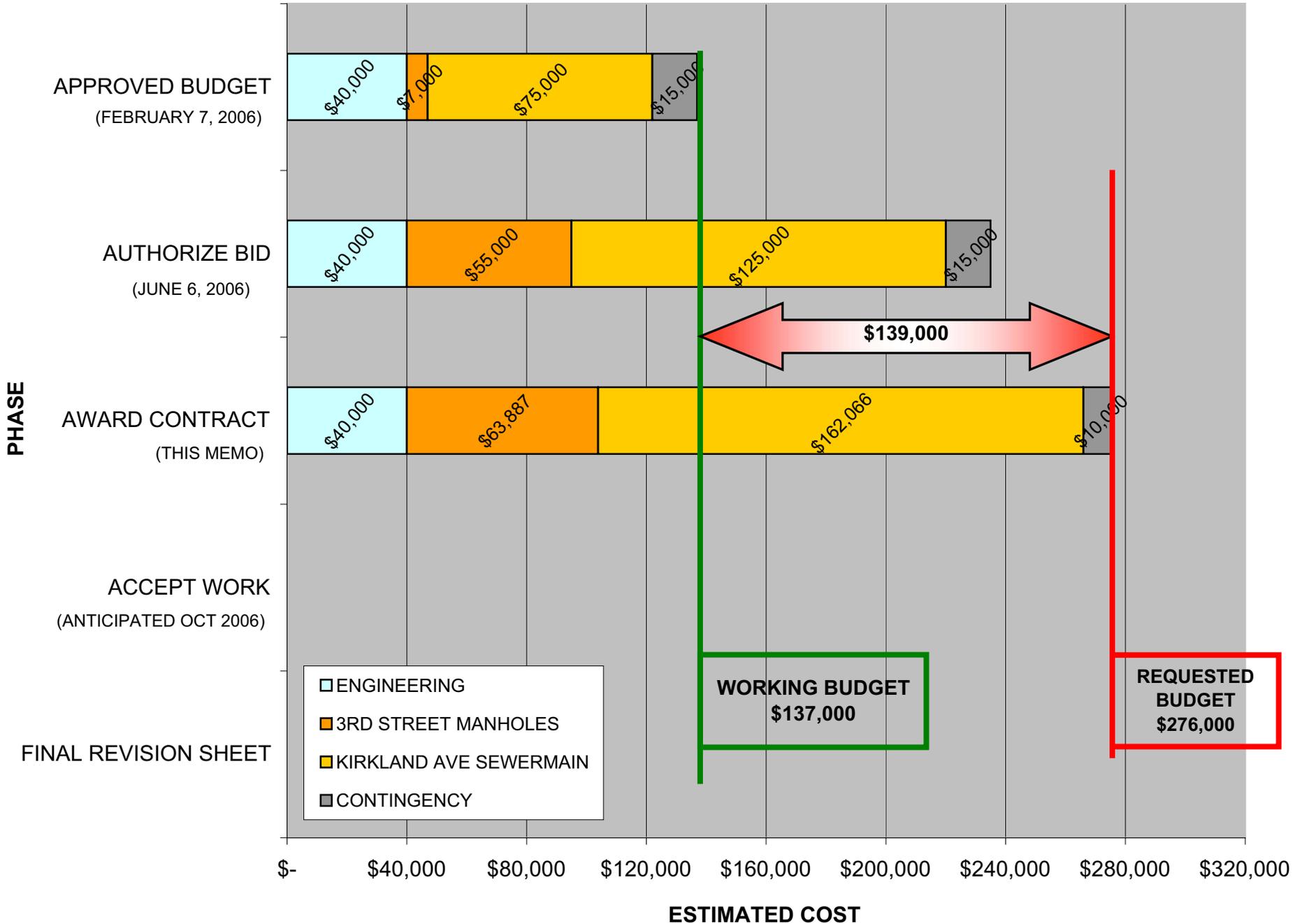
Kirkland Ave Sewermain

City of Kirkland



KIRKLAND SEWER PROJECT

PROJECT BUDGET REPORT



FISCAL NOTE

Source of Request							
Daryl Grigsby, Public Works Director							
Description of Request							
Request for additional funding of \$139,000 from the Utility Construction Reserve for the Kirkland Avenue Sewer Line Replacement project. The costs for the project have increased due to the time of year that the bid was let and the continuation of higher than normal bid prices. Also, manhole repair costs have increased due to the magnitude of the repairs that are now needed.							
Legality/City Policy Basis							
Fiscal Impact							
One-time use of \$139,000 of the Utility Construction Reserve. The reserve is able to fully fund this request.							
Recommended Funding Source(s)							
	Description	2006 Est End Balance	Prior Auth. 2005-06 Uses	Prior Auth. 2005-06 Additions	Amount This Request	Revised 2006 End Balance	2006 Target
Reserve	Utility Construction Reserve	4,599,401	880,000	24,238	139,000	3,604,639	see below
	The Utility Construction Reserve accounts for capital contributions from utility rates and connections charges and is used to fund capital projects. Capital replacement cycles require that reserves accumulate to pay for future replacement of infrastructure to supplement the use of debt. The liability against this reserve occurs in future years as capital replacement needs peak. 2005-2006 Prior Authorized Uses includes \$350,000 for a Sewer Line Encasement along I-405, \$400,000 additional funding for the 2005 Emergency Sewer Program and \$130,000 initial funding for the Kirkland Avenue Sewer Line Replacement project. 2005-2006 Prior Authorized Additions include the return of funds from the closure of 3 watermain replacement projects that were completed under budget.						
Revenue/ Exp Savings							
Other Source							
Other Information							

Prepared By	Sandi Miller, Financial Planning Manager	Date	June 26, 2006
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CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: July 5, 2006

Subject: 2005 EMERGENCY SEWER CONSTRUCTION PROGRAM - ACCEPT WORK

RECOMMENDATION:

It is recommended that the City Council accept the construction of the 2005 Emergency Sewer Construction Program (ESP), as constructed by Tri-State Construction Inc. of Bellevue, Washington, and establish the required lien period.

BACKGROUND DISCUSSION:

The scope of the project provided construction of sanitary sewer main in the following five areas (Attachment A):

- Bridle Trails Neighborhood –
 - 1) 116th Avenue NE between NE 53rd Street to the north property line of 5527
- South Rose Hill Neighborhood –
 - 2) 124th Avenue NE between NE 75th & NE 80th Streets
 - 3) 130th Avenue NE between NE 73rd Street and NE 75th Street
 - 4) NE 80th Street between 128th Avenue NE & 130th Avenue NE, and
130th Avenue NE between NE 78th Street and NE 80th Street
- Juanita Neighborhood –
 - 5) NE 109th Street between 104th Avenue NE and the end of the cul-de-sac

The 2005 ESP was adopted in the CIP as CSS-0556 at \$1 million. On April 5, 2005 based on a high level of interested participants in the program Council added \$400,000 in utility reserve funds to bring the total project budget to \$1.450 million.

At their regularly scheduled June 21, 2005 meeting, the City Council authorized staff to advertise for bids for the 2005 Emergency Sewer Project, and on August 2, 2005 the City Council awarded the construction contract to Tri-State Construction, Inc. of Bellevue, WA in the amount of \$976,229.76. Construction was completed in May 2006, and the total amount paid to the contractor was \$970,593.65 (Attachment B).

Memorandum to Dave Ramsay

July 5, 2006

Page 2 of 2

The construction took longer than expected due to unseasonably rainy weather in December and because of the complexity related to the boring portion of the project; therefore the inspection services and in-house engineering cost were higher than anticipated at the award phase.

The project included the installation of over 4,100 lineal feet of sewer main and provided sewer availability for 83 properties that are currently served by septic systems. Properties that benefit from this new sewer construction are responsible for all costs associated with the project, and in each case, individual property owners will be assessed a portion of the costs of the project. The original engineer's estimate of cost per property was \$15,000 including engineering and construction management; the total cost for the 2005 ESP was \$1,324,968 resulting in an individual assessment of \$15,975 per sewer stub. To date, 13 properties of the possible 83 have hooked up to the new sewer main and have signed interim contracts to repay their share of the assessments.

The 2005 assessment compares with the 1999 ESP assessments which ranged between \$6,000 and \$20,500, the 2001 ESP with assessments of \$9,726, and the 2003 assessments of \$11,866. Including the 2005 program, 324 connections have been made available by the City, 121 connections have been utilized by the property owners, and we anticipate with a continuing strong housing market, interest rates remaining lower than average, and the continuation of new housing development more ESP assessments will be paid in full than had been originally expected (Attachment C).

Attachments (3): Vicinity Map (A)

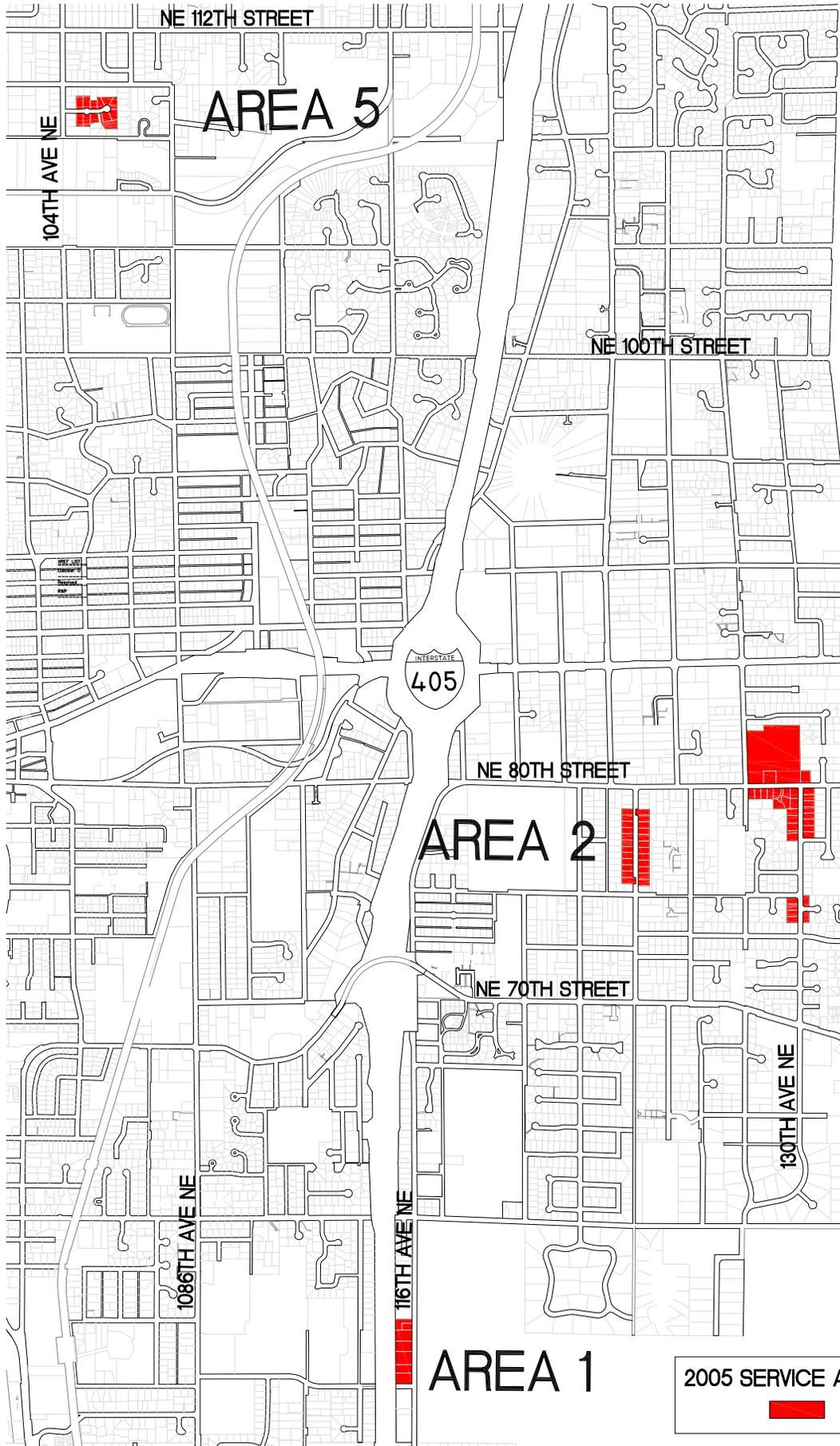
Project Budget Report (B)

ESP Project Comparison (C)



CITY OF KIRKLAND 2005 EMERGENCY SEWER PROGRAM

Attachment A



AREA 4

AREA 3

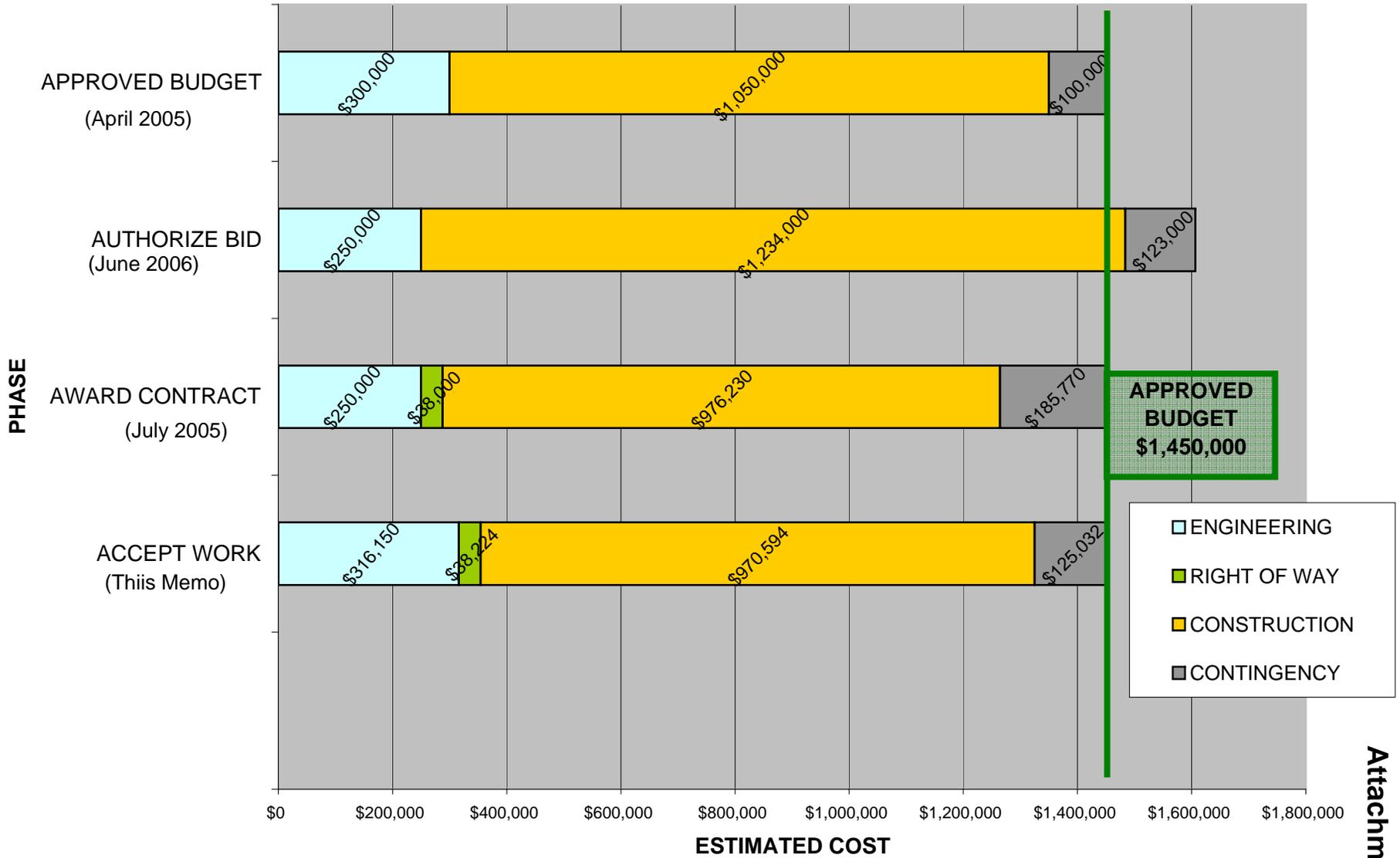
AREA 1

2005 SERVICE AREA




2005 EMERGENCY SEWER PROGRAM

PROJECT BUDGET REPORT



EMERGENCY SEWER PROJECT COMPARISON

Program	Year	Length (lineal feet)	# Connections Provided*	Connected	Final Project Cost	Cost Per Assessment	Reimbursed through 5/31/06	% Reimbursed	Principal Due
1	1999	2,900	54	33	\$560,000	\$6,000-\$20,500	\$418,504	75%	\$141,496
2	2001	4,756	74	40	\$724,616	\$9,726	\$556,946	77%	\$167,670
3	2003	5,700	113	36	\$1,434,658	\$11,857	\$740,558	52%	\$694,100
TOTAL		13,356	241	109	\$2,719,274		\$1,716,008	63%	\$1,003,266

Finance Overview

Program	Year	Connections	Paid in Full	Payment Refinance	Payment Sale	Payment Other	ACTIVE Contracts	Delinquent Contracts	Inactive
1	1999	54	38	12	19	7	10	2	4
2	2001	74	52	19	14	18	15	0	7
3	2003	113	53	18	11	24	38	2	20
TOTAL		241	143	49	44	49	63	4	31



CITY OF KIRKLAND

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: June 22, 2006

Subject: NORTSHORE UTILITY DISTRICT – GIS INTERLOCAL AGREEMENT

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to sign the attached interlocal agreement.

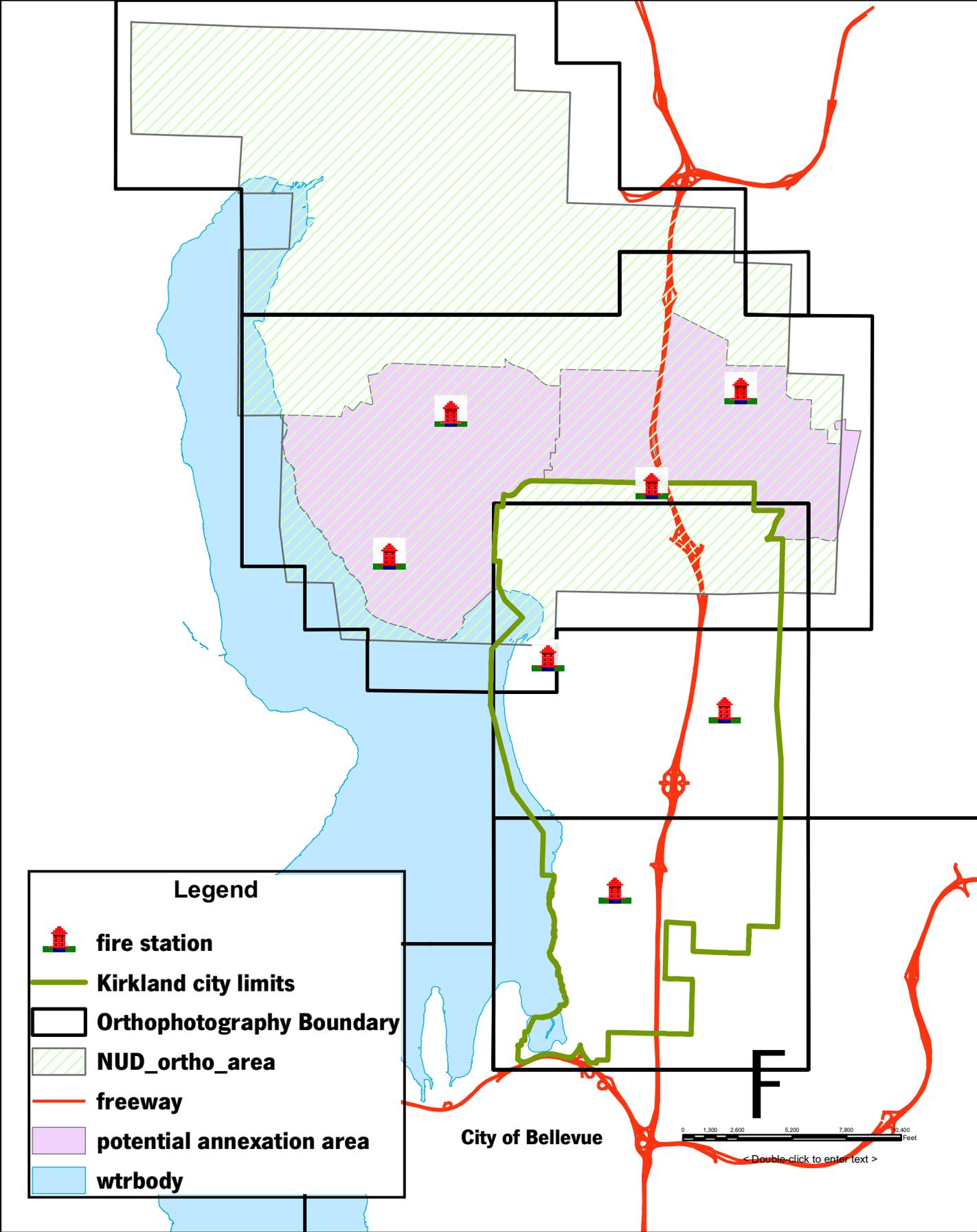
BACKGROUND AND DISCUSSION:

The City updates the Geographic Information System (GIS) aerial photography (orthophotos) every two to three years. These updates are funded from the Capital Improvement Program and typically cover all areas within the City limits for base mapping, exhibits, studies, and the like. In past contracts, Fire District 41 has also contributed to the project funding enabling the City to include much of the area to the north of the Kirkland city limits. During development of the 2005 Orthophotography scope of work, City Staff was approached by staff of the Northshore Utility District (NUD), who provide water and wastewater services to customers both within Kirkland, unincorporated King County to the north, and portions of the Cities of Bothell and Kenmore. NUD staff requested to participate with Kirkland, Fire District 41, and the City of Bellevue in the orthophotography contract (Attachment A).

Based on mutual benefits and overlap of service areas, the proposed shared contract is in the best interest of the parties. The attached interlocal allows NUD to participate in the City's contract and will allow compensation to Kirkland for services in the NUD boundaries.

Attachment

2005 Orthophotography Project





INTERLOCAL AGREEMENT

FOR INCORPORATION OF NORTSHORE UTILITY DISTRICT'S DIGITAL AERIAL PHOTOGRAPHY INTO THE CITY OF KIRKLAND'S 2005 GIS DIGITAL ORTHOPHOTO PROJECT

The City of Kirkland (hereinafter the "City") and the Northshore Utility District (hereinafter the "District"), both municipal corporations, in accordance with the Interlocal Cooperation Act (Chapter 39.34 RCW) do hereby agree as follows:

1. PURPOSE

The purpose of this Agreement is to provide for the digital aerial photography of the District's service area (the "Service area") that will be done in conjunction with the City's 2005 digital orthophoto project (hereinafter "the Project"). The parties have determined that it is in their mutual best interest to coordinate the digital photography of both parties in the Project due to the significant overlap of their respective boundaries.

2. THE PROJECT

The parties hereby agree that the City's RFP and selection process will be used and fully administered by the City. The Project will be performed in accordance with the City's specifications as amended by the District.

3. PROJECT COSTS

The District will be responsible for their proportionate share of the costs associated with the Service area. For purposes of this interlocal agreement, the District's share is \$24,000 as outlined in Exhibit A to this Interlocal.

4. THE PROCEDURE

a. Responsibilities

The District shall be responsible for the development of design criteria and standards to be applied in the Service area. The City shall incorporate the District's specifications, design criteria and schedule of items into the RFP in such a manner as to allow for the identification of costs for the Service area, and shall track all City staff/consultant time related to the incorporation of the District's components. The City shall be solely responsible for the RFP and contractor selection process.

b. Contractor Selection

The City shall select the lowest responsible bid for the Project based on the RFP criteria. The City shall enter into a contract, in the City's name only, with the successful contractor (the "Contractor") to complete the Project. The City shall administer the 2005 Orthophoto contract ("the Contract"). The District will be invited to attend any pre-construction or progress meetings and assist the City in the administration of the Contract by agreeing to review and return, with comments, all work products for the Project within seven (7) days of the date of receipt by the District.

c. City as Contracting Agency

The City shall serve as the contracting agency during performance of the work for the parties and shall generally manage and oversee the development of the District's orthophotography in association with the Project. The District will be responsible for costs of producing products for their Service area.

d. Change Orders

The City may approve changes in those parts of the Contract providing for products in the Service area, provided that if any change order would change the nature of the work or would cause that

portion of the contract price attributable to such adjustment work to increase by more than \$1,000.00 or cumulatively more than two percent (2%) of the original contract amount attributable to the Service area, the District's prior consent to the change orders shall be obtained, which consent shall not be unreasonably withheld. In the event that consent is unreasonably withheld, the District will be held responsible for all liability incurred by the City resulting from such withholding of consent. The City shall immediately provide the District with copies of all requests for change orders and executed change orders associated with the District's portion of the contract regardless of the dollar amount of the change order.

e. Payment Procedure

The City shall provide the District with monthly progress billings for that portion of the Project attributable to the Service area. The District shall pay the City for the cost of the District's component of the work, as provided in the contract bid (as adjusted by change order), based upon agreed upon progress, within forty five (45) days of receipt of each billing.

f. Payments to Contractor

The City shall make all disbursements to Contractor.

g. Final Acceptance

That portion of the Contractor's work related to the Service area shall not be given final acceptance until it is approved in writing by the City and the District. Neither party shall unreasonably withhold approval for final acceptance. The work product of the Service area shall become the property of the District upon final acceptance. The City agrees to assign all warranties related to the Service area to the District.

h. Staff Time, Costs, and Incidental Expenses

At all times material hereto, the parties shall separately bear their own staff time, engineering costs, and incidental expenses.

Should any claims arise related to the District's portion of the Project, the City shall handle and administer such claims in the same manner as it would handle any other claims on the Project. The City shall immediately notify the District and keep it informed as to the progress of the claim. The District will provide guidance to the City regarding proposed terms of settlement. Any decision regarding the settlement or prosecution of a claim shall be approved by the District prior to being finalized. If the District and the city cannot agree as to the prosecution or settlement of a claim, the District may prosecute or defend the claim and the City will assign such claims to the District. The District agrees to pay all costs of prosecution or defense if assigned such claims and defend, indemnify and hold harmless the City from all damages the City suffers from the District's prosecution or defense of the claim.

i. District Inspections

The City will allow the District to inspect work product related to the Service area work at reasonable times. To accomplish this, the City will provide the District with copies of the Contractor's work product and any revisions thereto, and advise the District 24 hours prior to the need for such inspection. The District agrees to provide such inspection in a timely manner to minimize delay to the Contractor and City.

4. INDEMNIFICATION AND INSURANCE

- a. The City shall require Contractor to indemnify, defend, and save harmless the District and its Commissioners, officers, agents, or employees from any claim, real or imaginary, filed against the District or its officers, agents, or employees alleging damage or injury arising out of the Contractor's participation in the Project.

5. NOTICES AND OTHER COMMUNICATIONS

All notices and other formal communications to be delivered under this Agreement shall be mailed or delivered to the following:

City of Kirkland
Daryl Grigsby, Public Works Director
or his designee
123 Fifth Avenue
Kirkland, Washington 98033-6189

Northshore Utility District
Dave Kaiser, Engineering Manager
or his designee
P.O. Box 489
Kenmore, Washington 98028 - 0489

Provided, however, the parties may change their respective designation of representatives by written notification to one another.

6. INTEGRATION AND MODIFICATION

This Agreement constitutes the final and completely integrated agreement between the parties concerning its subject matter and it may be signed in counterparts without affecting the validity of this provision. No modification of this agreement or this section is valid unless in writing and signed by both parties.

7. ASSIGNMENT

Neither party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of the other party.

The date of this Agreement is _____, 2006.

Execution of this Agreement by the undersigned representatives of each party has been authorized by Resolution No. _____ of the City of Kirkland and Resolution No. _____ of the Board of Commissioners of the Northshore Utility District.

CITY OF KIRKLAND

NORTHSHORE UTILITY DISTRICT

City Manager

General Manager

Approved as to form:

City Attorney

**2005 Orthophotography Project
(Participating Agency Share Allocation)**

6/23/2006

Task	Proposed Fee	Area	1	2	3	4	5	Total
			(NUD)	(NUD/FD/COK)	(NUD/COK)	(COK)	(COK)	
		%	0.3017	0.3412	0.0873	0.1111	0.1587	1.0000
A. Project Management	n.a.		n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
B. Project Startup	176.32		53.20	60.16	15.39	19.59	27.98	176.32
C. Scanning	1,616.85		487.80	551.67	141.15	179.63	256.59	1,616.85
D. AAT	5,712.75		1,723.54	1,949.19	498.72	634.69	906.61	5,712.75
E.-1 DTM - ortho only (Note 1)	5,400.00		2,532.60	2,867.40	n.a.	n.a.	n.a.	5,400.00
E.-2 DTM - 2' C.I. (Note 2)	6,279.75		n.a.	n.a.	n.a.	6,279.75	n.a.	6,279.75
F. Planimetric Compilation	deleted 2/14/06		n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
G. Orthophotography	14,105.55		4,255.64	4,812.81	1,231.41	1,567.13	2,238.55	14,105.55
H. Project Closeout	176.32		53.20	60.16	15.39	19.59	27.98	176.32
Sub-total	33,467.54		9,105.98	10,301.39	1,902.07	8,700.37	3,457.72	33,467.54
Aerial Photography (GPS Survey, Inc.)	16,785.00		5,064.03	5,727.04	1,465.33	1,864.81	2,663.78	16,785.00
Management Consultant	6,000.00		1,810.20	2,047.20	523.80	666.60	952.20	6,000.00
Sub-total	22,785.00		6,874.23	7,774.24	1,989.13	2,531.41	3,615.98	22,785.00
Total charges per area	56,252.54		15,980.21	18,075.64	3,891.20	11,231.79	7,073.70	56,252.54
Share Allocation								
Kirkland				6,025.21	1,945.60	11,231.79	7,073.70	26,276.30
NUD			15,980.21	6,025.21	1,945.60			23,951.03
Fire District 41				6,025.21				6,025.21
Total			15,980.21	18,075.64	3,891.20	11,231.79	7,073.70	56,252.54

Note 1: Ortho-only updates apply to Areas 1 and 2 only. DSA fee (\$5400) is split proportionately 46.9% Area 1 and 53.1% Area 2

Note 2: 2' C.I. updates is City of Kirkland; DSA fee (\$6279.75) is loaded to Area 4 and not allocated to other partners

Exhibit A



CITY OF KIRKLAND

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Elaine Borjeson, Solid Waste Coordinator
Daryl Grigsby, Public Works Director

Date: June 20, 2006

Subject: RESOLUTION TO RELINQUISH THE CITY'S INTEREST IN A PORTION OF UNOPENED RIGHT OF WAY

RECOMMENDATION:

It is recommended that the City Council adopt the enclosed Resolution, relinquishing interest in the north 8 feet of the unopened alley abutting the south boundary of Lot 1, City of Kirkland Lot Line Adjustment Number K429E-SMITH as recorded under Recording Number 7909260755 records of King County, Washington.

BACKGROUND DISCUSSION:

The unopened alley abutting the property of 643 12th Avenue was originally platted and dedicated in 1891 as the Supplementary Plat to Kirkland. The Five Year Non-User Statute provides that any street or right-of-way platted, dedicated or deeded prior to March 12, 1904, which was outside City jurisdiction when dedicated and which remains unopened or unimproved for five continuous years is then vacated.

Francis X. and Maria A. P. Fialho, the owners of the property abutting this right-of-way, submitted information to the City claiming the right-of-way was subject to the Five Year Non-User Statute (Vacation by Operation of Law), Laws of 1889, Chapter 19, Section 32. After reviewing this information, the City Attorney believes the approval of the enclosed Resolution is permissible.

Attachments: Resolution
Vicinity Map

12TH AVE

11TH AVE

FIALHO RESIDENCE NON-USER VACATION 643 12TH AVE

- | | | | |
|---|---------------------------|---|------------------|
|  | Fialho Residence |  | Building Outline |
|  | Proposed Vacation |  | School |
|  | Granted Non-User Vacation |  | Park |
|  | Pedestrian Easement | | |



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No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

Map Printed April 6, 2006 - Public Works GIS

RESOLUTION R-4581

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE IN AN UNOPENED ALLEY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNERS FRANCIS X. AND MARIA A. P. FIALHO.

WHEREAS, the City has received a request to recognize that any rights to the land originally dedicated in 1891 as right-of-way abutting a portion of the Supplementary Plat to Kirkland have been vacated by operation of law; and

WHEREAS, the Laws of 1889, Chapter 19, Section 32, provide that any county road which remains unopened for five years after authority is granted for opening the same is vacated by operation of law at that time; and

WHEREAS, the area which is the subject of this request was annexed to the City of Kirkland, with the relevant right-of-way having been unopened; and

WHEREAS, in this context it is in the public interest to resolve this matter by agreement,

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. As requested by property owners Francis X. and Maria A. P. Fialho, the City Council of the City of Kirkland hereby recognizes that the following described right of way has been vacated by operation of law and relinquishes all interest it may have, if any, in the portion of right-of-way described as follows:

A portion of unopened alley being identified as the north 8 feet of unopened alley abutting the south boundary of the following described property:

Lot 1, City of Kirkland Lot Line Adjustment Number K429E-SMITH as recorded under Recording Number 7909260755, being a portion of the southwest quarter of the northeast quarter of section 5, Township 25 North, Range 5 East, Willamette Meridian, in King County, Washington, LAKE AVENUE ADDITION TO KIRKLAND, according to the Plat thereof recorded in Volume 6 of Plats, page 86, AND the SUPPLEMENTARY PLAT TO KIRKLAND, according to the plat thereof recorded in Volume 8 of Plats, page 5, records of King County, Washington;
Commencing at a monument 5 feet east of the centerline of 6th Street; thence North 86° 46' 15" east a distance of 484.36 along the centerline of 12th Avenue;
Thence south 3° 13' 45" east a distance of 30' feet to the northwest corner of Lot 10 and the True Point of Beginning;
Thence south 3° 13' 45" east a distance of 120.00 feet to the southwest corner of Lot 17;
Thence north 86° 45' 15" east a distance of 180.00 feet to the southeast corner of Lot 12;
Thence north 3° 13' 45" west a distance of 28.50 feet to the northeast corner of Lot 12;
Thence south 87° 34' 59" west a distance of 60.00 feet to the northwest corner of Lot 13;
Thence north 3° 13' 45" west a distance of 90.65 feet to the northeast corner of Lot 7;
Thence south 86° 46' 15" west a distance of 120.00 feet to the northwest corner of Lot 10 and the True Point of Beginning.

Section 2. This resolution does not affect any third party rights in the property, if any.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2006.

Signed in authentication thereof this ____ day of _____, 2006.

MAYOR

Attest:

City Clerk



CITY OF KIRKLAND

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Elaine Borjeson, Solid Waste Coordinator
Daryl Grigsby, Public Works Director

Date: June 20, 2006

Subject: RESOLUTION TO RELINQUISH THE CITY'S INTEREST IN A PORTION OF UNOPENED RIGHT OF WAY

RECOMMENDATION:

It is recommended that the City Council adopt the enclosed Resolution, relinquishing interest in the south 8 feet of the unopened alley abutting the north boundary of Lots 49, 50 and 51, Block 240, Supplementary Plat to Kirkland, according to the plat thereof recorded in Volume 8 of Plats, page 5, records of King County, Washington, EXCEPT the east 5 feet of said Lot 51.

BACKGROUND DISCUSSION:

The unopened alley abutting the property of 648 11th Avenue was originally platted and dedicated in 1891 as the Supplementary Plat to Kirkland. The Five Year Non-User Statute provides that any street or right-of-way platted, dedicated or deeded prior to March 12, 1904, which was outside City jurisdiction when dedicated and which remains unopened or unimproved for five continuous years is then vacated.

Mark P. Nassutti, the owner of the property abutting this right-of-way, submitted information to the City claiming the right-of-way was subject to the Five Year Non-User Statute (Vacation by Operation of Law), Laws of 1889, Chapter 19, Section 32. After reviewing this information, the City Attorney believes the approval of the enclosed Resolution is permissible.

Attachments: Resolution
Vicinity Map



**NASSUTTI RESIDENCE NON-USER VACATION
648 11TH AVE**

- | | | | |
|---|---------------------------|---|------------------|
|  | Casey Property |  | Building Outline |
|  | Proposed Vacation |  | School |
|  | Granted Non-User Vacation |  | Park |
|  | Pedestrian Easement | | |



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Map Printed March 27, 2006 - Public Works GIS

RESOLUTION R-4582

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE IN AN UNOPENED ALLEY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNER MARK P. NASSUTTI.

WHEREAS, the City has received a request to recognize that any rights to the land originally dedicated in 1891 as right-of-way abutting a portion of the Supplementary Plat to Kirkland have been vacated by operation of law; and

WHEREAS, the Laws of 1889, Chapter 19, Section 32, provide that any county road which remains unopened for five years after authority is granted for opening the same is vacated by operation of law at that time; and

WHEREAS, the area which is the subject of this request was annexed to the City of Kirkland, with the relevant right-of-way having been unopened; and

WHEREAS, in this context it is in the public interest to resolve this matter by agreement,

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. As requested by property owner Mark P. Nassutti, the City Council of the City of Kirkland hereby recognizes that the following described right of way has been vacated by operation of law and relinquishes all interest it may have, if any, in the portion of right-of-way described as follows:

A portion of unopened alley being identified as the south 8 feet of unopened alley abutting the north boundary of Lots 49, 50 and 51, Block 240, SUPPLEMENTARY PLAT TO KIRKLAND, according to the plat thereof recorded in Volume 8 of Plats, page 5, records of King County, Washington EXCEPT the east 5 feet of said Lot 51.

Section 2. This resolution does not affect any third party rights in the property, if any.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2006.

Signed in authentication thereof this ____ day of _____, 2006.

MAYOR

Attest:

City Clerk



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Robin S. Jenkinson, City Attorney

Date: June 21, 2006

Subject: Proposed Amendments to Reasonable Use Process

RECOMMENDATION

Staff recommends that the City Council be briefed on proposed amendments to the existing reasonable use process in the Kirkland Zoning Code. Staff would also ask Council for direction on the key issues noted in the discussion below.

BACKGROUND DISCUSSION

On May 2, 2006, the City Council considered two reasonable use applications recommended by the Hearing Examiner. The Council asked staff to examine the existing reasonable use process for possible amendments to be included for consideration by the Planning Commission as part of the annual Zoning Code amendments.

Washington's Growth Management Act (GMA) was passed by the State Legislature in 1990. Under the GMA, all cities and counties in Washington are required to adopt regulations to protect critical or environmentally sensitive areas. The City of Kirkland adopted regulations in 2002 to protect sensitive areas including wetlands, streams, lakes, and frequently flooded areas.

The GMA critical areas requirement frequently restricts the amount of land upon which a property owner can construct buildings or other structures and in many cases eliminates a substantial amount of the economically viable use of the property. The critical areas regulations of almost all cities, including Kirkland's, contain a reasonable use provision to allow exceptions to critical area regulations when strict application of the regulations would deny reasonable use of the property. There is no legal requirement under state statute for cities to enact reasonable use exemptions. Cities have done so to avoid being held liable to property owners for compensation.

With the goal of ensuring that the important sensitive area regulations are enforced to the fullest extent possible, staff has attempted to craft amendments to the reasonable use process which would: 1) retain flexibility in order to adapt to the specific conditions of each site; 2) provide better guidelines for the exercise of this authority.

The first step in the process of drafting the proposed amendments was to collect examples of the reasonable use provisions from other cities and, in some instances, counties. (see **Attachment 1** - matrix comparing examples and **Attachment 2** - examples). In addition, staff closely reviewed the existing reasonable use provision and attempted to more fully describe the required submittals and better organize the approval criteria. (see **Attachment 3** – existing provisions). Finally, staff is recommending an alternative administrative process for improvements which do not exceed 3,000 square feet of site impact, including structures, paved areas, landscaping, decks, utility installation, and grading, as incentive for property owners to limit the size of their proposals. (see **Attachment 4** – draft provisions, subsection 5, page 3).

The issues on which staff seeks Council direction are as follows:

1. Is there additional information which Council would like with applicants' submittals?
2. Are the criteria identified for the decision-making process understandable and acceptable?
3. Does the Council think an alternative administrative process is appropriate?
4. Does the Council think 3,000 square feet of site impact is the correct threshold?

These and other proposed Zoning Code amendments will be included in a packet to be transmitted to the Planning Commission in July. Once Council reviews the proposed amendments, any direction provided to staff will be forwarded to the Planning Commission for its consideration.

ATTACHMENTS

1. Matrix Comparing examples of reasonable use provisions from other cities and counties.
2. Examples of reasonable use provisions from other cities and counties.
3. Existing reasonable use process in Kirkland Zoning Code 90.140.
4. Proposed amendments to reasonable use process.

REASONABLE USE ORDINANCES

*Generally, the reasonable use provisions of the cities and counties appear to follow the decision or review criteria from Model Code for Critical Areas originally developed for the cities of Duvall, Carnation, Snoqualmie and North Bend. The Model Code includes the following review criteria:

1. Application of the critical areas chapter would otherwise deny all reasonable use of the property;
2. There is no other reasonable use consistent with the underlying zoning of the property that has less adverse impact on the critical area and/or associated buffer;
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;
4. Any alteration is the minimum necessary to allow for reasonable use of the property;
5. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of the critical areas chapter or its predecessor; and
6. The applicant may only apply for a reasonable use exception if the requested exception provides relief not otherwise available from a variance approval.

The chart below will only indicate where a city or county has added to or departed from the criteria used in the Model Code.

CITY/COUNTY	DECISION CRITERIA	REQUIREMENTS	PROCESS
AUBURN	*		Hearing Examiner
BELLEVUE	The proposal results in no more than ten percent of the site being disturbed by structure or other land alteration. If the lot is less than 30,000 gross square feet, a total area up to 3,000 square feet may be disturbed.	The exception expires if the applicant fails to file for a building permit within one year unless an extension is granted.	Planning Director's Decision
BOTHELL	*		Hearing Examiner
BURIEN	*	Critical area study including mitigation plan	Planning Director's Decision
CARNATION	*	An approved mitigation plan.	Planning Board Decision
CASHMERE	*		Planning Director's Decision
DES MOINES	The proposal is compatible in design, scale, and use with other development or potential development in the	The extent of development within the buffer is limited to	Hearing Examiner

REASONABLE USE ORDINANCES

	immediate vicinity of the subject property in the same zone with similar site constraints.	that which is necessary to create a developable area which is no larger than 5,000 square feet.	
ENUMCLAW	*		City Council
EVERETT	*	A description of any modifications needed to the required front, side and rear setbacks; building height; and landscape widths to provide for a reasonable use while providing protection to the environmentally sensitive areas.	Planning Director's Decision
EDMONDS	The proposal minimizes net loss of critical area functions and values consistent with the best available science.		Hearing Examiner
FEDERAL WAY	The knowledge of the applicant of limitations when he or she acquired the property.		Hearing Examiner
GIG HARBOR	*	The exception is valid for two years unless an extension is granted.	Planning Director's Decision
ISSAQUAH	*		Hearing Examiner
MILL CREEK	The proposed activity will result in minimal alteration of existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions and will have a minimal effect on critical area functions. The proposed activity will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal or state government. The proposed activity will not cause material degradation of habitat, ground water or surface water quality.		Planning Commission

REASONABLE USE ORDINANCES

	The proposed activity will comply with all local, state, and general laws, including those related to environmental protection, sediment control, pollution control, floodplain restrictions; and on-site wastewater disposal.		
MUKILTEO	<p>Feasible on-site alternatives shall include, but are not limited to: reduction in density or building size, phasing of project implementation, change in timing of activities, and revision of road or parcel layout or related site planning considerations.</p> <p>An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose.</p> <p>The proposed activity or use will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water and hydrologic conditions and consideration being given to best available science.</p>	<p>Building setbacks may be reduced up to 50 percent whether the applicant demonstrates that the development cannot meet the code requirements without encroaching into a critical area or its buffer.</p> <p>Development shall leave at least 70 percent of the lot undisturbed. On small lots of 7,500 square feet or less, a maximum building footprint of 2,500 square feet would be allowed.</p> <p>Critical area regulations, buffers and/or setbacks may be reduced up to 50 percent by the Planning and Public Works Directors. .</p>	Planning Director's Decision
NEWCASTLE	*		Hearing Examiner
PUYALLUP	<p>That the proposed activities will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal government or State of Washington.</p> <p>That the proposed activities will not cause significant degradation of ground water or surface water quality.</p> <p>That the proposed activities comply with all state, local and</p>		Planning Director's Decision

REASONABLE USE ORDINANCES

	general laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal.		
REDMOND	*		Hearing Examiner
RICHLAND	*		Deputy City Manager, Community and Development Services
SPOKANE	*		Planning Director's Decision
STANWOOD	The proposal will result in no net loss of critical area functions and values consistent with the best available science.		Hearing Examiner
STEILACOOM	*		Hearing Examiner
SUMAS	Special circumstances and conditions exist which are peculiar to the land or lot, and which are not applicable to other lands or lots. The granting of the exception requested will not confer on the applicant any special privilege that is denied to other lands, buildings or structures under similar circumstances.		City Council
VANCOUVER	The proposal mitigates for the loss of critical area functions to the greatest extent feasible and contributes to the Critical Areas Restoration Fund for any impacts that cannot be mitigated.		Hearing Examiner
KITSAP	*		Hearing Examiner
KITTITAS	The Planning Department shall refer to relevant legal authorities at all levels of government, including federal and state constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof.		

**ATTACHMENT 2****Part 20.30P Protected Area Development Exception****20.30P.110 Scope.**

This Part 20.30P establishes the procedures and criteria that the City will use in making a decision upon an application for a Protected Area Development Exception or Small Lot Protected Area Development Exception. (Ord. 4978, 3-17-97, § 4; Ord. 3775, 5-26-87, § 22)

20.30P.115 Applicability.

This part applies to each application to approve a use or development on a site which contains more than 90 percent protected area defined by LUC 20.25H.070 or protected area setback defined by LUC 20.25H.090. (Ord. 3775, 5-26-87, § 22)

20.30P.120 Purpose.

A Protected Area Development Exception is a mechanism by which the City may approve limited use and disturbance of a protected area defined by LUC 20.25H.070 when no other use of the property constitutes a reasonable alternative. This approval also serves to modify the dimensional standards of LUC 20.20.010 and the dimensional and density/intensity standards of Part 20.25H LUC as necessary to accommodate the appropriate level of use or development. (Ord. 3775, 5-26-87, § 22)

20.30P.125 Who may apply.

The property owner may apply for a Protected Area Development Exception. (Ord. 3775, 5-26-87, § 22)

20.30P.130 Applicable procedure.**A. Protected Area Development Exception.**

The City will process a Protected Area Development Exception through Process I, LUC 20.35.100 et seq.

B. Small Lot Protected Area Development Exception.

A Small Lot Protected Area Development Exception applies to a lot of less than 30,000 gross square feet or a lot for single-family development and will be processed through Process II, LUC 20.35.200 et seq. (Ord. 4978, 3-17-97, § 5; Ord. 4302, 11-18-91, § 16; Ord. 3775, 5-26-87, § 22)

20.30P.140 Decision criteria.

The City may approve or approve with modifications an application for a Protected Area Development Exception if:

- A. Limiting use of the property to those uses provided in LUC 20.25H.080.B is not reasonable given the physical characteristics of the property, its location and surrounding development potential; and
- B. The Protected Area Exception is the minimum necessary to fulfill the purpose of this part; and
- C. The proposal results in no more than 10 percent of the area being disturbed by the proposal or other activities that are not limited to the area being disturbed by the proposal, landscaping, provided, however, that if the proposal includes a total area of disturbance, the mitigation measures required by the applicable decisionmaker are not included; and
- D. The proposal is compatible in design, scale and use with other development or potential development in the immediate vicinity of the subject property in the same zone and with similar site constraints; and
- E. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the protected area; and
- F. The proposal incorporates the performance standards of LUC 20.25H.110 to the maximum extent possible; and
- G. The proposal complies with other applicable requirements of this Code. (Ord. 5481, 10-20-03, § 13; Ord. 3775, 5-26-87, § 22)

20.30P.145 Limitation on authority.

The City may not grant a Protected Area Development Exception to:

- A. The provisions of LUC 20.10.440 establishing the allowable uses in each land use district; or
- B. The provisions of Chapter 20.30 and 20.35 LUC or any other procedural or administrative provision of the Land Use Code; or
- C. Any provision of the Land Use Code within the primary approval jurisdiction of another decisionmaker as established by the Bellevue City Code; or
- D. Any provision of the Land Use Code which, by the terms of that Code, is not subject to a variance. (Ord. 3775, 5-26-87, § 22)

20.30P.150 Time limitation.

A Protected Area Development Exception automatically expires and is void if the applicant fails to file for a Building Permit or other necessary development permit within one year of the effective date of the Exception unless:

- A. The applicant has received an extension for the Exception pursuant to LUC 20.30P.155; or

B. The Exception approval provides for a greater time period. (Ord. 3775, 5-26-87, § 22)

20.30P.155 Extension.

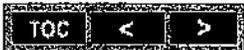
A. The Director of Planning and Community Development may extend a Protected Area Development Exception, not to exceed one year, if:

1. Unforeseen circumstances or conditions necessitate the extension of the Exception; and
2. Termination of the Exception would result in unreasonable hardship to the applicant; and the applicant is not responsible for the delay; and
3. The extension of the Exception will not cause substantial detriment to existing uses or sensitive areas in the immediate vicinity of the subject property.

B. The Director of Planning and Community Development may grant no more than one extension. (Ord. 4978, 3-17-97, § 7; Ord. 3775, 5-26-87, § 22)

20.30P.160 Assurance device.

In appropriate circumstances, the City may require a reasonable performance or maintenance assurance device in conformance with LUC 20.40.490 to assure compliance with the provisions of the Land Use Code and the Exception as approved. (Ord. 3775, 5-26-87, § 22)



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RCW). The application shall be processed using the Type 1 review process pursuant to BMC 19.65.

C. Public agency and utility exception review criteria. The *Director's* decision shall be based on the following criteria:

- i. There is no other practical or feasible alternative to the proposed development with less impact on the *critical area*; and
- ii. The proposal minimizes the impact on *critical areas*; and
- iii. The application of this chapter would unreasonably restrict the ability to provide utility services to the public, and
- iv. The proposal meets the decision criteria in BMC 19.40.100.

4. Reasonable use exception.

A. If the application of this chapter would deny all *reasonable use* of the property, the *applicant* may apply for a Reasonable Use Exception. All requirements of this chapter apply, except as specifically waived as part of the decision on the exception.

B. Limitations. Reasonable use exceptions are not authorized for changes in density limitations, permitted *uses* or activities in *critical areas* or their required *buffers*; expanding a use otherwise prohibited, and shall not be used to achieve the maximum density allowed without the existence of *critical areas*.

C. Exception request and review process. An application for a reasonable use exception shall be made to the city and shall include a *critical area* study, including mitigation plan, if necessary; and any other related project documents, such as special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The application shall be processed using the Type 1 review process pursuant to BMC 19.65.

D. Reasonable use exception review criteria. The *Director's* decision shall be based on the following criteria:

- i. The application of this chapter would deny all *reasonable use* of the property;
- ii. There is no other *reasonable use* with less impact on the *critical area*;
- iii. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal *site* and is consistent with the general purposes of this chapter and the public interest; and
- iv. Any *alterations* permitted to the *critical area* shall be the minimum necessary to allow for *reasonable use* of the property.
- v. The proposal meets the decision criteria in BMC 19.40.100. [Ord. 376 § 1, 2003]

19.40.100 Review criteria.

1. Any alteration to a *critical area* or its required *buffer*, unless otherwise provided for in this Chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

- A. The proposal limits the impact on *critical areas*;
- B. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the *site*;
- C. The proposal is consistent with the general purposes of this Chapter and the public interest;
- D. Any alterations permitted to the *critical area* or its required *buffer* are mitigated in accordance with the critical area study; and
- E. The proposal protects the *critical area* functions and value consistent with the *best available science*.

2. The city may condition the proposed activity as necessary to mitigate impacts to *critical areas* and to conform to the standards required by this Chapter. [Ord. 376 § 1, 2003]

CRITICAL AREA STUDY

19.40.110 Critical area study – waiver.

The *Director* shall waive the requirement for a critical area study ~~if as follows~~:

~~4. No critical areas present. If the *Director* determines that the project area is not within or adjacent to a *critical area* or *buffer*, and that the proposed activity is unlikely to degrade the functions or value of a *critical area*.~~

~~2. Critical areas present, but no impact. If the *Director* determines that there are *critical areas* within or adjacent to the project area, and:~~

- 1. There will be no alteration of the *critical area* or *buffer*, and
- 2. The development proposal will not impact the *critical area* in a manner contrary to the purpose, intent, and requirements of this Chapter; and
- 3. The proposal is consistent with other City of Burien applicable regulations and standards. [Ord. 376 § 1, 2003], or

19.40.120 Critical area study requirements.

1. General. The critical area study shall be funded by the *applicant* and shall be prepared in accordance with procedures established by the *Director*. If appropriate professional expertise does not exist on City staff, the *Director* may retain experts at the *applicant's* expense to review critical area studies submitted by the *applicant*. Expense to the *applicant* shall be determined at the pre-application meeting.

CARNATION

Chapter 15.88 ENVIRONMENTALLY SENSITIVE AREAS

Section 15.88.050 Reasonable use exception.

A. If the application of this Chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purposes of this ordinance and the public interest.

B. An application for a sensitive areas reasonable use exception shall be filed with the City of Carnation and shall be heard by the Planning Board which shall seek legal advice from and consult with the City Attorney and shall issue a final decision.

C. The Planning Board, in recommending approval of the reasonable use exception must determine that:

1. Application of this Chapter would deny all reasonable use of the property; and,
2. There is no other reasonable use with less impact on the sensitive area; and,
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site; and,
4. Any alterations permitted to these sensitive areas shall be the minimum necessary to allow for reasonable use of the property.

D. Any authorized alteration of a sensitive area under this Chapter shall be subject to conditions established by the City and shall require mitigation under an approved mitigation plan.

critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated or replaced at the responsible party's expense.

- A. Normal maintenance or repair of existing legal buildings, structures, roads or development, including damage by accident, fire or natural elements. Normal repair of buildings and structures involves restoring to a state comparable to the original condition, including the replacement of walls, fixtures and plumbing; provided that the value of work and materials in any twelve-month period does not exceed twenty-five percent of the value of the structure prior to such work as determined by using the most recent ICBO construction tables, the repair does not expand the number of dwelling units in a residential building, the building or structure is not physically expanded, and, in the case of damaged buildings and structures, a complete application for repair is accepted by the City within six months of the event and repair is completed within the terms of the permit;
- B. Emergency construction necessary to protect life or property from immediate damage by the elements. An emergency is an unanticipated event or occurrence which poses an imminent threat to public health, safety, or the environment, and which requires immediate action within a time too short to allow full compliance. Once the threat to the public health, safety, or the environment has dissipated, the construction undertaken as a result of the previous emergency shall then be subject to and brought into full compliance with this title;
- C. Existing agricultural activities normal or necessary to general farming conducted according to industry-recognized best management practices including the raising of crops or the grazing of livestock;
- D. The normal maintenance and repair of artificial drainage systems which does not involve the use of heavy equipment, and which does not require permit issuance from other local, state or federal agencies.
- E. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, critical area impacts should be minimized and disturbed areas shall be immediately restored; and
- F. Passive recreational activities, including, but not limited to: fishing, bird watching, hiking, hunting, boating, horseback riding, skiing, swimming, canoeing, and bicycling provided the activity does not alter the critical area or its buffer by changing existing topography, water conditions or water sources.

18.10 A.040 Reasonable Use

- A. The city may modify the requirements of this title in specific cases when necessary to allow reasonable use of an applicant's property. To qualify for such relief the applicant must demonstrate all of the following:
 - 1. That no other reasonable use can be made of the property that will have a lesser adverse impact on the critical area and adjoining and neighboring lands;
 - 2. That the proposed use does not pose a threat to the public health, safety or welfare; and
 - 3. That the amount of relief requested is the minimum necessary to allow reasonable use of the property.
- B. A request for a reasonable use exception shall be submitted to the city with the application materials for the particular development proposal. The application shall be supplemented with an explanation as to how the reasonable use exception criteria are satisfied. The city may require additional information or studies to supplement the reasonable use exception request.
- C. A reasonable use exception shall be processed according to the provisions of the Title 14 CMC governing limited administrative reviews.

18.10 A.050 Reference Maps and Inventories

The distribution of critical areas within the City are described and displayed in reference materials and on maps maintained by the City. These reference materials, in the most current form, are intended for general information only and do not depict site-specific designations. They are intended to advise the City, applicants and other participants in the development permit review process that a critical area may exist and that further study, review and consideration may be necessary. These reference materials shall include but are not limited to the following:

- A. Maps.

“Reasonable use” or “reasonable economic use” means a legal concept that has been articulated by federal and state courts in regulatory takings cases.

37.050 Exemptions, exceptions, modifications.

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification as provided in this chapter. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the administrative modifications which can be granted to other requirements of this title of the city code.

A. Exemptions. All activities which are exempted, excepted, or granted modifications shall prevent, minimize and/or compensate for impacts to environmentally sensitive areas to the maximum extent possible. Such activities which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable. The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements:

1. Emergencies that threaten the public health, safety and welfare, as verified by the city;
2. Legally constructed structures in existence on the date the ordinance codified in this chapter becomes effective that do not meet the buffer requirements of this chapter may be remodeled, reconstructed or replaced provided that the new construction or related activity does not further encroach into an environmentally sensitive area. Remodeling or reconstruction shall be subject to all other requirements of the zoning code;
3. Existing and ongoing agriculture in agricultural zones in existence as of the date this chapter becomes effective; provided, however, at such time as the property ceases to be used for agricultural activities, the property shall be brought into compliance with the provisions of this chapter;
4. Normal and routine maintenance of legally constructed irrigation and drainage ditches, provided that this exemption shall not apply to any ditches used by salmonids;
5. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds, provided that such activities shall not involve the conversion of any wetland or stream not used for such purposes on the date this chapter becomes effective;
6. Entirely artificial structures intentionally constructed by humans from upland areas for purposes of storm water drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter;
7. Category III wetlands less than five hundred square feet in area having only one wetland class, which is not forested, and which is hydrologically isolated;
8. Category IV wetlands less than eight thousand square feet in area;
9. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility related activities, public street and public park maintenance activities when undertaken pursuant to best management practices to avoid impacts to environmentally sensitive areas:
 - a. Normal and routine maintenance or repair of existing utility structures or right-of-way,
 - b. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,
 - c. Relocation of natural gas, cable communications, telephone facilities, lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,
 - d. Installation or construction in improved street rights-of-way and replacement, operation or alteration of all facilities listed in subsections A.9.b and A.9.c of this section,
 - e. Normal and routine maintenance of public streets, state highways, and public park facilities. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area nor does it include construction of a maintenance road or the dumping of maintenance debris;
10. Buffer management when approved by the planning director and all agencies with jurisdiction;
11. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the State Department of Natural Resources.

B. Reasonable Use Exception. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

1. There is no other reasonable use or feasible alternative to the proposed development with less impact on the environmentally sensitive area; and
2. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

3. Any alterations permitted to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of this chapter; and

5. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible.

C. Reasonable Use Decision Process. Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the proposal shall include the following information which will be used to evaluate the criteria for reasonable use exception:

1. A description of the areas of the lot which are either environmentally sensitive or within setbacks required by this chapter;

2. A description of the amount of the lot which is within setbacks required by other standards of the zoning code;

3. An analysis of the minimum amount of development that would be considered "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;

4. An analysis of the impact that the amount of development described in subsection C.3 of this section would have on the environmentally sensitive areas;

5. An analysis of whether any other reasonable use with less impact on the environmentally sensitive areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the environmentally sensitive areas and buffers;

6. A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the environmentally sensitive areas;

7. An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

8. A description of any modifications needed to the required front, side and rear setbacks; building height; and landscape widths to provide for a reasonable use while providing protection to the environmentally sensitive areas;

9. Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

D. Reasonable Use Administrative Modification. If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

1. If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while still providing protection to the environmentally sensitive areas;

2. If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the environmentally sensitive areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot, provided there is adequate mitigation provided for any reduction in the buffer. This approach shall be preferred in circumstances where the environmentally sensitive areas have already been degraded or imputed by activities occurring prior to the effective date of this chapter, and enhancement/restoration of the degraded environmentally sensitive area can reasonably be expected to be accomplished; or

3. If a reasonable economic use of a lot cannot exist by means of either subsection D.1 or D.2 of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection D.1 or D.2 of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

a. R-S, R-1 and R-2 Zones. The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

i. The number of dwelling units which the planning director determines to be the minimum necessary to

allow for reasonable economic use of the restricted property, or

ii. Twenty percent more dwelling units than would be permitted on the receiving site without the transfer of development rights.

In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. All such lots shall have a minimum lot width of fifty feet. All dwelling units on such lots shall be single-family dwellings.

b. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

c. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

d. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

E. Public Utility and Infrastructure Exception. If the application of this section would prohibit a development proposal by a public agency or public utility to construct utility lines for the conveyance of water, sewage, storm drainage, natural gas, or telecommunications; or the construction of collector or arterial streets and highways, the agency or utility may request an exception pursuant to this subsection. Such a request shall be reviewed by the hearing examiner using the review process described in EMC Title 15, Local Project Review Procedures. The hearing examiner may approve, or approve with modifications such a request only when the following findings are made:

1. There is no other practicable alternative to the proposed development with less impact on the environmentally sensitive area; and

2. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible; and

3. The proposal does not impact a significant fish or wildlife habitat area.

F. Prohibition on Variances—Other Exceptions Permitted by this Chapter. The variance procedures described in Section 41.130 of this title shall not apply to the standards of this chapter. The following subsections permit alteration or modification of the requirements of this chapter for protection of environmentally sensitive areas:

1. Subsection 8 for modification of standards for geologically hazardous areas;

2. Subsections 10 and 11 for modification of standards for wetlands and their required buffers;

3. Subsection 14 for modification of standards for streams and their required buffers. (Ord. 2538-01 §§ 44, 45, 46, 2001; Ord. 1838-91 § 5, 1991.)

GIG HARBOR

18.12.110

- b. Geologic data pertinent to well logs or borings used to identify information;
- c. Ambient ground water quality;
- d. Ground water elevation;
- e. Depth to perched water table, including mapped location;
- f. Recharge potential of facility site, respective to permeability and transmissivity;
- g. Ground water flow vector and gradient;
- h. Currently available data on wells and any springs located within 1,000 feet of the facility site;
- i. Surface water location and recharge potential;
- j. Water supply source for the facility;
- k. Analysis and discussion of the effects of the proposed project on the ground water resource;
- l. Proposed sampling schedules;
- m. Any additional information that may be required or requested by the Pierce County environmental health department.

3. Review of Geohydrologic Assessment. A geohydrologic assessment prepared under this section shall be submitted to the Pierce County department of environmental health for review and comment. Comments received by the department of health within 60 days of submittal of the assessment shall be considered by the city in the approval, conditional approval or denial of a project.

4. Findings for Consideration of Approval. A hydrogeologic assessment must clearly demonstrate that the proposed use does not present a threat of contamination to the aquifer system, or provides a conclusive demonstration that application of new or improved technology will result in no greater threat to the ground water resource than the current undeveloped condition of the site. Successful demonstration of these findings warrants approval under this section. (Ord. 619 § 1, 1992).

18.12.110 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;

2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);

3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;

4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;

2. The proposed development does not present a threat to the public health, safety or welfare;

3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;

4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;

5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;

6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property.

The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners

adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. **Appeal of Director's Decision.** The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. **Limits of Applying Reasonable Use Exception.** A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. **Time Limitation.** A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and
2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).

18.12.120 Maintenance of existing structures and developments.

Structures and developments lawfully existing prior to the adoption of this section shall be allowed to be maintained and repaired without any additional review procedures under this title; provided, that the maintenance or repair activity itself remains consistent with the provisions of this chapter and does not increase its nonconformity of such structures or development. Additionally, such construction activity shall not prove harmful to adjacent properties. Maintenance consists of usual actions necessary to prevent a decline, lapse or cessation from a lawfully established condition. Repair consists of the restoration of a development comparable to its original condition within two years of sustaining damage or partial destruction. Maintenance and repair shall include damage incurred as a result of accident, fire or the elements.

Total replacement of a structure or development which is not common practice does not constitute repair. In addition to the requirements of this section, the requirements of Chapter 17.68 GHMC (Nonconformities) shall apply. (Ord. 619 § 1, 1992).

18.12.130 Exemptions from development standards.

Certain activities and uses may be of such impact and character or of such dependency to the maintenance and welfare of a lawfully permitted use that the requirements of this title shall not apply and may be waived at the discretion of the department. Notwithstanding the requirements of Title 17 GHMC, the following uses and activities are exempt from the requirements of this chapter:

A. Minimum actions necessary to protect life or property in an emergency situation. Qualification as an emergency shall be based upon the factual occurrence of imminent threat or danger;

B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width;

C. Science research and educational facilities, including archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access;

D. Subsurface drilling for geologic exploration associated with a proposed development which is not exempt from the requirements of this title;

E. The placement of signs consistent with Chapter 17.80 GHMC. (Ord. 619 § 1, 1992).

18.12.140 Variances from the minimum requirements.

A. Variance applications shall be considered by the city according to variance procedures described in Chapter 17.66 GHMC and shall be processed as a Type III application under the permit processing procedures of GHMC Title 19. The required showings for a variance shall be according to this section.

B. The examiner shall have the authority to grant a variance from the provisions of this chapter, including variance for buffer widths, when, in the opinion of the examiner, the conditions as set forth in this section have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. **Required Showings for a Variance.** Before any variance may be granted, it shall be shown:

(2) An application for a public agency and utility exception shall be made to the City and shall include a critical area identification form; critical area report and mitigation plan, if necessary; and any other pertinent project documents/studies. The Director shall prepare a determination approving, approving with conditions, or denying the request. This determination shall be based on review of the submitted information, a site inspection, and the proposal's ability to comply with all of the following criteria:

(a) There is no other practical alternative to the proposed development with less impact on critical areas and all reasonable measures have been taken to minimize impacts to critical areas;

(b) The application of this chapter would unreasonably restrict the ability to provide street or utility services to the public;

(c) The proposal does not pose a significant threat to the public health, safety, or welfare on or off the site; and

(d) The proposal includes measures to compensate for impacts to critical area function and values consistent with the requirements of this chapter.

18.06.430 Reasonable use permitted

(1) A variance to the provisions of this chapter may be considered by the Planning Commission if application of this chapter would deny all reasonable use of the subject property and upon a showing by the applicant of all the following elements:

(a) The proposed activity will result in minimal alteration of existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions and will have a minimal effect on critical area functions;

(b) The proposed activity will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal or state government;

(c) The proposed activity will not cause material degradation of habitat, ground water or surface water quality;

(d) The proposed activity will comply with all local, state, and general laws, including those related to environmental protection, sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

(e) There will be no damage to public or private property and no threat to the health or safety of people on or off the site; and

(f) The inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and/or creating or adding to the undevelopable condition.

18.06.440 Exception for minor new developments in buffers

(1) Remodels and additions to an existing, legally established structure or impervious area that currently encroaches on a critical area buffer shall be exempt from compliance with regulations in this chapter provided that all of the following criteria are met to the Director's satisfaction:

(a) The proposed development is a minor development and is consistent with the existing use of the site;

(b) The impacts on critical area functions and values are avoided and minimized to the maximum extent possible consistent with this chapter;

(c) The affected area is located at least twenty (20) feet from the critical area boundary;

(d) The minor development does not intensify the use or cause the existing structure/impervious surface to encroach any closer to the critical area;

(e) There are no changes in slope stability or drainage; and

(f) The minor development does not increase the affected site structural/impervious surface footprint by more than twenty five percent (25%).

(2) This exception shall not be allowed more than once for any individual site unless a variance for reasonable use is granted pursuant to MCMC Section 18.06.430.

Article V Critical Area Reporting Requirements and Permit Process

18.06.510 Pre-application conference

All applicants are encouraged to meet with the department prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the City's critical area standards and procedures; to review any conceptual site plans prepared by the applicant; to discuss appropriate investigative techniques and methods; and to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the City.

18.06.520 Critical area identification form; initial determination

(1) Prior to the City's consideration of any proposed activity not found to be exempt under MCMC 18.06.410, the applicant shall submit to the department a completed critical area

Joint Model Code for Critical Areas

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http://cted.wa.gov/CTED/documents/ID_1902_Publications.doc

Model Code for Critical Areas

For the cities of

Duvall, Carnation, Snoqualmie, North Bend

Produced by the

Snoqualmie Watershed Forum

with assistance from

Adolfson Associates, Inc.

July 20, 2004



Duvall Carnation Snoqualmie North Bend King County

- a. The applicant has considered all reasonably possible construction techniques based on available technology that are feasible for the proposed project and eliminated any that would result in unreasonable risk of impact to the critical area; and
 - b. The applicant has considered all available sites and alignments within the range of potential sites and alignments that meet the project purpose and for which operating rights are available.
2. The proposal minimizes and mitigates unavoidable impacts to critical areas and/or critical areas buffers.
- C. **◀Reasonable Use▶**. If the application of this Chapter would deny all **◀reasonable use▶** of the property, the applicant may apply for an exception pursuant to this section. After holding a public hearing pursuant to XMC XX.XX.XXX (Hearing Examiner review and approval), the hearing examiner may approve the exception if the hearing examiner finds that:
1. This Chapter would otherwise deny all **◀reasonable use▶** of the property;
 2. There is no other **◀reasonable use▶** consistent with the underlying zoning of the property that has less adverse impact on the critical area and/or associated buffer;
 3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;
 4. Any alteration is the minimum necessary to allow for **◀reasonable use▶** of the property;
 5. The inability of the applicant to derive **◀reasonable use▶** of the property is not the result of actions by the applicant after the effective date of this chapter or its predecessor; and
 6. The applicant may only apply for a **◀reasonable use▶** exception under this subsection if the requested exception provides relief not otherwise available from a variance approval.
- D. **Variance**. Where avoidance of the impact in wetlands, streams, fish and wildlife habitat and critical aquifer recharge areas is not possible, a variance shall be obtained to permit the impact. Variances will be granted on the basis of a finding of consistency with all the criteria listed below. The hearing examiner shall not consider the fact the property may be utilized more profitably.
1. The variance shall not constitute a grant of special privilege inconsistent with the limitation on use of other properties similarly affected by the code provision for which a variance is requested;
 2. That such variance is necessary, because of special circumstances and/or conditions relating to the size, shape, topography, sensitive areas, location, or surroundings of the subject property, to provide it with those relative rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located. The phrase "relative rights and privileges" is to ensure that the property rights and privileges for the subject property are considered primarily in relation to current City land-use regulations;
 3. That the special conditions and/or circumstances identified in subsection 2 of this section giving rise to the variance application do not result from the actions of the applicant, property owner, or recent prior owner(s) of the subject property;
 4. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property, neighborhood, or improvements in the vicinity and zone in which subject property is situated;

17.52.025 Reasonable use provisions.

A. The standards and requirements of these critical areas regulations are not intended, and shall not be construed or applied in a manner to deny all reasonable use of private property. If the applicant demonstrates to the satisfaction of the planning director or his or her designee that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions. A reasonable use exception is intended as a "last resort" when no plan and/or mitigation can meet the requirements of this chapter and allow the applicant a reasonable use of his or her property.

B. The applicant must demonstrate to the planning director or his or her designee all of the following:

1. That no reasonable use with less impact on the critical area and/or the buffer is feasible and reasonable;
2. There is no feasible and reasonable on-site alternative to the proposed activity or use that would allow reasonable use with less adverse impacts to the critical area and/or buffer. Feasible on-site alternatives shall include, but are not limited to: reduction in density or building size, phasing of project implementation, change in timing of activities, and revision of road or parcel layout or related site planning considerations;
3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;
4. The proposed activity or use will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions and consideration has been given to best available science;
5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;
6. The proposed activity or use complies with all local, state, and federal laws; and
7. The inability to derive reasonable use is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after March 23, 1992.

C. Allowed Reductions for Single-Family Residential Reasonable Use Lots. As provided under state law and the guidelines of the Department of Trade and Economic Development, reasonable use permits shall allow the development of a modest single-family residential home on a critical area lot.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.
2. Development on reasonable use lots shall leave at least seventy percent of the lot undisturbed to protect the critical areas. On small lots seven thousand five hundred square feet or less, a maximum building footprint of two thousand five hundred square feet would be allowed. Additional impervious area for the driveway will be permitted which provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area the use of bridges and open bottom culverts shall be considered minimal impact. Yard areas will be permitted only if they do not encroach into the critical area or buffer.
3. Critical area regulations, buffers and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on reasonable use lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

D. Allowed Reductions for Multifamily, Commercial, and Industrial Lots.

1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.
2. The number of required parking stalls may be reduced by up to forty percent if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.
3. Critical area regulations, buffers, and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on reasonable use lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse

impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

E. If upon application of the wetland mitigation and buffer reduction options contained in Chapters 17.52A through 17.52D, and reasonable provisions contained herein, a development cannot be built without further intrusion into the critical area or buffer, then the applicant can pursue a variance under Chapter 17.64, Conditional Uses and Variances.

F. Subdivisions of reasonable use lots will not be allowed unless there is sufficient area to construct all buildings, driveways, drainage facilities, landscaping, and yards areas without intruding on the critical area, buffer, or setback. (Ord. 1112 § 3, 2005)

9. The proposal complies with use, area, lot dimension, landscaping and parking requirements of the RD12.5(S) zoning district:

Regulation	Requirement	Submitted
Front setback (MMC 17.20)	25'	74'
Rear setback (MMC 17.20)	5'	113'
Side setbacks (MMC 17.20)	5'	15' – north 6' – south
Lot Coverage (MMC 17.20)	30%	10.4 %

10. This site contains critical areas, including steep slopes greater than forty (40) percent and a Type II wetland is found along a portion of the northern third of the lot (Ord. 987). Steep slopes require a twenty-five (25) foot setback and Type II wetlands require a fifty (50) foot buffer. If all associated setbacks and buffers are applied there will be no viable building envelope; therefore, site development is subject to reasonable use provisions.

11. Following the Wetland Saving Provisions (Reasonable Use) 17.52b.180, this project meets reasonable use criteria as shown below:

MUKILTEO	
That no reasonable use with less impact on the wetland and the buffer is feasible and reasonable.	A single-family residence is a reasonable use of this lot. There are no feasible alternate options for site development due to the lot's steep topography and wetland.
That there is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors.	The applicants provided alternate designs and house plan layouts. Additionally, the applicants proposed different driveway layouts, however feasible alternatives were limited by the steep grade of on-site slopes.
That the proposed activities, as conditioned, will result in the minimum possible impacts to wetlands and buffers.	There is no way to minimize impacts to the wetland and wetland buffer at this site. The applicants are providing limited on-site mitigation measures. Following, MMC 17.52B.130, the applicants will provide off-site compensatory mitigation to offset the impacts to wetland function.
All reasonable mitigation measures have been implemented or assured.	This project will implement mitigation measures to minimize impacts based on the Critical Areas Report and Enhancement Plan, prepared by Talasaea Consultants, Inc. on April 4, 2005.
That the inability to derive reasonable economic uses is not the result of the applicant's actions.	The project location is on an existing undeveloped vacant lot.

12. Following MMC 17.52B.110, the applicant submitted alternate house and site designs for review. Due to the location of the wetland, impacts to the wetland were unavoidable.

13. Following MMC 17.52B.130, the applicants provided an off-site mitigation plan to compensate for wetland impacts. The City approved off-site mitigation for the Type IV wetland at 92nd Street Park on April 4, 2005. The applicant's proposal includes buffer enhancements at a ratio of 3:1 to improve habitat functions at the approved site.

implement this chapter and to prepare and require the use of such forms as are necessary to its administration.

18.24.050 Complete exemptions.

The following are exempt from the provisions of this chapter and any administrative rules promulgated thereunder:

A. Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the city immediately. The director shall confirm that an emergency exists and determine what, if any, mitigation shall be required to protect the health, safety, welfare and environment and to repair any resource damage;

B. Agricultural activities in existence before the date of incorporation, as follows:

1. Mowing of hay, grass or grain crops;
2. Tilling, dicing, planting, seeding, harvesting and related activities for pasture, food crops, grass seed or sod if such activities do not take place on steep slopes;
3. Normal and routine maintenance of existing irrigation and drainage ditches not used by salmonids; and
4. Normal and routine maintenance of farm ponds, fish ponds, manure lagoons and livestock watering ponds;

C. Public water, electric and natural gas distribution, public sewer collection, cable communications, telephone utility and related activities undertaken pursuant to city-approved best management practices, as follows:

1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;
2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency which approves the new location of the facilities;
3. Replacement, operation, repair, modification or installation or construction in an improved public road right-of-way of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less when such facilities are located within an improved public road right-of-way or the city authorized private roadway;
4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by a local governmental agency which approves the new location of the facilities; and
5. Replacement, operation, repair, modification, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or the city authorized private roadway;

B. The grazing of livestock is exempt from the provisions of this chapter and any administrative rules promulgated thereunder, except for the livestock restriction provisions and any animal density limitations established by law, if the grazing activity was in existence before the date of incorporation;

C. A permit or approval sought as part of a development proposal for which multiple permits are required is exempt from the provisions of this chapter and any administrative rules promulgated thereunder, except for the notice on title provisions, NMC 18.24.170 through 18.24.180, if:

1. The city previously reviewed all critical areas on the site;
2. There is no material change in the development proposal since the prior review;
3. There is no new information available which is important to any critical area review of the site or particular critical area;
4. The permit or approval under which the prior review was conducted has not expired or, if no expiration date, no more than five years have lapsed since the issuance of that permit or approval; and
5. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.

18.24.070 Exceptions.

A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this subsection upon payment of the fee established by resolution:

1. The agency or utility shall apply to the department and shall make available to the department other related project documents such as permit applications to other agencies, special studies and SEPA documents. The department shall prepare a recommendation to the hearing examiner.

2. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of applicable city ordinances. The hearing examiner shall make a recommendation to the city council based on the following criteria:

a. There is no other practical alternative to the proposed development with less impact on the critical area; and

b. The proposal minimizes the impact on critical areas.

3. This exception shall not allow the use of the following critical areas for regional retention/detention facilities except where there is a clear showing that the facility will protect public health and safety or repair damaged natural resources:

a. Class 1 streams or buffers;

b. Category I wetlands or buffers with plant associations of infrequent occurrence; or

c. Category I or II wetlands or buffers which provide critical or outstanding habitat for herons, raptors or state or federal designated endangered or threatened species unless clearly demonstrated by the applicant that there will be no impact on such habitat.

D. Maintenance, operation, repair or replacement of publicly improved roadways as long as any such alteration does not involve the expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way when such facilities are located within an improved public right-of-way or city authorized private roadway;

E. Maintenance, operation or repair of publicly improved recreation areas as long as any such alteration does not involve the expansion of improvements into previously unimproved recreation areas; and

F. Public agency development proposals only to the extent of any construction contract awarded before the date of incorporation; provided, that any law or regulation in effect at the time of such award shall apply to the proposal.

G. Measures to control a fire or halt the spread of disease or damaging insects, provided that the removed vegetation shall be replaced in-kind or with similar native species within one (1) year pursuant to a restoration plan meeting the requirements of NMC 18.24.370. Replacement trees may be planted at a different nearby location within the critical area buffer if it can be determined that planting in the same location would create a new fire hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one (1) inch in diameter-at-breast height (dbh) for deciduous trees and minimum of six (6) feet in height for evergreen trees as measured from the top of the root ball.

18.24.060 Partial exemptions.

A. The following are exempt from the provisions of this chapter and any administrative rules promulgated thereunder, except for the notice on title provisions, NMC 18.24.170 through 18.24.180, and the flood hazard area provisions, NMC 18.24.220 through 18.24.260:

1. Structural modification of, addition to or replacement of structures, except single detached residences, in existence before the date of incorporation which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the structure lying within the above-described building setback area, critical area or buffer;

2. Structural modification of, addition to or replacement of single detached residences in existence before the date of incorporation which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 1,000 square feet over that existing before the date of incorporation and no portion of the modification, addition or replacement is located closer to the critical area or, if the existing residence is in the critical area, extends farther into the critical area; and

3. Maintenance or repair of structures which do not meet the development standards of this chapter for landslide or seismic hazard areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair;

B. If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection upon payment of the fee established by resolution:

1. The applicant shall apply to the department, and the department shall prepare a recommendation to the hearing examiner. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of Chapter 18.44 NMC.

2. The hearing examiner shall review the application in consultation with the city attorney and shall conduct a public hearing pursuant to the provisions of the applicable city ordinances. The hearing examiner shall make a recommendation to the city council based on the following criteria:

a. The application of this chapter would deny all reasonable use of the property; and

b. There is no other reasonable use with less impact on the critical area; and

c. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and

d. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.

3. Any authorized alteration of a critical area under this subsection shall be subject to conditions established by the city council including, but not limited to, mitigation under an approved mitigation plan.

18.24.080 Critical area maps and inventories.

The distribution of many environmentally critical areas in the city is displayed on maps in the city's critical areas map folio. Many of the wetlands are inventoried and rated and that information is published in the King County or city wetlands inventory notebooks. Many flood hazard areas are mapped by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for King County." If there is a conflict among the maps, inventory and site-specific features, the actual presence or absence of the features defined in this title as critical areas shall govern.

18.24.085 Salmonid use – Rebuttal of presumption.

The presumption in NMC 18.06.686 that a stream is used by salmonids may be rebutted by:

A. Documenting a lawful blockage which prevents salmonids from entering a stream or portion thereof, and the stream has no known resident salmonids present; or

B. Subject to the conditions of any Washington Department of Fish and Wildlife scientific sampling permit, sampling carried out by trapping or electrofishing the stream or other applicable water body during the high flow period from January 31st through March 31st which shows that salmonids are not present. The

21.06.1410 Reasonable use.

If an applicant demonstrates to the satisfaction of the director that application of these standards would deny all reasonable economic use of the property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the director:

(1) That no reasonable use with less impact on the environmentally critical area and its buffer is possible;

(2) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to environmentally critical areas and associated buffers;

(3) That the proposed activities will result in minimum feasible alteration or impairment to the environmentally critical area's functional characteristics and its existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions;

(4) That the disturbance of the environmentally critical area has been minimized by locating any necessary alteration in the environmentally critical area buffers to the extent possible;

(5) That the proposed activities will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal government or the state of Washington;

(6) That the proposed activities will not cause significant degradation of ground water or surface water quality;

(7) That the proposed activities comply with all state, local and general laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

(8) That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and

(9) That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter. (Ord. 2324 § 2(14), 1992).

1 (5) The inability to derive reasonable economic use is not the result of the
2 applicant's actions. The purchase price of the property shall not be construed
3 to be an applicant's action.
4

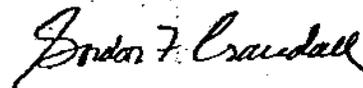
5 8. Staff has analyzed the reasonable use exception at pages 12-15 of the Technical
6 Committee Report. Here too, Applicant has made out a case for the reasonable use
7 exception. There is simply not enough buildable space on this property to locate the
8 garage/accessory dwelling unit outside the sensitive area. Other properties in the
9 vicinity, with the same or similar conditions, have been given the relief Applicant
10 seeks here. Without the reasonable use exception, the lot could not be developed for
11 residential use.
12

13 9. Any finding of fact deemed to be a conclusion of law is adopted as such.
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15 **DECISION**

16 The application of Kien Truong for a variance for the 18 foot setback for a garage and a
17 reasonable use exception from the landslide hazard standards of a sensitive area is
18 **GRANTED**, subject to the conditions in Attachment B.
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23 Done this 7th day of November, 2005

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27 **Gordon F. Crandall**
Hearing Examiner
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SAMMAMISH

9. 5 letters of comment, concerning the proposed reasonable use exception were received within the comment period. The letters of comment indicate concerns with access to the site, drainage, height of retaining walls, and slope stability.
10. Current zoning of the subject property and the vicinity is R-4 du/ac.
11. Per the Sammamish Municipal Code (SMC) 20.05.020, reasonable use exception applications are processed as a Type 2 permit.
12. The Comprehensive Plan designation for this site is R4 Urban Residential;
13. Per SMC 21A.25, the maximum amount of impervious surface allowed for a property zoned R-4 is 55%. The Director has determined that 35% is the minimum necessary for reasonable use.
14. WAC 197-11-800 governs the application of SEPA regulations in conjunction with land use development. The proposed single family residence, which meets the definition of minor new construction, is specifically exempted from SEPA per WAC 197-11-800(1)(b);
15. 21A.50280 steep slope regulations require that a minimum buffer of fifty feet shall be established from the top, toe, and along the sides of any slope 40% in inclination or steeper. All of the parcels lie in an area of over 40% slopes or their buffers.
16. ~~Per 21A.50.070(2), if the application of the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection.~~
 - a. The applicant may first apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of ISDC chapter 21A.44. The applicant shall apply to the Department, and the Department shall make a final decision based on the following criteria:
 - i. the application of this chapter would deny all reasonable use of the property;
The properties are completely constrained by sensitive areas, their buffers and the required building setbacks. Without relief no structures could be constructed on the lots.
 - ii. there is no other reasonable use with less impact on the sensitive area;
Construction of a single family residence will have the least impact on the sites of any of the allowed uses in the zone.
 - iii. the proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and

The construction of single family residences will not pose an unreasonable threat to the public health, safety, and welfare if the conditions of this permit are met.

iv. any alterations permitted to the sensitive areas shall be the minimum necessary to allow for reasonable use of the property.

The permit as conditioned will limit development while permitting the construction of a single family residence on each of the parcels.

Conclusions:

1. Single family residential development is permitted in the R-4 zone and is consistent with established residential development within the vicinity of the subject site and is consistent with the Interim Sammamish Comprehensive Plan;
2. Construction of the proposed single family home is consistent with surrounding development and single family development is generally considered a reasonable use of property zoned R-4;
3. The proposed reasonable use exception is exempt from the State Environmental Protection Act (SEPA) requirements per WAC 197-11-800(1) (b.) (i);
4. Issuance of a reasonable use exception will alleviate strict enforcement of the provisions of Title 21A.50 of the Sammamish Development Code that create an unnecessary hardship to the property owner, which results in it being unfeasible and prohibitive to construct a single-family residence on the property;
5. Based upon the geotechnical studies (Exhibit C) generated by the applicant's consulting engineer and reviewed by city engineering staff, the Reasonable Use Exception, as conditioned, does not create health and safety hazards, is not materially detrimental to the public welfare, nor is it unduly injurious to property or improvements in the vicinity.
6. Based upon Eastside Fire and Rescue's review, the Reasonable Use Exception does not create health and safety hazards, is not materially detrimental to the public welfare, or is not unduly injurious to property or improvements in the vicinity. However, due to access issues all of the residences are required to have fire sprinklers installed. (Exhibit D)
7. As conditioned, the development proposal will only be permitted to generate new impervious surface totals of only 35% on each lot and will disturb only 47 to 48 percent of the lots, the applicant has demonstrated the proposal is the minimum necessary to allow for reasonable use of the property; based on access and engineering recommendations (Exhibit B).
8. As conditioned, the proposed development will decrease the potential for erosion and / or steep slope failure.

CARNATION

Chapter 15.88 ENVIRONMENTALLY SENSITIVE AREAS

Section 15.88.050 Reasonable use exception.

A. If the application of this Chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purposes of this ordinance and the public interest.

B. An application for a sensitive areas reasonable use exception shall be filed with the City of Carnation and shall be heard by the Planning Board which shall seek legal advice from and consult with the City Attorney and shall issue a final decision.

C. The Planning Board, in recommending approval of the reasonable use exception must determine that:

1. Application of this Chapter would deny all reasonable use of the property; and,
2. There is no other reasonable use with less impact on the sensitive area; and,
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site; and,
4. Any alterations permitted to these sensitive areas shall be the minimum necessary to allow for reasonable use of the property.

D. Any authorized alteration of a sensitive area under this Chapter shall be subject to conditions established by the City and shall require mitigation under an approved mitigation plan.

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18.12.110

- b. Geologic data pertinent to well logs or borings used to identify information;
- c. Ambient ground water quality;
- d. Ground water elevation;
- e. Depth to perched water table, including mapped location;
- f. Recharge potential of facility site, respective to permeability and transmissivity;
- g. Ground water flow vector and gradient;
- h. Currently available data on wells and any springs located within 1,000 feet of the facility site;
- i. Surface water location and recharge potential;
- j. Water supply source for the facility;
- k. Analysis and discussion of the effects of the proposed project on the ground water resource;
- l. Proposed sampling schedules;
- m. Any additional information that may be required or requested by the Pierce County environmental health department.

3. Review of Geohydrologic Assessment. A geohydrologic assessment prepared under this section shall be submitted to the Pierce County department of environmental health for review and comment. Comments received by the department of health within 60 days of submittal of the assessment shall be considered by the city in the approval, conditional approval or denial of a project.

4. Findings for Consideration of Approval. A hydrogeologic assessment must clearly demonstrate that the proposed use does not present a threat of contamination to the aquifer system, or provides a conclusive demonstration that application of new or improved technology will result in no greater threat to the ground water resource than the current undeveloped condition of the site. Successful demonstration of these findings warrants approval under this section. (Ord. 619 § 1, 1992).

18.12.110 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

- 1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;

- 2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);

- 3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;

- 4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

- 5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

- 6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

- 7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

- 1. There is no feasible alternative to the proposed development which has less impact on the critical area;

- 2. The proposed development does not present a threat to the public health, safety or welfare;

- 3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;

- 4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;

- 5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;

- 6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property.

The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners

adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and
2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).

18.12.120 Maintenance of existing structures and developments.

Structures and developments lawfully existing prior to the adoption of this section shall be allowed to be maintained and repaired without any additional review procedures under this title; provided, that the maintenance or repair activity itself remains consistent with the provisions of this chapter and does not increase its nonconformity of such structures or development. Additionally, such construction activity shall not prove harmful to adjacent properties. Maintenance consists of usual actions necessary to prevent a decline, lapse or cessation from a lawfully established condition. Repair consists of the restoration of a development comparable to its original condition within two years of sustaining damage or partial destruction. Maintenance and repair shall include damage incurred as a result of accident, fire or the elements.

Total replacement of a structure or development which is not common practice does not constitute repair. In addition to the requirements of this section, the requirements of Chapter 17.68 GHMC (Nonconformities) shall apply. (Ord. 619 § 1, 1992).

18.12.130 Exemptions from development standards.

Certain activities and uses may be of such impact and character or of such dependency to the maintenance and welfare of a lawfully permitted use that the requirements of this title shall not apply and may be waived at the discretion of the department. Notwithstanding the requirements of Title 17 GHMC, the following uses and activities are exempt from the requirements of this chapter:

A. Minimum actions necessary to protect life or property in an emergency situation. Qualification as an emergency shall be based upon the factual occurrence of imminent threat or danger;

B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width;

C. Science research and educational facilities, including archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access;

D. Subsurface drilling for geologic exploration associated with a proposed development which is not exempt from the requirements of this title;

E. The placement of signs consistent with Chapter 17.80 GHMC. (Ord. 619 § 1, 1992).

18.12.140 Variances from the minimum requirements.

A. Variance applications shall be considered by the city according to variance procedures described in Chapter 17.66 GHMC and shall be processed as a Type III application under the permit processing procedures of GHMC Title 19. The required showings for a variance shall be according to this section.

B. The examiner shall have the authority to grant a variance from the provisions of this chapter, including variance for buffer widths, when, in the opinion of the examiner, the conditions as set forth in this section have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. Required Showings for a Variance. Before any variance may be granted, it shall be shown:

17.52.025 Reasonable use provisions.

- A. The standards and requirements of these critical areas regulations are not intended, and shall not be construed or applied in a manner to deny all reasonable use of private property. If the applicant demonstrates to the satisfaction of the planning director or his or her designee that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions. A reasonable use exception is intended as a "last resort" when no plan and/or mitigation can meet the requirements of this chapter and allow the applicant a reasonable use of his or her property.
- B. The applicant must demonstrate to the planning director or his or her designee all of the following:
1. That no reasonable use with less impact on the critical area and/or the buffer is feasible and reasonable;
 2. There is no feasible and reasonable on-site alternative to the proposed activity or use that would allow reasonable use with less adverse impacts to the critical area and/or buffer. Feasible on-site alternatives shall include, but are not limited to: reduction in density or building size, phasing of project implementation, change in timing of activities, and revision of road or parcel layout or related site planning considerations;
 3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;
 4. The proposed activity or use will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions and consideration has been given to best available science;
 5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;
 6. The proposed activity or use complies with all local, state, and federal laws; and
 7. The inability to derive reasonable use is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after March 23, 1992.
- C. Allowed Reductions for Single-Family Residential Reasonable Use Lots. As provided under state law and the guidelines of the Department of Trade and Economic Development, reasonable use permits shall allow the development of a modest single-family residential home on a critical area lot.
1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.
 2. Development on reasonable use lots shall leave at least seventy percent of the lot undisturbed to protect the critical areas. On small lots seven thousand five hundred square feet or less, a maximum building footprint of two thousand five hundred square feet would be allowed. Additional impervious area for the driveway will be permitted which provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area the use of bridges and open bottom culverts shall be considered minimal impact. Yard areas will be permitted only if they do not encroach into the critical area or buffer.
 3. Critical area regulations, buffers and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on reasonable use lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.
- D. Allowed Reductions for Multifamily, Commercial, and Industrial Lots.
1. Building setbacks may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city's code requirements without encroaching onto a critical area or its buffer.
 2. The number of required parking stalls may be reduced by up to forty percent if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.
 3. Critical area regulations, buffers, and/or setbacks may be reduced up to fifty percent by the planning director and public works director to allow development on reasonable use lots so long as the reduction results in the least impact to the critical area. Where the buffer reduction has the potential to result in significant adverse

impacts to the critical area due to inadequate buffering, off-site buffer mitigation shall be required. Mitigation can be in the form of off-site buffer restoration or enhancement in an approved wetland mitigation bank, Big Gulch, Japanese Gulch, Picnic Point Gulch or some other available site per an approved mitigation plan as required by the city's critical areas regulations. Payment of an in-lieu fee may also be allowed if and when the city establishes a program that compensates for critical area impacts. Money generated by such a program would be set aside in a reserved account by the city and used for critical area and buffer restoration or enhancement projects within the city's ravines, streams, or wetlands which are protected by the city's parks and open space zoning designation.

E. If upon application of the wetland mitigation and buffer reduction options contained in Chapters 17.52A through 17.52D, and reasonable provisions contained herein, a development cannot be built without further intrusion into the critical area or buffer, then the applicant can pursue a variance under Chapter 17.64, Conditional Uses and Variances.

F. Subdivisions of reasonable use lots will not be allowed unless there is sufficient area to construct all buildings, driveways, drainage facilities, landscaping, and yards areas without intruding on the critical area, buffer, or setback. (Ord. 1112 § 3, 2005)

21.06.1410 Reasonable use.

If an applicant demonstrates to the satisfaction of the director that application of these standards would deny all reasonable economic use of the property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the director:

(1) That no reasonable use with less impact on the environmentally critical area and its buffer is possible;

(2) That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to environmentally critical areas and associated buffers;

(3) That the proposed activities will result in minimum feasible alteration or impairment to the environmentally critical area's functional characteristics and its existing contours, vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions;

(4) That the disturbance of the environmentally critical area has been minimized by locating any necessary alteration in the environmentally critical area buffers to the extent possible;

(5) That the proposed activities will not jeopardize the continued existence of endangered, threatened, sensitive, or monitored species as listed by the federal government or the state of Washington;

(6) That the proposed activities will not cause significant degradation of ground water or surface water quality;

(7) That the proposed activities comply with all state, local and general laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

(8) That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and

(9) That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter. (Ord. 2324 § 2(14), 1992).

37.050 Exemptions, exceptions, modifications.

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification as provided in this chapter. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the administrative modifications which can be granted to other requirements of this title of the city code.

A. Exemptions. All activities which are exempted, excepted, or granted modifications shall prevent, minimize and/or compensate for impacts to environmentally sensitive areas to the maximum extent possible. Such activities which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable. The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements:

1. Emergencies that threaten the public health, safety and welfare, as verified by the city;
2. Legally constructed structures in existence on the date the ordinance codified in this chapter becomes effective that do not meet the buffer requirements of this chapter may be remodeled, reconstructed or replaced provided that the new construction or related activity does not further encroach into an environmentally sensitive area. Remodeling or reconstruction shall be subject to all other requirements of the zoning code;
3. Existing and ongoing agriculture in agricultural zones in existence as of the date this chapter becomes effective; provided, however, at such time as the property ceases to be used for agricultural activities, the property shall be brought into compliance with the provisions of this chapter;
4. Normal and routine maintenance of legally constructed irrigation and drainage ditches, provided that this exemption shall not apply to any ditches used by salmonids;
5. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds, provided that such activities shall not involve the conversion of any wetland or stream not used for such purposes on the date this chapter becomes effective;
6. Entirely artificial structures intentionally constructed by humans from upland areas for purposes of storm water drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter;
7. Category III wetlands less than five hundred square feet in area having only one wetland class, which is not forested, and which is hydrologically isolated;
8. Category IV wetlands less than eight thousand square feet in area;
9. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility related activities, public street and public park maintenance activities when undertaken pursuant to best management practices to avoid impacts to environmentally sensitive areas:
 - a. Normal and routine maintenance or repair of existing utility structures or right-of-way,
 - b. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,
 - c. Relocation of natural gas, cable communications, telephone facilities, lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using the review process described in EMC Title 15, Local Project Review Procedures,
 - d. Installation or construction in improved street rights-of-way and replacement, operation or alteration of all facilities listed in subsections A.9.b and A.9.c of this section,
 - e. Normal and routine maintenance of public streets, state highways, and public park facilities. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area nor does it include construction of a maintenance road or the dumping of maintenance debris;
10. Buffer management when approved by the planning director and all agencies with jurisdiction;
11. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the State Department of Natural Resources.

B. Reasonable Use Exception. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

1. There is no other reasonable use or feasible alternative to the proposed development with less impact on the environmentally sensitive area; and
2. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

3. Any alterations permitted to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of this chapter; and

5. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible.

C. Reasonable Use Decision Process. Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the proposal shall include the following information which will be used to evaluate the criteria for reasonable use exception:

1. A description of the areas of the lot which are either environmentally sensitive or within setbacks required by this chapter;

2. A description of the amount of the lot which is within setbacks required by other standards of the zoning code;

3. An analysis of the minimum amount of development that would be considered "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;

4. An analysis of the impact that the amount of development described in subsection C.3 of this section would have on the environmentally sensitive areas;

5. An analysis of whether any other reasonable use with less impact on the environmentally sensitive areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the environmentally sensitive areas and buffers;

6. A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the environmentally sensitive areas;

7. An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

8. A description of any modifications needed to the required front, side and rear setbacks; building height; and landscape widths to provide for a reasonable use while providing protection to the environmentally sensitive areas;

9. Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

D. Reasonable Use Administrative Modification. If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

1. If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while still providing protection to the environmentally sensitive areas;

2. If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the environmentally sensitive areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot, provided there is adequate mitigation provided for any reduction in the buffer. This approach shall be preferred in circumstances where the environmentally sensitive areas have already been degraded or imputed by activities occurring prior to the effective date of this chapter, and enhancement/restoration of the degraded environmentally sensitive area can reasonably be expected to be accomplished; or

3. If a reasonable economic use of a lot cannot exist by means of either subsection D.1 or D.2 of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection D.1 or D.2 of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

a. R-S, R-1 and R-2 Zones. The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

i. The number of dwelling units which the planning director determines to be the minimum necessary to

allow for reasonable economic use of the restricted property, or

ii. Twenty percent more dwelling units than would be permitted on the receiving site without the transfer of development rights.

In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. All such lots shall have a minimum lot width of fifty feet. All dwelling units on such lots shall be single-family dwellings.

b. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

c. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

d. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

E. Public Utility and Infrastructure Exception. If the application of this section would prohibit a development proposal by a public agency or public utility to construct utility lines for the conveyance of water, sewage, storm drainage, natural gas, or telecommunications; or the construction of collector or arterial streets and highways, the agency or utility may request an exception pursuant to this subsection. Such a request shall be reviewed by the hearing examiner using the review process described in EMC Title 15, Local Project Review Procedures. The hearing examiner may approve, or approve with modifications such a request only when the following findings are made:

1. There is no other practicable alternative to the proposed development with less impact on the environmentally sensitive area; and

2. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible; and

3. The proposal does not impact a significant fish or wildlife habitat area.

F. Prohibition on Variances—Other Exceptions Permitted by this Chapter. The variance procedures described in Section 41.130 of this title shall not apply to the standards of this chapter. The following subsections permit alteration or modification of the requirements of this chapter for protection of environmentally sensitive areas:

1. Subsection 8 for modification of standards for geologically hazardous areas;

2. Subsections 10 and 11 for modification of standards for wetlands and their required buffers;

3. Subsection 14 for modification of standards for streams and their required buffers. (Ord. 2538-01 §§ 44, 45, 46, 2001; Ord. 1838-91 § 5, 1991.)

Ordinance, shall be considered as a valid scientific process and the "best available science (BAS)" for assessment of that particular site.

WHEREAS, the City of Spokane is committed to seeking funding to conduct a city-wide site-specific inventory and associated analysis, simultaneous with the studies required by the SMA, to determine the site-specific riparian habitat and buffer zones, and at the time such studies are compiled to make such revisions to this Ordinance as may be appropriate. To that extent the city is willing to enter into a memorandum of understanding (MOU) with interested groups to make sure the studies are completed.

WHEREAS, the City of Spokane intends to comply with the State GMA provisions.

NOW, THEREFORE, THE CITY OF SPOKANE DOES ORDAIN:

Section 1. That there be added to SMC Chapter 11.19 a new section designated 11.19.2560 to read as follows:

11.19.2560 TITLE, PURPOSE, INTENT, AND SEVERABILITY

A. Title

This ordinance shall be known and may be cited as the "Spokane Interim Fish and Wildlife Habitat Conservation Area Ordinance."

B. Purpose

The purpose of this Ordinance is to protect environmentally sensitive areas, the public health, safety and welfare by preserving and protecting fish and wildlife habitat conservation areas through the regulation of development and other activities.

C. Intent

The provisions of this Ordinance shall be construed liberally to carry out its purpose effectively and if any provisions of this Ordinance conflict with other regulations, ordinances, or other authorities, that which provides more protection to fish and wildlife habitat conservation areas should apply.

D. Severability

Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstance is not affected.

Section 2. That there be added to SMC Chapter 11.19 a new section designated 11.19.2562 to read as follows:

11.19.2562 GENERAL PROVISIONS

A. Applicability

The requirements of this Ordinance apply to all activities and development occurring in a Fish and Wildlife Habitat Conservation Area as defined in Section 11.19.2566A. Property located in a Fish and Wildlife Habitat Conservation Area, as defined in this ordinance, is subject to both zoning classification regulations and the additional requirements imposed under this Ordinance. In any case where there are differences between the provisions of the underlying zone and this ordinance, the provisions of this Ordinance shall apply.

B. Compliance by Owners

It is the specific intent of this Ordinance to place the obligation of complying with requirements upon the owner of the property or land within its scope and provisions.

C. Reasonable Use Exception

Requirements: If an applicant for a development proposal demonstrates to the satisfaction of the Director that application of the standards of this Ordinance would deny all reasonable use of the property according to current takings case law. The applicant shall pay a fee as determined by the Director, which may cover mailing and processing, and shall submit documentation on forms provided by the department demonstrating all of the following to the satisfaction of the Director:

1. Applications of this Ordinance would deny all reasonable use of the property.
2. There is no reasonable use with less impact on the fish and wildlife habitat.
3. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the property.
4. Any alteration to the fish and wildlife habitat is the minimum necessary to allow for reasonable use of the property.
5. The inability of the applicant to derive reasonable use is not the result of actions by the applicant in subdividing the property or adjusting boundary lines, thereby creating the undevelopable conditions after the effective date of this Ordinance.

Decision: The Director shall include findings on each of the evaluation criteria listed above in a written decision. The written decision shall be mailed to the applicant and adjacent property owners, including property owners across public rights-of-way or private easements. The written decision shall include conditions necessary to serve the purposes of the Ordinance and shall provide an appeal procedure as contained in Section 11.02.0710. The Director should also advise the applicant as to the applicability of transfer of development rights, planned unit developments, and any other innovative land use techniques.

D. Exemptions

The following activities are exempt from the provisions of this Chapter, provided that the work is conducted using best management practices and any unavoidable impact affecting the environment will be minimized. However, nothing herein shall be construed to relieve the property owner of requirements imposed by the State Environmental Policy Act.

1. Existing and ongoing agricultural activities, including construction of structures that support agricultural activities: The activities cease to be existing when either of the following conditions occur:
 - a. The area on which they were conducted has been converted to a nonagricultural use.
 - b. The area has lain idle more than five years, unless the idle land is registered in a federal or state soils conservation program.
2. Maintenance or repair of public rights-of-way, legally existing roads, structures, or facilities used in the service of the public to provide transportation, electricity, gas, water, telephone, telegraph, telecommunication, sanitary sewer, stormwater treatment, and other public utility services.

Expansions of sanitary sewer treatment plants are exempt from the requirements of this Ordinance subject to an approved habitat management plan.

city shall require recording of a covenant on the title of the property, stating as follows:

“Persons with interest in this property are advised that this property is potentially subject to flooding, geologic (seismic), and volcanic lahars (mudflow) hazards.”

17.114.120 Exception – Public agency and utility.

(1) If the application of this chapter or chapters 17.115 - .135 would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception request and review process. An application for a public agency and utility exception shall be made to the city planning department and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The planning director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (4).

(3) Hearing examiner review. The hearing examiner shall review the application and planning director's recommendation, and conduct a public hearing pursuant to the provisions of the SMC 17.85. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4).

(4) Public agency and utility review criteria. The criteria for review and approval of public agency and utility exceptions are as follows:

- (a) There is no other practical alternative to the proposed development with less impact on the critical areas;
- (b) The application of this chapter or chapters 17.115-.135 would unreasonably restrict the ability to provide utility services to the public;
- (c) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (d) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
- (e) The proposal is consistent with other applicable regulations and standards.

(5) Burden of proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

17.114.130 Exception – Reasonable use.

(1) If the application of this chapter or chapters 17.115 - .135 would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section.

Note: this version shows changes only. Sections that require no changes will remain as currently in the Stanwood code. If you need a copy of a section of the current code, please call Stanwood Community Development at (360)629-4577 to request a copy.

(2) Exception request and review process. An application for a reasonable use exception shall be made to the city and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The planning director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (4).

(3) Hearing examiner review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of the SMC 17.85. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (4).

(4) Reasonable use review criteria. One or more of the following criteria for review and approval of reasonable use exceptions follow may apply:

(a) The application of this chapter or chapters 17.115-.135 would deny all reasonable economic use of the property;

(b) No other reasonable economic use of the property has less impact on the critical area;

(c) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

(d) 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 chapter, or its predecessor;

(e) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(f) The proposal will result in no net loss of critical area functions and values consistent with the best available science; or

(g) The proposal is consistent with other applicable regulations and standards.

(5) Burden of proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

17.114.140 Allowed permitted activities.

(1) Allowed permitted activities—defined. Allowed activities are similar to exemptions in that they do not require critical area review. However, unlike exemptions, allowed activities must follow the critical areas standards. Conditions may be applied to the underlying permit, such as the building permit, to ensure critical area protection.

(2) Critical area report. Activities allowed under this section and corresponding sections in 17.115-.135 shall be reviewed and permitted or approved by the city or other agency with jurisdiction, but do not require submittal of a separate critical area identification form or critical area report, unless such submittal was required previously for the underlying permit. The planning director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this chapter and chapters 17.115 - .135 to protect critical areas.

Note: this version shows changes only. Sections that require no changes will remain as currently in the Stanwood code. If you need a copy of a section of the current code, please call Stanwood Community Development at (360)629-4577 to request a copy.

B. Exception request and review process. An application for a public agency or utility exception shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW).

C. Review and Decision. The Town Administrator shall review the application and shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in Subsection (D) pursuant to SMC 14.20.010.

D. Public agency and utility review criteria. Public agency and utility exceptions shall be granted when all of the following criteria are demonstrated:

1. There is no other practical alternative to the proposed development with less impact on the critical areas.
2. The application of this Chapter would unreasonably restrict the ability to provide utility services to the public.
3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.
4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science.
5. The proposal is consistent with other applicable regulations and standards.

E. Burden of proof. The burden of proof shall be on the applicant to provide evidence in support of the application and to provide information sufficient for any required decision.

16.16.140 Exception – Reasonable use

A. If the application of this Chapter would deny all reasonable economic use of the subject property, the property owner may apply for an exception pursuant to this Section and SMC 14.08.050.

B. Exception request and review process. An application for a reasonable use exception shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The Town Administrator shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in Subsection (D).

C. Hearing examiner review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of SMC 14.08.050. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in Subsection (D).

D. Reasonable use review criteria. A reasonable use exception shall be granted if all of the following criteria are met:

1. The application of this Chapter would deny all reasonable economic use of the property.
 2. No other reasonable economic use of the property has less impact on the critical area.
 3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property.
 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 Chapter, or its predecessor.
 5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.
 6. The proposal will result in no net loss of critical area functions and values consistent with the best available science.
 7. The proposal is consistent with other applicable regulations and standards.
- E. **Burden of proof.** The burden of proof shall be on the applicant to provide evidence in support of the application and to provide information sufficient for any required decision.

16.16.150 Allowed activities

- A. **Permits.** Allowed activities do not require critical area permits, however, they may require other permits or approvals. The Town Administrator may apply conditions to the other permit or approval to ensure that the allowed activity is consistent with the provisions of this Chapter to protect critical areas.
- B. **Best management practices.** Allowed activities shall use best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. Best management practices shall ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.
- C. **Allowed activities.** The following activities are allowed:
1. **Permit requests subsequent to previous critical area review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) are allowed if all of the following conditions have been met:
 - a. The provisions of this Chapter have been previously addressed as part of another approval.
 - b. There have been no material changes in the potential impact to the critical area or buffer since the prior review.
 - c. There is no new information available that is applicable to any critical area review of the site or particular critical area.
 - d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval.

15.20.420 Aquifer Recharge Area Designation.

Aquifer recharge areas shall be designated based on meeting any one of the following criteria:

- A. Wellhead Protection Areas designated per WAC 246-290;
- B. Sole Source Aquifers designated by the U.S. EPA per the Federal Safe Drinking Water Act;
- C. Areas designated for special protection as part of a groundwater management program per RCW 90.44, 90.48, or 90.58 or WAC 173-100 or 173-200.

15.20.430 Aquifer Recharge Area Detailed Study Requirements.

All proposals that require SEPA review and are located within a designated aquifer recharge area shall be reviewed by the Zoning Administrator to determine the potential for adverse impacts to groundwater resources. If the potential for significant adverse impacts is present, then the Zoning Administrator shall require preparation of an aquifer recharge area Detailed Study. The Detailed Study shall be prepared by a qualified consultant with experience in preparing hydrogeologic site assessments. Evidence of these qualifications shall be included within the study. The Detailed Study shall include the following, in addition to the minimum requirements established in section 15.20.200(B):

- A. A description of the existing hydrogeologic conditions of the project site and the proposed activity's potential to result in contamination of groundwater resources.

15.20.440 Aquifer Recharge Area Performance Requirements.

Activities requiring preparation of an aquifer recharge area Detailed Study shall only be permitted if the Detailed Study indicates that the activity does not pose a significant threat to the underlying aquifer system. The Zoning Administrator shall establish mitigating conditions necessary to insure protection of groundwater resources.

15.20.450 Reasonable Use Exceptions.

- A. An exception from the provisions of this Chapter may be granted by the City Council. An application for a exception shall be processed as a Class III action pursuant to the provisions of Chapter 20.08 SMC. A filing fee as established in Chapter 20.108 SMC shall be paid to the city clerk-treasurer at the time of application.
- B. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision on the application will be made. The City Council shall grant such an exception only when the applicant demonstrates that the requested exception is consistent with all of the following criteria:
 - 1. Special circumstances and conditions exist which are peculiar to the land or lot, and which are not applicable to other lands or lots;
 - 2. The special conditions or circumstances are not the result of actions taken by the applicant;
 - 3. Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties under the terms of this Chapter;
 - 4. The granting of the exception requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures under similar circumstances;
 - 5. The granting of the exception is consistent with the general purpose and intent of this Chapter and will not create significant adverse impacts to the identified critical areas or otherwise be detrimental to public health, safety, or welfare.
- C. In granting any exception, the City Council may prescribe such conditions and safeguards as are deemed necessary to secure adequate protection of critical areas, public health, safety and welfare, and to ensure conformity with this Chapter.
- D. If the City Council decides to grant the exception, the City Council shall make a finding that the reasons set forth by the applicant justify the granting of the exception, and that the exception granted is the minimum necessary to allow reasonable use of land, building or structure.

- E. In granting any exception, the City Council may prescribe time limits within which the action for which the exception is requested shall commence or be completed or both. Failure to conform to any such time limits shall void the exception.

15.20.460 Enforcement.

The Zoning Administrator is authorized to make site inspections and take such actions as necessary to administer and enforce this Chapter. City representatives shall make a reasonable effort to contact the property owner before entering onto private property. Activities found to be not in compliance with this Chapter or any applicable performance requirements or any conditions established through the Critical Areas Review and approval process, such as required mitigation, shall be subject to enforcement actions necessary to bring the activity into compliance. The City shall have the authority to require restoration, rehabilitation or replacement measures to compensate for violations of this chapter which result in destruction, degradation, or reduction in function of critical areas or required buffer areas.

15.20.470 Violations and Penalty.

- A. Violation – Penalty. Each day that a violation of this section continues shall constitute a separate offense and be punishable as such. Any violation of this section shall be punished as follows:
1. First Offense: The first offense shall be punished by a penalty of not more than \$250.00, including all costs and assessments, and not less than \$150.00, which minimum amount shall not be suspended or deferred.
 2. Second Offense: The second offense within a 5-year period shall be punished by a penalty of not more than \$500.00, including all costs and assessments, and not less than \$200.00, which minimum amount shall not be suspended or deferred.
 3. Third or Subsequent Offense: A person committing a third or subsequent offense within a 5-year period shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$1,000.00 or imprisonment in jail not to exceed 90-days or by both such fine and imprisonment. The minimum sentence shall be \$250.00, which amount shall not be suspended or deferred.

Law enforcement officers commissioned by the City are authorized to issue a Notice of Infraction upon certification that the officer has probable cause to believe, and does believe, that a person has committed an infraction contrary to the provisions of this Chapter. The infraction need not have been committed in the issuing officer's presence except as otherwise provided by law.

- B. Additional Remedies. In addition to the penalties provided in this Chapter and any other remedy allowed by law, the City may bring an action to enjoin a violation of any provision of this chapter. In any action or suit brought under this Section, the City, if it prevails, shall recover reasonable attorney's fees to be set by the Court, in addition to its costs and disbursements.

15.20.480 Definitions.

"Adjacent" or "adjacent to" generally means within a distance of 50 feet from a critical area or, in some circumstances involving upland wildlife habitat conservation areas, within a greater distance within which the project is likely to impact the critical area.

"Agriculture" or "Agricultural activities" means those activities directly pertaining to the production of crops or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, the operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities, or improved areas.

20.740.070 Minor Exceptions

- A. Minor Exceptions Authorized. Minor exceptions of no greater than 10% from the standards of this Chapter may be authorized by the City in accordance with the procedures set forth in VMC 20.210.060, Type II Applications. Minor exceptions from the elevation standards of VMC 20.740.120 may exceed the 10% limit. Minor exceptions shall not be combined with buffer averaging (20.740.140(C)(1)(b)(2)) or buffer reduction (20.740.140(C)(1)(b)(3)).
- B. Minor Exception Criteria. A minor exception from the standards of this Chapter may be granted only if the applicant demonstrates that the requested action conforms to all of the following criteria. Additional approval criteria applying to minor exceptions in frequently flooded areas are set forth in VMC 20.740.120(D)(3).
1. Unusual conditions or circumstances exist that are peculiar to the intended use, the land, the lot, or something inherent in the land, and that are not applicable to all other lands in the same vicinity or district;
 2. The unusual conditions or circumstances do not result from the actions of the applicant;
 3. Granting the minor exception requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, structures, or buildings under similar circumstances;
 4. The minor exception is necessary for the preservation and enjoyment of a substantial property right of the applicant such as is possessed by the owners of other properties in the same vicinity or district;
 5. The minor exception requested is the least necessary and no greater than 10% of the subject standard (except in the case of the elevation standards of VMC 20.740.120 where the least necessary may exceed the 10% limit) to relieve the unusual circumstances or conditions identified in Subsection VMC 20.740.070(B)(1) above;
 6. The granting of the minor exception or the cumulative effect of granting more than one minor exception is consistent with the general purpose and intent of the City of Vancouver Comprehensive Plan, this Title, this Chapter, and the underlying zoning district;
 7. Degradation of the functions (including public health and safety) of the subject critical areas and any other adverse impacts resulting from granting the minor exception will be minimized and mitigated to the extent feasible in accordance with the provision of this Chapter;
 8. Granting the minor exception will not otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;
 9. The proposed development complies with all other applicable standards.
- C. Conditions May Be Required. In granting any minor exception, the City may attach such conditions and safeguards as are necessary to secure adequate protection of critical areas and developments from adverse impacts, and to ensure conformity with this Chapter.

- D. Time Limit. The City shall prescribe a time limit within which the action for which the minor exception is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the minor exception.
- E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.

20.740.080 Reasonable Use Exceptions

A. Exception Request and Review Process.

If the application of this Chapter would deny all reasonable economic use of the subject property, the City shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this Section. Exceptions from the standards of this Chapter may be authorized by the City in accordance with the procedures set forth in VMC 20.210.060, Type III Applications.

An application for a reasonable use exception shall be made to the City and shall include a Critical Areas Report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (RCW 43.21C). The Planning Official shall prepare a recommendation to the Hearings Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in VMC 20.740.080(B).

- B. Reasonable Use Review Criteria. The City shall approve applications for reasonable use exceptions when all of the following criteria are met:
1. The application of this Chapter would deny all reasonable economic use of the property;
 2. No other reasonable economic use of the property has less impact on the critical area;
 3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
 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 Chapter, or its predecessor;
 5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;
 6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible and contributes to the Critical Areas Restoration Fund for any impacts that cannot be mitigated.
 7. The proposal is consistent with other applicable regulations and standards.

- C. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

20.740.090 Unauthorized Critical Areas Alterations and Enforcement

A. Enforcement.

1. It shall be unlawful to violate the provisions of VMC Chapter 20.740. Any violation of this Chapter shall constitute a public nuisance.
2. VMC Title 22 shall provide the enforcement provisions for VMC Chapter 20.740. VMC Title 22 may impose any of the remedies, requirements or corrective actions contained in this Chapter. In lieu of or in addition to the enforcement provisions contained in VMC Title 22, the City may also seek injunctive or other relief from any court of competent jurisdiction.
3. The City shall deposit all monetary penalties collected pursuant to VMC Title 22 into the Critical Areas Restoration Fund. Accrued monies in the Critical Areas Restoration Fund shall be used to protect and restore critical areas within the City of Vancouver.

- B. Requirement for Restoration Plan. In the event the City initiates enforcement action under VMC Title 22 or files a complaint in court, the City may require a restoration plan consistent with the requirements of this Chapter. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in VMC 20.740.090(C). The Planning Official shall, at the violator's expense, seek expert advice in determining whether the plan restores the affected area to its pre-existing condition or, where that is not possible, restores the functions of the affected area. Inadequate plans shall be returned to the applicant or violator for revision and re-submittal.

C. Minimum Performance Standards for Restoration

1. For alterations to frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:
 - a. The structure and functions of the critical area or buffer prior to violation shall be restored, including water quality and habitat functions;
 - b. The soil types and configuration prior to violation shall be replicated;
 - c. The critical area and buffers shall be replanted with native vegetation; and
 - d. Information demonstrating compliance with the requirements in VMC 20.740.050(F) Mitigation Plan Requirements shall be submitted to the Planning Official.

 **Kitsap County Code**

19.100.140 Reasonable use exception.

If the application of this title would deny all reasonable use of the property, the applicant may apply for a reasonable use exception pursuant to this section:

A. The applicant shall apply to the department, and the department shall prepare a recommendation to the hearing examiner. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of the section. The property owner and/or applicant for a reasonable use exception has the burden of proving that the property is deprived of all reasonable uses. The examiner shall review the application and shall conduct a public hearing pursuant to the provisions of Title 21 of the Kitsap County Code (Land Use and Development Procedures). The examiner shall make a final decision based on the following criteria:

1. The application of this title would deny all reasonable use of the property;
2. There is no other reasonable use which would result in less impact on the critical area;
3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this title and the public interest, and does not conflict with the Endangered Species Act or other relevant state or federal laws; and
4. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.

B. Any authorized alterations of a critical area under this section shall be subject to conditions established by the examiner including, but not limited to, mitigation under an approved mitigation plan. (Ord. 351 (2005) § 11, 2005; Ord. 217 (1998) § 3 (part), 1998)

19.100.145 Appeals.

A. Appealable Actions. The following decisions or actions required by this title may be appealed:

1. Any decision to approve, condition or deny a development proposal, or any disagreement on conclusions, methodology, rating systems, etc. between the department and such person or firm which prepares special reports pursuant to Chapter 19.700 may be appealed by the applicant or affected party to the Kitsap County hearing examiner.
2. Any decision to approve, condition or deny a variance application by the department may be appealed by the applicant or affected party to the Kitsap County hearing examiner.
3. Any decision to require, or not require a special report pursuant to this title may be appealed by the applicant or affected party to the Kitsap County hearing examiner.

B. Appeal Process. The following process shall be followed in submitting an appeal and taking action:

1. Any appeal regarding a decision to require, or not require a special report shall be made within fourteen calendar days of the decision. The appeal shall be in writing stating the basis that such reports should or should not be required for the proposed development. The hearing examiner may (a) remand the decision back to the department requesting that specific issues be reconsidered; (b) modify the decision of the department; or (c) uphold the decision of the department.
2. Any appeal regarding a decision to approve, condition or deny a development proposal based on this title, or any decision to approve, condition or deny a variance, shall be made within fourteen calendar days of the decision. A fee in an amount as established under the Kitsap County Code shall be paid to the department at the time an appeal is filed. The appeal shall be in writing and shall state

specifically the issues that are the subject of the appeal, focusing on the specific inadequacies of the particular decision under dispute. The hearing examiner may (a) remand the decision back to the department requesting that specific issues be reconsidered; (b) modify the decision of the department; or (c) uphold the decision of the department.

3. Kitsap County shall not issue any permit, license or other development approval on the development proposal site pending the outcome of the appealed decision.
(Ord. 351 (2005) § 12, 2005; Ord. 217 (1998) § 3 (part), 1998)

19.100.150 Critical area and buffer notice to title.

Project applicants shall sign a "Critical Area and Buffer Notice to Title" (See Chapter 19.800, Appendix "E") to be filed with the Kitsap County auditor on all development proposals subject to this title and containing any critical area or its buffer. After review of the development proposal, the department will condition critical area development in accordance with this title. These standards will be identified on the approved notice to title, which shall run with the land in accordance with this title. This notice shall serve as an official notice to subsequent landowners that the landowner shall accept sole responsibility for any risk associated with the land's identified critical area.

Notice to title may not be required in cases where the clearing or building footprint for minor new development will not adversely impact a critical area or its buffer (i.e., normal repair and maintenance, not adjacent to a critical area). Lack of such notice on a specific parcel does not indicate that Kitsap County has determined critical areas or buffers do not exist on that parcel.
(Ord. 351 (2005) § 13, 2005; Ord. 217 (1998) § 3 (part), 1998)

19.100.155 General application requirements.

A. All applicants for major new development are required to meet with the department prior to submitting an application subject to Title 17 of Kitsap County Code; all applicants for construction of a single-family dwelling are encouraged to do so. The purpose of this meeting is to discuss Kitsap County's zoning and applicable critical area requirements, to review any conceptual site plans prepared by the applicant and to identify potential impacts and mitigation measures. Such conference shall be for the convenience of the applicant, and any recommendations shall not be binding on the applicant or the county.

B. The applicant must comply with the standards and requirements of this title as well as standards relating to Title 12 of the Kitsap County Code (Stormwater Management) set forth by the department, as now or hereafter amended. To expedite the permit review process, the department shall be the lead agency on all work related to critical areas. Development may be prohibited in a proposed development site based on criteria set forth in this title; the applicant should first determine whether this is the case before applying for permits from the department.

C. Application for development proposals, reasonable use exception or variances regulated by this title or for review of special reports shall be made with the department by the property owner, lessee, contract purchaser, other person entitled to possession of the property, or by an authorized agent as listed in Chapter 19.700 (Special Reports).

D. A filing fee in an amount established under the Kitsap County Zoning Ordinance shall be paid to the department at the time an application for a permit relating to a critical area or a special report review is filed.

E. Applications for any development proposal subject to this title shall be reviewed by the department for completeness and consistency or inconsistency with this title.

F. At every stage of the application process, the burden of demonstrating that any proposed development is consistent with this title is upon the applicant.

G. All site plan applications for development proposals subject to this title shall include a site plan drawn to scale identifying locations of critical areas, location of proposed structures and activities, including clearing and grading and general topographic information as required by the department. If the

KITTITAS COUNTY §17A, 03.065

17A.03.065 Property rights.

1. All regulatory or administrative actions taken pursuant to this chapter shall not result in an unconstitutional taking of private property, and shall not expand or reduce the scope of private property protections provided in the state and federal constitutions. This chapter shall not prohibit uses permitted prior to its adoption and shall remain in effect until the county adopts development regulations pursuant to RCW 36.70A.120. Classifying or designating critical areas does not imply a change in the landowner's right to use his or her land under current law.
2. In applying this chapter, the planning department shall refer to relevant legal authorities at all levels of government, including federal and state constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof. The application and administration of this chapter shall assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights; and are not arbitrary or discriminatory.
3. Periodic reports shall be made at least annually to the board of county commissioners by the planning director and prosecuting attorney concerning county compliance with constitutional and judicial requirements. The planning director shall immediately advise the board should any provisions of this chapter in his opinion be in violation of state or federal constitutional requirements, or recent court decisions, and whether the provision is required by the state of Washington or discretionary with the county. If the provision which generates concern is a requirement of the state, the board of county commissioners shall immediately advise the appropriate state department or agency. If the provision is discretionary with the county, the board of commissioners shall promptly schedule a public hearing to consider the ordinance provision or policy. (Ord. 94-22 (part), 1994).

Robin Jenkinson

From: Byron Katsuyama [bkatsuyama@mrsc.org]
Sent: Friday, May 12, 2006 2:31 PM
To: Robin Jenkinson
Subject: MRSC Research Request - Reasonable Use Exception Provisions

Hi Robin,

This is in response to your request for sample "reasonable use exception" provisions. Here are a few more for you to ponder (I've pasted in the full text of provisions from Issaquah, Enumclaw, Gig Harbor, Richland, Auburn, Bothell, Des Moines, Edmonds, Federal Way, and Vancouver):

Issaquah Municipal Code:

18.10.390 Definitions.

Reasonable use: A legal concept that has been articulated by federal and state courts in regulatory takings cases. In a takings case, the decision-maker must balance the public's interests against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions.

A reasonable use variance must balance the public interests against the regulation being unduly oppressive to the landowner. The following criteria are guidelines when making a decision regarding a reasonable use variance:

- A. The extent to which the proposal would contribute to increasing the level of the harm the regulation is designed to prevent;
- B. The feasibility of alternative solutions;
- C. The amount and percentage of lost (economic) value to the land owner;
- D. The extent of remaining uses available to the land owner, if the regulation were strictly enforced;
- E. The past, present and future uses of the property; however, the use does not need to be the owner's planned use, or prior use or the highest and best use;
- F. The temporary or permanent nature of the regulation.

...

18.10.430 Variances.

A. Purpose: The variance provision is provided to property owners who, due to the strict implementation of this chapter and/or to unusual circumstances regarding the subject property,

are deprived of privileges commonly enjoyed by other properties in the same vicinity, zone and under the same land use regulations or have been denied all reasonable use of the property; provided, however, that the fact that surrounding properties have been developed under regulations in force prior to the adoption of this Code shall not be the sole basis for the granting of a variance.

B. Variance Granted: Before any variance may be granted, the applicant must file an application with the Permit Center and must demonstrate to the satisfaction of the Hearing Examiner the ability to meet all of the criteria in IMC 18.10.430(C). In the event that the applicant is not able to fulfill all of the criteria in IMC 18.10.430(C), a demonstration must be made to the satisfaction of the Hearing Examiner, regarding the ability to successfully meet all of the criteria established in IMC 18.10.430(D).

A variance application shall be submitted to the Permit Center along with a critical areas special study, where applicable.

C. Variance Criteria Established:

1. The variance is in harmony with the purpose and intent of the relevant City ordinances and the Comprehensive Plan;
2. The variance shall not constitute a grant of special privilege which would be inconsistent with the permitted uses, or other properties in the vicinity and zone in which the subject property is located;
3. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity, located in the same zone as the subject property and developed under the same land use regulations as the subject property requesting the variance;
4. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
5. That alternative development concepts that comply with the Code provisions to which the variance is requested have been evaluated, and that undue hardship would result if the strict adherence to the Code provisions is required;
6. The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and
7. The need for the variance is not the result of actions of the applicant or property owner.

D. Reasonable Use Variance Criteria Established: Only after the determination, by the Hearing Examiner, that the proposal does not meet all of the variance criteria listed above, may the application be reviewed, by the Hearing Examiner at the same public hearing, under the following criteria:

1. There is no reasonable use of the property left; and

2. That the granting of this variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

3. The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and

4. The need for the variance is not the result of actions of the applicant or property owner.

E. Cumulative Impact of Area Wide Requests: In the granting of variances from this Code, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies and intent set forth in this chapter.

F. Public Hearing: The Hearing Examiner shall hold a public hearing and notice shall be provided under the provisions of the Land Use Code and Issaquah Municipal Code. The applicant or representative(s) shall appear in person at the hearing.

G. Notice of Hearing Examiner's Decision: Copies of the Hearing Examiner's decision shall be mailed to the applicant and to other parties of record not later than three (3) working days following the filing of the decision. "Parties of record" shall include the applicant and all other persons who specifically request notice of the decision by signing a register provided for such purpose at the public hearing.

H. Appeals: Decisions by the Hearing Examiner may be appealed to the City Council in accordance with IMC 18.04.250, Administrative appeals. (Ord. 2301 § 3, 2001; Ord. 2108 § 10.2.10, 1996).

Enumclaw Municipal Code:

19.02.210 Avoiding wetland impacts.

If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purposes of this chapter and the public interest; provided, that the city council finds that:

A. This chapter would otherwise deny all reasonable use of the property;

B. There is no other reasonable use with less impact on the wetland;

C. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;

D. Any proposed alteration of the wetland is the minimum necessary to allow for reasonable use of the property;

E. There is no feasible on-site alternative, including reduction in density and site-planning considerations;

F. The inability to derive reasonable economic use from the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of the ordinance codified in this chapter. (Ord. 1960 § 3, 1998).

19.02.220 Minimizing wetlands impacts.

A. After it has been determined by the city council pursuant to EMC 19.02.210 that losses of wetland are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize wetland impacts.

B. Minimizing impacts to wetlands shall include but is not limited to:

1. Limiting the degree or magnitude of the regulated activity;
2. Limiting the implementation of the regulated activity;
3. Using appropriate and best available technology;
4. Taking affirmative steps to avoid or reduce impacts;
5. Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;
6. Involving resource agencies early in site planning; and
7. Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities. (Ord. 1960 § 3, 1998).

Gig Harbor Municipal Code:

18.12.110 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;
2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);
3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;
4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;

2. The proposed development does not present a threat to the public health, safety or welfare;

3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;

4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;

5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;

6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property. The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure

the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and
2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).

Richland Municipal Code:

22.10.360 General Savings Provision - Reasonable Use

A. The standards and regulations of this section are not intended, and shall not be construed or applied in a manner, to deny all reasonable economic use of private property. If an applicant demonstrates to the satisfaction of the City of Richland that strict application of these standards and the utilization of cluster techniques, planned unit development, and transfer of development rights would deny all reasonable economic use of its property, development may be permitted subject to appropriate conditions, derived from this ordinance as determined by the Deputy City Manager, Community and Development Services, and after all requests from the Board of Adjustment have been denied.

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B. An applicant for relief from strict application of these standards shall demonstrate the following:

1. That no reasonable use with less impact on the critical habitat and/or hazard area and buffer is feasible and reasonable;
2. That there is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors;
3. That the proposed activities, as conditioned, will result in the minimum possible impacts to wetlands and buffers;
4. That all reasonable mitigation measures have been implemented or assured;
5. That all provisions of the City's regulations allowing density transfer on-site and off-site have been considered; and (Ord. 48-93; Ord. 31-03).

Auburn Municipal Code:

16.10.150 Reasonable use provision.

A. The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.

B. Applications for a reasonable use exception shall be processed as a Type III decision, pursuant to ACC 14.03.030 and Chapter 18.66 ACC.

C. An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:

1.No reasonable use with less impact on the critical area and its buffer is possible.

There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable and economically viable use with fewer adverse impacts;

2.The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas;

3.All reasonable mitigation measures have been implemented or assured;

4.The inability to derive reasonable use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition; and

5.The applicant shall demonstrate that the use would not cause a hazard to life, health or property.

D.The burden of proof shall be on the applicant to provide evidence in support of the application and to provide sufficient information on which any decision has to be made.

E.Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city codes.

F.Except when application of this title would deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the title shall pursue a variance as provided in ACC 16.10.160. (Ord. 5894 § 1, 2005.)

Bothell Municipal Code:

16.10.150 Reasonable use provision.

A.The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.

B.Applications for a reasonable use exception shall be processed as a Type III decision, pursuant to ACC 14.03.030 and Chapter 18.66 ACC.

C.An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:

1.No reasonable use with less impact on the critical area and its buffer is possible.

There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable and economically viable use with fewer adverse impacts;

2.The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas;

3.All reasonable mitigation measures have been implemented or assured;

4.The inability to derive reasonable use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition; and

5.The applicant shall demonstrate that the use would not cause a hazard to life, health or property.

D. The burden of proof shall be on the applicant to provide evidence in support of the application and to provide sufficient information on which any decision has to be made.

E. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city codes.

F. Except when application of this title would deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the title shall pursue a variance as provided in ACC 16.10.160. (Ord. 5894 § 1, 2005.)

Des Moines Municipal Code:

18.86.094 Reasonable use exceptions in wetlands, streams, ravine sidewalls, and bluffs.

(1) Adjustments to Dimensional Requirements.

(a) Yard Reductions for Building One Single-Family Dwelling. When an environmentally sensitive area that is undevelopable pursuant to DMMC 18.86.060 together with any required yard on the opposite side of the undevelopable area equals more than 50 percent of the property dimension of the development site, such yard shall be reduced as follows:

(i) A required side yard is reduced to five feet.

(ii) A required front or rear yard is reduced to 10 feet.

(b) Other Adjustments. All other adjustments to any dimensional requirements of this title or other land use regulatory provisions of this code shall be processed as either a PUD or variance pursuant to chapter 18.52 DMMC and the hearing examiner code, respectively.

(2) Single-Family Dwelling. Development of one single-family dwelling within the buffer of a wetland or stream on a development site shall be approved by the community development director if the applicant demonstrates that:

(a) The extent of development within the buffer is limited to that which is necessary to create a developable area which is no larger than 5,000 square feet;

(b) The proposal utilizes to the maximum extent possible and best available construction, design, and development techniques which result in the least adverse impact on the environmentally sensitive area;

(c) The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and

(d) The proposal is consistent with the purpose and intent of this chapter.

(3) Other Development Proposals. An applicant may propose to develop other than one single-family dwelling on a development site in accordance with subsection (2) of this section pursuant to the following:

(a) Procedure. The city shall process a reasonable use development exception through the office of the hearing examiner, or

if the exception is proposed in conjunction with a development proposal requiring approval of the city council, the exception shall be processed together with that development proposal. The community development director shall serve as the applicable department director and the hearing examiner or city council shall serve as the hearing body.

(b) Decision Criteria. The city shall approve or approve with modifications an application for a reasonable use development exception if:

(i) The proposal is limited to the minimum necessary to fulfill reasonable use of the property; and

(ii) The proposal is compatible in design, scale, and use with other development or potential development in the immediate vicinity of the subject property in the same zone and with similar site constraints;

(iii) The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the environmentally sensitive area or areas;

(iv) The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and

(v) The proposal is consistent with the purpose and intent of this chapter.

(4) Limited Waiver of Hillside Disturbance Limitations. Any one or all of the disturbance limitation requirements of DMMC 18.86.077 may be waived if the community development director determines that the application of such requirements is not feasible for developing one single-family dwelling on a development site and the proposal is consistent with the purpose and intent of this chapter.

(5) Modification of Existing Structures. Existing structures or improvements that do not meet the requirements of this chapter may be remodeled, reconstructed, or replaced; provided, that the new construction does not further intrude into an environmentally sensitive area.

(6) Previously Altered Environmentally Sensitive Areas. If any portion of an environmentally sensitive area has been altered from its natural state, the applicant may propose to develop within the altered area pursuant to the following:

(a) Procedure. The city shall process the proposed development exception through the office of the hearing examiner, or if the exception is proposed in conjunction with a development proposal requiring approval of the city council, the exception shall be processed together with that development proposal. The community development director shall serve as the applicable department director and the hearing examiner or city council shall serve as the hearing body.

(b) Decision Criteria. The city shall approve or approve with modifications an application for a development exception within a previously altered environmentally sensitive area only if the applicant demonstrates that:

- (i) The environmentally sensitive area was lawfully altered in accordance with the provisions of this code and any state and federal laws at the time the alteration occurred;
- (ii) The alteration has significantly disrupted the natural functions of the environmentally sensitive area;
- (iii) The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the environmentally sensitive area;
- (iv) The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and
- (v) The proposal is consistent with the purpose and intent of this chapter. [Ord. 1237 § 3, 1999; Ord. 853 § 9(a), 1990.]

Edmonds Municipal Code:

23.40.210 Variances.

A. Variances from the standards of this title may be authorized through the process of hearing examiner review in accordance with the procedures set forth in Chapter 20.85 ECDC only if an applicant demonstrates that one or more of the following two conditions exist:

1. The application of this title would prohibit a development proposal by a public agency or public utility. A public agency and utility exception may be granted as a variance if:
 - a. There is no other practical alternative to the proposed development with less impact on the critical areas;
 - b. The application of this title would unreasonably restrict the ability to provide utility services to the public;
 - c. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
 - d. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
 - e. The proposal is consistent with other applicable regulations and standards.
2. The application of this title would deny all reasonable economic use (see the definition of "reasonable economic use(s)" in ECDC 23.40.320) ["Reasonable economic use(s)" means the minimum use to which a property owner is entitled under applicable state and federal constitutional provisions in order to avoid a taking and/or violation of substantive due process. "Reasonable economic use" shall be liberally construed to protect the constitutional property rights of the applicant. For example, the minimum reasonable use of a residential lot which

meets or exceeds minimum bulk requirements is use for one single-family residential structure. Determination of "reasonable economic use" shall not include consideration of factors personal to the owner such as a desire to make a more profitable use of the site.] of the subject property. A reasonable use exception may be authorized as a variance only if an applicant demonstrates that:

- a. The application of this title would deny all reasonable economic use of a property or subject parcel;
- b. No other reasonable economic use of the property consistent with the underlying zoning and the city comprehensive plan has less impact on the critical area;
- c. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
- d. 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 the ordinance codified in this title or its predecessor;
- e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- f. The proposal minimizes net loss of critical area functions and values consistent with the best available science; and
- g. The proposal is consistent with other applicable regulations and standards.

B. Specific Variance Criteria. A variance may be granted if the applicant demonstrates that the requested action conforms to all of the following specific criteria:

1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;
2. The special conditions and circumstances do not result from the actions of the applicant;
3. A literal interpretation of the provisions of this title would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this title, and the variance requested is the minimum necessary to provide the applicant with such rights;
4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings under similar circumstances;
5. The granting of the variance is consistent with the general purpose and intent of this title, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property; and
6. The decision to grant the variance is based upon the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

C. **Hearing Examiner Review.** The city hearing examiner shall review variance applications and conduct a public hearing pursuant to the provisions of Chapter 20.100 ECDC. The hearing examiner shall approve, approve with conditions, or deny variance applications based on a proposal's ability to comply with general and specific variance criteria provided in subsections (A) and (B) of this section.

D. **Conditions May Be Required.** The director retains the right to prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this title for variances granted through hearing examiner review.

E. **Time Limit.** The director shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance, unless the applicant files an application for an extension of time before the expiration. An application for an extension of time shall be reviewed by the director as provided in ECDC 20.95.050.

F. **Burden of Proof.** The burden of proof shall be on the applicant to bring forth evidence in support of a variance application and upon which any decision has to be made on the application. [Ord. 3527 § 2, 2004].

Federal Way Municipal Code:

22-1244 Reasonable use of the subject property.

(a) The provisions of this section establish a mechanism whereby the provisions of this article may be modified or waived on a case-by-case basis if their implementation would deprive an applicant of all reasonable use of the subject property.

(b) An applicant may apply for a modification or waiver of the provisions of this article using process IV; except, that applications for projects on single-family residential lots platted prior to the incorporation of the city may use process III.

(c) The city may approve a modification or waiver of the requirements of this article on a case-by-case basis based on the following criteria:

(1) The application of the provisions of this article eliminates all reasonable use of the subject property.

(2) It is solely the implementation of this article, and not other factors, which precludes all reasonable use of the subject property.

(3) The applicant has in no way created or exacerbated the condition which forms the limitation on the use of the subject property, nor in any way contributed to such limitation.

(4) The knowledge of the applicant of limitations on the subject property when he or she acquired the subject property.

(5) The waiver or modification will not lead to, create nor significantly increase the risk of injury or death to any person or damage to improvements on or off the subject property.

(d) If the city grants a request under this section, it shall grant the minimum necessary to provide the applicant with some reasonable use of the subject property, considering the factors described in subsections (c)(1) through (c)(5) of this section. The city may impose any limitations, conditions and restrictions it considers appropriate to reduce or eliminate any undesirable effects or adverse impacts of granting a request under this section. (Ord. No. 90-43, § 2(80.35), 2-27-90; Ord. No. 91-105, § 4(80.35), 8-20-91; Ord. No. 91-123, § 3(80.35), 12-17-91; Ord. No. 99-353, § 3, 11-16-99; Ord. No. 04-468, § 3, 11-16-04)

Vancouver Municipal Code:

Section 20.740.080 Reasonable Use Exceptions

A. Exception Request and Review Process.

If the application of this chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section. Exceptions from the standards of this chapter may be authorized by the city in accordance with the procedures set forth in VMC 20.210.060, Type III Applications.

An application for a reasonable use exception shall be made to the city and shall include a Critical Areas Report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (RCW 43.21C). The planning official shall prepare a recommendation to the Hearings Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in VMC 20.740.080(B).

B. Reasonable Use Review Criteria. The city shall approve applications for reasonable use exceptions when all of the following criteria are met:

1. The application of this chapter would deny all reasonable economic use of the property;
2. No other reasonable economic use of the property has less impact on the critical area;
3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
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 chapter, or its predecessor;
5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;
6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible and contributes to the Critical Areas Restoration Fund for any impacts that cannot be mitigated.
7. The proposal is consistent with other applicable regulations and standards.

C. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

You might also find some samples on our "Critical Areas" Web page.

I hope this helps. Let me know if I can be of any more assistance.

Byron Katsuyama
Public Policy Consultant

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-----Original Message-----

From: rjenkinson@ci.kirkland.wa.us [<mailto:rjenkinson@ci.kirkland.wa.us>]
Sent: Wednesday, May 10, 2006 4:06 PM
To: Receptionist
Subject: Research Request

Name: Robin Jenkinson
City or County Employed by: City of Kirkland
Department: City Attorney's Office
Position: City Attorney
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123 Fifth Avenue
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Research Request:

Good afternoon, The City of Kirkland is looking to rewrite its reasonable use exception for its critical areas ordinances and I am looking for a few good examples. Using your site search, I located provisions from Bellevue, Burien, Cashmere, Spokane, Stanwood, Steilacoom, and Kitsap County. Have you assembled or are you aware of others? Do you have any from other states? Thanks. Robin

2. Development Factor – The amount of site area computing the maximum potential use of a site area buffer is derived from the

percentage of a "percent credit," to be used in determining the maximum potential use of a site which contains a sensitive area.

ATTACHMENT 3

Percentage of Site in			Counted at
< 1	to		100%
> 10	to		90%
> 20	to	30%	80%
> 30	to	40%	70%
> 40	to	50%	60%
> 50	to	60%	50%
> 60	to	70%	40%
> 70	to	80%	30%
> 80	to	90%	20%
> 90	to	100%	10%

90.140 Reasonable Use

This chapter is not intended, and shall not be construed or applied in a manner, to deny reasonable use of a lot, tract, or parcel. An owner of real property may apply for a reasonable use exception to this chapter, which shall be considered under Process IIB of Chapter 152 KZC. The application shall include the proposed use and activities for the property, and shall address the criteria described in this section. The decision maker shall determine whether application of this chapter will deny reasonable use of the property, and whether the proposed use and activities are a reasonable use of the property. In making these determinations, the decision maker shall consider the following three criteria:

1. There is no permitted type of land use for the property with less impact on the sensitive area and the buffer is feasible and reasonable; and
2. No on-site alternative to the proposal is feasible and reasonable, considering possible changes in site layout, reductions in density and similar factors; and
3. The proposal, as conditioned, will result in minimum feasible alteration of or impairment to the functional characteristics of the sensitive areas, and their existing contours, vegetation, fish and wildlife resources, and hydrological conditions; and will not cause significant degradation of groundwater or surface-water quality.

The applicant shall submit a report prepared by a qualified professional selected by the applicant, with the qualified professional's report reviewed by the City's wetland consultant at the applicant's cost and expense. The report shall describe how the proposal will or will not comply with the above three decisional criteria.

In determining whether application of this chapter will deny reasonable use of the property, the decision maker shall consider the following:

1. The inability to derive reasonable use is the result of the applicant's actions, such as segregating or dividing property and creating the undevelopable condition, or taking actions in violation of any local, state, or federal law or regulation; and
2. The land use and environmental regulations which prevent reasonable use of the property were in effect at the time of purchase of the property by the applicant.

ATTACHMENT 4

90.140 Reasonable Use.

1. Purpose of the Reasonable Use Exception. The purpose of the reasonable use exception is to:

a. Provide the City with a mechanism to approve limited use and disturbance of a sensitive area and sensitive area buffer when strict application of this chapter would deny all economically viable use of the property;

b. Establish guidelines and standards for the exercise of this authority adjusted to the specific conditions of each site; and

c. To protect public health, welfare and safety of the citizens of Kirkland.

2. "Reasonable Use" - is a legal concept that has been articulated by federal and state courts in regulatory takings cases. In a takings case, the decision-maker must balance the public benefit against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, and the economic loss borne by the owner. Public benefit factors include the seriousness of the harm to be prevented, the extent to which the land involved contributes to the harm, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions.

3. Reasonable Use Exception. If the application of this chapter would preclude all reasonable use of a site, an owner of real property may apply for a reasonable use exception to this chapter. The application shall be considered under Process IIB of Chapter 152 KZC, provided that for a single-family development proposal which does not exceed a total of 3,000 square feet of site impact, and does not encroach into the sensitive area, but only the associated buffer, the administrative alternative process in subsection 5 of this section may be used.

As part of the reasonable use request, in addition to submitting an application, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's qualified professional. The report shall include the following:

a. A determination and delineation of the sensitive area and sensitive area buffer containing all the information specified in KZC 90.40(3) for a wetland or based on the definitions contained in this chapter for a stream;

b. An analysis of whether any other reasonable use with less impact on the sensitive area and sensitive area buffer is possible;

c. Sensitive site design and construction staging of the proposal so that the development will have the least practicable impact on the sensitive area and sensitive area buffer;

- d. A description of the area of the site which is within the sensitive area or within the set-backs or buffers required by this chapter;
- e. A description of protective measures that will be undertaken such as siltation curtains, hay bales and other siltation prevention measures, and scheduling the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;
- f. An analysis of the impact that the amount of development proposed would have on the sensitive area and the sensitive area buffer;
- g. How the proposal minimizes to the greatest extent possible net loss of sensitive area functions;
- h. Whether the improvement is located away from the sensitive area and the sensitive area buffer to the greatest extent possible; and
- i. Such other information or studies as the Planning Official may reasonably require.

4. Decisional Criteria. The City shall grant applications for reasonable use exceptions only if all of the following criteria are met:

- a. That no permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible and reasonable;
- b. That there is no feasible on-site alternative to the proposed activities, including reduction in density or intensity, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the sensitive area and buffer;
- c. Unless the applicant can demonstrate unique circumstances related to the subject property, the development proposal results in no more than 10% of the site being disturbed by structure or other land alteration including but not limited to grading, utility installation, decks, paving, and landscaping; provided, however, that if the subject property is a lot of less than 30,000 square feet, a total area of up to 3,000 square feet may be disturbed;
- d. The proposal is compatible in design, scale and use with other development in the immediate vicinity of the subject property in the same zone and with similar site constraints;
- e. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques, including pervious

surfaces, which minimize to the greatest extent possible net loss of sensitive area functions and values;

f. The proposed development does not pose an unreasonable threat to the public health, safety, or welfare on or off the property; and

g. The inability to derive reasonable use is not the result of actions by the applicant after the effective date of this chapter or its predecessor.

The City may approve reduction in required yards to reduce the impact on the sensitive area and sensitive area buffer. The City may impose any other reasonable conditions on the granting of the reasonable use exception consistent with the minimum requirements of this chapter.

5. Reasonable Use Process: Administrative Alternative. If, in order to provide reasonable use of a site, the standards of this chapter need to be modified and the proposed improvement does not exceed a total of 3,000 square feet of site impact, including but not limited to structures, paved areas, landscaping, decks, utility installation, and grading, the Planning Director is authorized to approve a reasonable use exception subject to subsections 3.a. through 4.h. of this section and considered under Process I of Chapter 145 KZC. Administrative approval shall also be subject to the following limitations:

a. The required front yard may be reduced by up to 50% where the applicant demonstrates that the development cannot meet the City's code requirements without encroaching into the sensitive area buffer.

b. The encroachment of the proposed development shall only be into the sensitive area buffer, not the sensitive area.

The Planning Director shall include in the written decision any conditions and restrictions that he/she determines are necessary to eliminate or minimize any undesirable effects of approving the exception. The Planning Director may impose any other reasonable conditions on the approval of the exception consistent with the minimum requirements of this chapter.

6. Lapse of Approval. The reasonable use exception approval expires and is void if the applicant fails to file a complete building permit application within one year of the final decision granting or approving the exception, unless the applicant has received an extension for the exception from the decision-maker 30 days prior to expiration. "Final decision" means the final decision of the Planning Director or City Council.

a. The applicant may apply for a one-time extension, of up to one year. The application must be submitted by letter to the Planning Department and, along with any other supplemental documentation, must demonstrate that the applicant is making substantial progress toward developing the subject property consistent with the approval and that circumstances beyond his/her control prevent compliance with the time limit under this section.

b. The applicant shall include with the letter of request the fee as established by ordinance.

c. An application for a time extension will be reviewed by the Planning Director for an administrative alternative Process I approval and by the Hearing Examiner for a Process IIB approval.

d. Any person who is aggrieved by a time extension or denial of a time extension under this section may appeal that determination.

e. The applicant must file a letter of appeal within 14 days of the approval or denial of the time extension indicating how the determination affects his/her property and presenting any relevant arguments or information on the correctness of the determination. The applicant shall include the appeal fee as established by ordinance.

f. All appeals of decisions under this section will be reviewed and decided upon using Process IIA, described in Chapter 150 KZC.

Ord\KZC Reasonable Use-Final



CITY OF KIRKLAND

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MEMORANDUM

To: David Ramsay, City Manager
From: Eric Shields, Planning Director
Date: June 22, 2006
Subject: Regulations Implementing the North Rose Hill Plan

Earlier this year I prepared a memorandum discussing Zoning Code Consistency with the Comprehensive Plan (attached). The City Council reviewed the memorandum at a meeting in February at which time staff was directed to prepare an analysis of the consistency of development regulations with the North Rose Hill Neighborhood Plan. The completed analysis is attached.

The analysis is in the form of a multi-page table that lists the goals and policies of the Plan in the left column and indicates the corresponding regulations or other measures that are in place to implement the policies. Where there are inconsistencies or no known implementation measures, this is noted in bold text. The items so noted are shown below along with a recommendation for how to respond to each:

Policy NRH 11.1:

Allow multifamily development with a density of 12 units per acre in the area north of the Kirkland Boys and Girls Club to NE 113th Place, subject to the following standards:

- 1) To reduce the potential for a piecemeal development pattern, aggregation of at least two acres should be encouraged for multifamily development.
- 2) Improvement of an east/west right-of-way, such as NE 112th Place or an appropriate alternate may be required. This connection would provide improved general and emergency access to Slater Avenue NE.
- 3) Retention of significant vegetation to provide protection from I-405 should be required.
- 4) If adjacent to wetland areas or 124th Avenue NE, natural environment and transportation goals should be observed.

Implementation:

This area is shown on the neighborhood plan land use map (Figure NRH-4) as "*MEDIUM DENSITY RESIDENTIAL 12 UNITS/ ACRE.*" The zoning map is consistent with the plan map, showing the same area as RM 3.6 (1 unit/ 3600 sq. ft. of lot area = 12.1 units/ acre).

The Zoning Code does not contain any special regulations for the RM 3.6 zone that would specifically implement these development standards. The City could implement most of the standards through the SEPA review process (but not the 2 acre minimum lot size). However, all of the parcels in this area are already developed to their full potential.

Recommendation: The area addressed by this policy is now fully developed at its maximum zoning potential, so Policy NRH 11.1 is essentially a moot point. Consequently revisions to zoning regulations to implement the policy are not recommended.

Policy NRH 14.3:

Encourage Lake Washington Technical College to continue to provide community meeting facilities for the neighborhood and the City.

Implementation:

The word “*encourage*” implies that implementation is intended to occur through incentives or non-regulatory actions. **Zoning regulations do not have regulatory incentives for public meeting facilities.**

Recommendation: Revisions to regulations are not recommended. Implementation of this policy will depend upon the good will of the Technical College.

Policy NRH 19.1:

Designate the following subareas to address site-specific development standards.

NRH 1A

•The types of commercial uses allowed in this area should be compatible with the community and the region. Car and boat dealerships and big box retail uses are prohibited.

Implementation:

The NRH 1A zone allows any retail use except:

- “*Vehicle or boat sales or rental facilities*” **(the neighborhood plan refers to “car and boat dealerships.”)**
- “*Retail establishments providing storage services...*”
- “*Storage and operation of heavy equipment...*”
- “*Outdoor storage of bulk commodities, except...*”

NRH 1B

The types of commercial uses allowed in this area should be limited to both office uses and those retail uses that serve the people working and living in Kirkland. Traditional neighborhood business uses are retail sales of goods and services with limited gross floor area. Car and boat dealerships, hotels/motels, entertainment, and big box retail uses are prohibited.

The NRH 1B zone allows any retail use except:

- “*Entertainment and recreational facilities.*”
- “*Vehicle or boat sales or rental facilities.*” **(the neighborhood plan refers to “car and boat dealerships.”)**
- “*Retail establishments providing storage services...*”
- “*Storage and operation of heavy*

equipment...”

- “Outdoor storage of bulk commodities, except...”

Recommendation: In 2005, the City Council reviewed this issue and determined that the intended meaning of the plan and zoning is to allow indoor vehicle sales and prohibit outdoor vehicle storage and display. A zoning code interpretation was prepared to implement this intention. However, neither the North Rose Hill Plan nor the Zoning Code clearly reflect this intention and should be amended.

NRH 3

•A 15-foot-wide heavily landscaped buffer should be provided, and building mass should be oriented away from low density areas...

Implementation:

Office uses are required to meet “*landscape category B*,” which establishes a 15 foot wide buffer adjacent to residential uses. **Multi-family residential uses are required to meet “*landscape category D*,” which establishes a 5 ft. wide buffer adjacent to residential uses.**

Recommendation: Staff has concluded that the inconsistency between the plan and zoning was due to an error in the plan. A smaller buffer for multi-family uses should have been referenced in the plan, consistent with buffering requirements throughout the City. However, a project has been approved and is now under construction on the property addressed by this policy. Plans for the project include a 15 foot wide buffer consistent with the above policy. Consequently, a plan amendment is not recommended. If the Council concludes that greater buffers should be required between, single family and multi-family uses, they could direct consideration of a City-wide code amendment.

Policy NRH 23.2:

Design buildings and landscape adjoining development to minimize potential noise and visual impacts generated by traffic on 124th and 132nd Avenues NE.

Implementation:

The City does not have regulations for this purpose.

Recommendation: A code amendment is not recommended. Property owners may take the impacts into account when designing projects.

Policy NRH 31.2:

Maintain individual property owners’ existing septic systems in high working order.

Implementation:

There is no regulation or action of the City to implement this policy. Maintenance of septic systems is the responsibility of property owners.

Recommendation: A code amendment is not recommended. This is the responsibility of property owners.

Policy NRH 36.1:

Establish a street tree plan for the neighborhood. Trees bordering streets can unify the neighborhood's landscape.

Implementation:

City staff maintains a list of trees that are acceptable for planting as street trees City-wide. **There is not a plan for street trees that is specific to North Rose Hill.**

Recommendation: This item could be referred to the Natural Resources Management Team for prioritization in their work plan.

Attachments:

1. Regulations Implementing the North Rose Hill Neighborhood Plan
2. Memorandum from Eric Shields to David Ramsay RE: Zoning Code Consistency with the Comprehensive Plan

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>Goal NRH 1 – Preserve features and locations that reflect the neighborhood’s historic heritage</p> <p>Policy NRH 1.1: Provide markers and interpretive information at historic sites.</p>	<p>Implementation of this policy will require the direct action of the City, Heritage Society or others, rather than through regulation.</p>
<p>Goal NRH 2 – Protect and improve the water quality in Forbes Lake and in the Forbes Creek and Juanita Creek basins.</p> <p>Policy NRH 2.1: Undertake public management strategies and adopt development regulations to enhance stream buffers, promote fish passage, and improve the function of streams, lakes, wetlands and wildlife corridors.</p>	<p>There is no indication that this policy is intended to be implemented through regulations unique to North Rose Hill. Therefore, implementation will occur through City-wide drainage basin regulations and/ or City capital improvements.</p>
<p>Goal NRH 3 – Locate and design new development to preserve and enhance the health, safety, drainage, habitat, and aesthetic functions provided by sensitive areas.</p> <p>Policy NRH 3.1: Site structures away from wetland, lake, or stream areas, consistent with the natural environment policies and regulations.</p> <p>Policy NRH 3.2: Utilize flexible and innovative housing designs and styles adjoining sensitive areas where they would better protect these features.</p> <p>Policy NRH 3.3: Reduced maximum residential density may occur around Forbes Lake due to the presence of natural features.</p> <p>Policy NRH 3.4: Enhance stream buffers connecting identified natural wildlife areas around wetlands and Forbes Lake in order to provide corridors for wildlife movement between them.</p> <p>Policy NRH 3.5: Develop viewpoints and interpretive information around streams and wetlands if protection of the natural features can be reasonably ensured.</p>	<p>Implementation will occur through City-wide drainage basin regulations in the Zoning Code.</p> <p>Currently, implementation of this policy is through Planned Unit Developments initiated at the discretion of developers.</p> <p>The area around Forbes Lake is zoned PLA 17. Zoning regulations for PLA 17 require a minimum land aggregation of 2 acres to achieve the maximum density of 12 units/ acre. City-wide drainage basin regulations further reduce density in proportion to the percentage of wetland on the property.</p> <p>Implementation will occur through City-wide drainage basin regulations in the Zoning Code.</p> <p>Implementation of this policy will occur primarily through the direct action of the City or others, rather than through regulation. If appropriate, viewpoints could be approved as public benefits in PUDs.</p>

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>Goal NRH 4 – Protect and properly manage the urban forest throughout the North Rose Hill neighborhood.</p> <p>Policy NRH 4.1: Encourage retention of native vegetation and significant stands of native trees on hillsides, along stream banks, and in sensitive area buffers.</p> <p style="padding-left: 40px;">Narrative text following the policy recommends recording of green belt easements.</p> <p>Policy NRH 4.2: Preserve as many trees as possible during the development process.</p> <p>Policy NRH 4.3: Protect notable trees and groves of trees.</p> <p style="padding-left: 40px;">Narrative text associated with this policy states: <i>“Until the City develops regulations to protect notable trees and groves of trees Citywide, continue to promote retention of significant trees on private property.”</i> The plan does not define notable trees or map specific groves to be saved.</p>	<p>The word “<i>encourage</i>” implies that implementation is intended to occur through incentives or non-regulatory actions. Even so, implementation will occur through City-wide Zoning Code regulations regarding trees, drainage basins and geologically hazardous areas.</p> <p>Implementation will occur through City-wide tree regulations in the Zoning Code.</p> <p>New City-wide tree regulations recently have been adopted. The regulations do not define or regulate “notable trees,” but they do define “<i>specimen</i>” and “<i>landmark</i>” trees and “<i>tree groves</i>.” These types of trees are given priority to be saved if feasible.</p>
<p>Goal NRH 5 – Protect potentially hazardous areas, such as landslide, erosion, and seismic areas, through limitations on development and maintenance of existing vegetation.</p> <p>Policy NRH 5.1: Regulate development on slopes with high or moderate landslide or erosion hazards and on seismic hazard areas to avoid damage to life and property.</p>	<p>There is no indication that this policy is intended to be implemented through regulations unique to North Rose Hill. Implementation will occur through City-wide geologically hazardous areas regulations in the Zoning Code.</p>
<p>Goal NRH 6 – Protect wildlife throughout the neighborhood</p> <p>Policy NRH 6.1: Encourage creation of backyard sanctuaries for wildlife habitat in upland areas.</p> <p style="padding-left: 40px;">The narrative text discusses implementation by property owners with</p>	<p>Implementation of this policy will require the direct action of the City or others, rather than through regulation. This is listed as a desirable project in the Natural Resources Management Plan. The Natural Resources Management Team will include information about backyard sanctuaries in public educational</p>

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
assistance from the City, State or other agencies.	efforts.
<p>Goal NRH 7 – Identify priorities and funding sources for sensitive areas acquisition, restoration, or education.</p> <p>Policy NRH 7.1: Identify priority locations in the Forbes Creek drainage basin.</p>	<p>Implementation of this policy will require construction of storm water projects by the City using funds collected through the City’s Storm Water Utility and prioritized through the Capital Improvement Program. There are several storm water projects slated for North Rose Hill in the current CIP.</p>
<p>Goal NRH 8 – Promote and retain the residential character of the neighborhood.</p> <p>Policy NRH 8.1: Encourage a variety of housing styles and types to serve a diverse population.</p> <p style="padding-left: 40px;">Narrative text associated with this policy notes that the predominant housing style in the neighborhood is detached single-family. Further: “Cottage, compact single family, <i>attached and clustered dwellings are appropriate to serve a diverse population and changing household demographics as allowed by Citywide policies.</i>”</p> <p>Policy NRH 8.2: Locate new commercial development in the business districts at the north and south boundaries of the North Rose Hill neighborhood in order to prevent commercial encroachment.</p>	<p>The City is now in the process of evaluating whether to allow such alternative types of housing City-wide, and if so under what conditions.</p> <p>The Zoning Map was amended to create new zoning districts for the North Rose Hill Business District. The zone boundaries precisely match the boundaries shown on the neighborhood plan land use map (Figure NRH-4).</p>
<p>Goal NRH 9 – Allow innovative residential development styles when specific public benefits are demonstrated as allowed by Citywide policies.</p> <p>Policy NRH 9.1: Allow innovative development styles or techniques if increased protection of sensitive or hazardous areas, affordable or lower cost housing, or housing choice are demonstrated.</p>	<p>As noted above, consideration of City-wide regulations is now in process.</p>
<p>Goal NRH 10 – Maintain predominately detached single-family residential development at a density of six units per acre in low density areas and allow some density increase if specific public benefits are demonstrated as</p>	

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>allowed by Citywide policies.</p> <p>Policy NRH 10.1: Preserve low density areas south of NE 117th Street to approximately NE 86th Street, and between the freeway and 132nd Avenue NE.</p> <p style="padding-left: 40px;">Narrative text associated with this policy reiterates the potential for “<i>innovative housing styles.</i>”</p>	<p>This area is shown on the neighborhood plan land use map (Figure NRH-4) as “<i>LOW DENSITY RESIDENTIAL.</i>” The zoning map is consistent with the plan map. A small portion of the low density area is zoned RS-7.2. The remainder is zoned RSX 7.2.</p>
<p>Goal NRH 11 – Allow multifamily development at a density of 12 units per acre as a transition between low density areas and more intensive development.</p> <p>Policy NRH 11.1: Allow multifamily development with a density of 12 units per acre in the area north of the Kirkland Boys and Girls Club to NE 113th Place, subject to the following standards:</p> <ol style="list-style-type: none"> 1) To reduce the potential for a piecemeal development pattern, aggregation of at least two acres should be encouraged for multifamily development. 2) Improvement of an east/west right-of-way, such as NE 112th Place or an appropriate alternate may be required. This connection would provide improved general and emergency access to Slater Avenue NE. 3) Retention of significant vegetation to provide protection from I-405 should be required. 4) If adjacent to wetland areas or 124th Avenue NE, natural environment and transportation goals should be observed. <p>Policy NRH 11.2: Allow multifamily development with a density of 12 units per acre west of Slater Avenue NE, at approximately NE 97th Street.</p> <p style="padding-left: 40px;">Narrative text associated with this policy discusses protection of adjacent single family areas. Such protections will be implemented through basic zoning requirements such as height limitations, setbacks and landscape buffers.</p>	<p>This area is shown on the neighborhood plan land use map (Figure NRH-4) as “<i>MEDIUM DENSITY RESIDENTIAL 12 UNITS/ ACRE.</i>” The zoning map is consistent with the plan map, showing the same area as RM 3.6 (1 unit/ 3600 sq. ft. of lot area = 12.1 units/ acre).</p> <p>The Zoning Code does not contain any special regulations for the RM 3.6 zone that would specifically implement these development standards. The City could implement most of the standards through the SEPA review process (but not the 2 acre minimum lot size). However, all of the parcels in this area are already developed to their full potential.</p> <p>This area is shown on the neighborhood plan land use map (Figure NRH-4) as “<i>MEDIUM DENSITY RESIDENTIAL 12 UNITS/ ACRE.</i>” The zoning map is consistent with the plan map, showing the same area as RM 3.6 (1 unit/ 3600 sq. ft. of lot area = 12.1 units/ acre).</p>

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>Goal NRH 12 – Locate high density development with densities between 18 and 24 units per acre at the north end of the neighborhood, close to the Totem Lake neighborhood and the Lake Washington Technical College</p> <p>Policy NRH 12.1: Allow multifamily development at a density of 18 units per acre in the northeast corner of the neighborhood, subject to the following standards to ensure protection of landslide and erosion hazard slope areas and preservation of significant vegetation:</p> <ol style="list-style-type: none"> 1) Preparation of a slope stability analysis and compliance with recommendations to ensure stability. 2) Retention of maximum vegetative cover. 3) Clustering of structures to preserve significant groupings of trees. 4) Dedication of natural greenbelt easements in the sensitive slope areas. 5) Substantial setbacks and landscape buffers adjacent to single-family areas. <p>Policy NRH 12.2: Allow 24 units per acre in the area east of Slater Avenue NE and north of NE 116th Street, close to the activities and services of Totem Lake.</p>	<p>This area is shown on the neighborhood plan land use map (Figure NRH-4) as “<i>HIGH DENSITY RESIDENTIAL 18 UNITS/ ACRE.</i>” The zoning map is consistent with the plan map, showing the same area as RM 2.4. (1 unit/ 2400 sq. ft. of lot area = 18.15 units/ acre.)</p> <p>Standards 1), 2), 4) and 5) would be implemented through City-wide Zoning Code regulations regarding geologically hazardous areas, tree management, required yards and buffering. All of the parcels in this area are already developed to their full development.</p> <p>This area is shown on the neighborhood plan land use map (Figure NRH-4) as “<i>HIGH DENSITY RESIDENTIAL 24 UNITS/ ACRE.</i>” The zoning map is consistent with the plan map, showing the same area as RM 1.8. (1 unit/ 1800 sq. ft. of lot area = 24.2 units/ acre.)</p>
<p>Goal NRH 13 – Protect the natural features of Forbes Lake, Forbes Creek, and associated sensitive area wetlands and buffers.</p> <p>Policy NRH 13.1: Consider medium density residential development with a maximum density of 12 units per acre, subject to the following development standards:</p> <ol style="list-style-type: none"> 1) Development should be subject to a public review process. 2) A minimum of two acres should be aggregated for multifamily development to reduce the potential for a piecemeal development pattern. 3) West of Forbes Lake, development should provide for the continuation of a bicycle and pedestrian path that generally follows the alignment of Slater Avenue NE and connects to NE 90th Street. 4) New development adjacent to Forbes Lake should provide for 	<p>This area is shown on the neighborhood plan land use map (Figure NRH-4) as “<i>MEDIUM DENSITY RESIDENTIAL PLA 17 6-12 UNITS/ ACRE.</i>” The zoning map is consistent with the plan map, showing the same area as PLA 17.</p> <p>The Zoning Code regulations for PLA 17 implement the standards in the plan as follows:</p> <ul style="list-style-type: none"> • Development on a lot containing less than two acres is limited to one detached unit, with a minimum lot size of 7200 sq. ft. No special review process is required. • For attached or stacked dwelling units: <ul style="list-style-type: none"> ○ Minimum lot size is two acres.

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>public access to the lake in appropriate locations. Public access should be limited to passive uses, such as walking trails or viewpoints.</p> <p>5) Vehicular connection through this subarea to NE 90th Street is not permitted.</p> <p>6) Future development density potential may be reduced from what otherwise could be achieved around Forbes Lake based on the presence of environmental constraints in PLA 17 and the application of management techniques to protect these resources.</p> <p>7) If adjacent to wetland areas or 124th Avenue NE, Goals NRH 3 and 23 should be observed.</p>	<ul style="list-style-type: none"> ○ Maximum permitted density is 1 unit/ 3600 sq. ft. of lot area (= 12.1 units/ acre). ○ Development must be approved through Process IIA. ○ Public access to the lake is required. ○ A street connection to NE 90th St. is prohibited. <p>City-wide drainage basin regulations further reduce density based on the percentage of the site occupied by wetlands and/or buffers.</p> <p>Goal 3 will be implemented through City-wide drainage basin regulations, as noted above. Goal 23 will be implemented through during City approval of proposed development permits.</p>
<p>Goal NRH 14 – Recognize and enhance the role the college plays in the North Rose Hill neighborhood, the wider Kirkland community and in the region.</p> <p>Policy NRH 14.1: Encourage Lake Washington Technical College to provide nonmotorized connections between the surrounding residential areas and the campus. These links will provide access to the college at multiple locations.</p> <p>Policy NRH 14.2: Seek partnership opportunities between Lake Washington Technical College and the City on educational, technical, recreational, and social services.</p> <p>Policy NRH 14.3: Encourage Lake Washington Technical College to continue to provide community meeting facilities for the neighborhood and the City.</p>	<p>The word “<i>encourage</i>” implies that implementation is intended to occur through incentives or non-regulatory actions. However, the potential for nonmotorized connections was considered during the recent review of the College Master Plan (see discussion below).</p> <p>Implementation of this policy will require City actions other than regulation.</p> <p>The word “<i>encourage</i>” implies that implementation is intended to occur through incentives or non-regulatory actions. Zoning regulations do not have regulatory incentives for public meeting facilities. It is unclear how implementation will occur.</p>
<p>Goal NRH 15 – Ensure that any college expansion is compatible with the surrounding residential neighborhood.</p> <p>Policy NRH 15.1:</p>	<p>The College is shown on the neighborhood plan land use map as “LAKE WASHINGTON TECHNICAL COLLEGE PLA 14” The Zoning Map was revised consistent with the plan map, showing the same area as PLA (Planned Area) 14.</p>

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>Provide public review of major expansion of the college. Mitigation may be required for impacts of the proposed expansion and, where feasible, the existing use.</p> <p>Policy NRH 15.2: Consider an extension of NE 116th Street to 132nd Avenue NE, in order to improve access to the college.</p> <p>Policy NRH 15.3: Consider relocating the NE 120th Street driveway farther to the west, away from the bend in the road to the east. Allow no additional driveways to 132nd Avenue NE.</p> <p>Policy NRH 15.4: Encourage creation of affordable housing near the college.</p>	<p>Zoning regulations for PLA 14 do not establish specific development standards. However, the college is required to have a Master Plan approved through Process IIB. A Master Plan application was recently submitted and a public hearing was held before a Hearing Examiner. The Examiner has recommended approval with conditions. The applicant has asked that further processing of the application (City Council decision) be suspended to allow for their consideration of one of the Hearing Examiner’s conditions of approval.</p> <p>Consideration of a street connection did occur during the review of the Master Plan.</p> <p>Implementation of this policy could be considered during review of the College Master Plan.</p> <p>Incentives are provided by City-wide regulations within multi-family zones (MF zones abut the college to the north and west) and by regulations for the nearby Totem Lake business district.</p>
<p>Goal NRH 16 – Ensure that any future church expansion or redevelopment of the site is compatible with the surrounding residential community.</p> <p>Policy NRH 16.1: Provide public review of redevelopment or expansion of the church. Consider mitigation of impacts from the proposed expansion and, where feasible, the existing use.</p> <p>Policy NRH 16.2: Encourage housing at this site.</p>	<p>This is referring to City Church.</p> <p>City Church is located in the RSX 7.2 zone. The Zoning Code establishes that a church must be approved through Process IIA if less than 5 acres in size or Process IIB if five or more acres. Mitigation measures can be implemented through the approval process.</p> <p>Detached single family units are allowed in the RSX zone and could be incorporated into the church master plan. A Planned Unit Development for a housing project at the south end of the church property was approved several years ago.</p>
<p>Goal NRH 17 – Develop the North Rose Hill Business District to complement the Totem Lake neighborhood.</p> <p>Policy NRH 17.1: Improve NE 116th Street with coordinated streetscape improvements and</p>	<p>Implementation of this policy will require construction of improvements by the City, with funding prioritized though the</p>

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>gateway features.</p> <p>Policy NRH 17.2: Establish urban design standards for commercial and mixed-use residential development in the North Rose Hill Business District. Encourage building designs that provide architectural and human scale buildings, discourage parking in front of buildings, ensure pedestrian orientation, provide convenient bike and pedestrian connections to the neighborhood, and are complementary to the design standards for the Totem Lake neighborhood.</p>	<p>Capital Improvement Program. In addition, the Zoning Code requires that developers improve adjacent City rights of way consistent with adopted street standards. Gateway improvements could also be required if they do not add significant expense.</p> <p>Design guidelines and regulations have been adopted.</p>
<p>Goal NRH 18 – Encourage increased residential capacity in the North Rose Hill Business District to help meet housing needs.</p> <p>Policy NRH 18.1: Allow increased height when upper story residential use is provided.</p> <p>The narrative text associated with this policy discusses the desire to provide incentives to make upper story residential use more profitable than commercial use.</p> <p>Policy NRH 18.2: Implement regulatory and other incentives to encourage affordable housing in conjunction with Citywide efforts.</p>	<p>New zoning regulations for the NRH 1A and 1B zones allow residential uses up to 5 stories (the first story must be commercial use). Office and retail uses are limited to two stories.</p> <p>In 2004, amendments to the Zoning Code were adopted which provide incentives for affordable housing in many zones of the City, including the North Rose Hill Business District. Incentives include increased structure height and increased lot coverage.</p>
<p>Goal NRH 19 – Limit the types of commercial uses to those that are compatible with the residential focus of the North Rose Hill Business District.</p> <p>Policy NRH 19.1: Designate the following subareas to address site-specific development standards.</p> <p style="text-align: center;">NRH 1A</p>	<p>The specific location of the following subareas is shown on the neighborhood plan land use map (Figure HRH-4). The Zoning Map was revised to be consistent with the plan map.</p> <p>This area is shown on both the neighborhood plan land use</p>

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>•West of 124th Avenue NE is a mixed-use retail commercial/residential designation.</p> <p>•This area should have a regional commercial character that supports and promotes the residential development that is being encouraged to locate there. Uses should be compatible with residential development.</p> <p>•The types of commercial uses allowed in this area should be compatible with the community and the region. Car and boat dealerships and big box retail uses are prohibited.</p> <p>•Increased building heights should be allowed in order to provide sufficient incentive to develop a range of housing choices in conjunction with commercial development.</p> <p>•Buildings exceeding two stories must be developed with residential uses above the ground floor. A maximum of five stories is permitted.</p> <p>•Hotel uses are appropriate to a maximum of four stories. These facilities should be designed to be compatible with the residential character of the area.</p> <p>•With any development at the corner of NE 116th Street and 124th Avenue NE, neighborhood gateway features, such as open space, plaza, or signage should be integrated with a pedestrian connection linking Slater Avenue NE and NE 116th Street. In the alternative, a corner feature should be provided.</p> <p style="text-align: center;">NRH 1B</p> <p>•East of 124th Avenue NE is a mixed-use retail commercial/residential designation.</p> <p>•This area should have a neighborhood commercial character to support and promote the residential development that is being encouraged to locate there. Uses should be compatible with residential development.</p> <p>•The types of commercial uses allowed in this area should be limited to both office uses and those retail uses that serve the people working and living in Kirkland. Traditional neighborhood business uses are retail sales of goods and services with limited gross floor area. Car and boat dealerships, hotels/motels, entertainment, and big box retail uses are prohibited.</p> <p>•Increased building heights should be allowed in order to encourage new residential development or redevelopment in conjunction with commercial development. Buildings exceeding two stories must be developed with residential uses above the ground floor. A maximum of five stories is permitted.</p>	<p>map (Figure NRH-4) and the Zoning Map as “NRH 1A.” NRH 1A Zoning Code regulations that implement plan policies are:</p> <ul style="list-style-type: none"> • Commercial and residential uses are allowed. • Any retail use uses are allowed except: <ul style="list-style-type: none"> ○ “Vehicle or boat sales or rental facilities” (Note: neighborhood plan refers to “car and boat dealerships.”) ○ “Retail establishments providing storage services...” ○ “Storage and operation of heavy equipment...” ○ “Outdoor storage of bulk commodities, except...” • The maximum floor area of retail uses is 60,000 sq. ft. • Maximum permitted heights are: <ul style="list-style-type: none"> ○ Commercial uses: 2 stories. ○ Residential uses: 5 stories (with ground floor commercial). ○ Hotels: 4 stories. • Development is subject to design review for compliance with the Design Guidelines for Pedestrian Oriented Business Districts. (Design guidelines for the North Rose Hill Business District call for the construction of a gateway feature.) <p>This area shown on both the neighborhood plan land use map (Figure NRH-4) and the Zoning Map as “NRH 1B.” NRH 1B Zoning Code regulations that implement plan policies are:</p> <ul style="list-style-type: none"> • Commercial and residential uses are allowed • Any retail use uses are allowed except: <ul style="list-style-type: none"> ○ “Entertainment and recreational facilities.” ○ “Vehicle or boat sales or rental facilities.” (Note: neighborhood plan refers to “car and boat dealerships.”) ○ “Retail establishments providing storage services...” ○ “Storage and operation of heavy equipment...” ○ “Outdoor storage of bulk commodities, except...” • Hotels are not listed as a permitted use. • The maximum floor area of retail uses is 10,000 sq. ft. • Maximum permitted heights are: <ul style="list-style-type: none"> ○ Commercial uses: 2 stories.

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>•Establish 15-foot landscape buffers between commercial development and adjacent residential uses.</p> <p style="text-align: center;">NRH 2</p> <p>•This area borders I-405 and provides a transition between the freeway and established residential areas to the east, and between the mixed-use retail/residential uses to the north along 116th Street and established residential areas to the south.</p> <p>•Stand-alone or mixed-use office/residential uses should be developed.</p> <p>•Provide flexibility in density to encourage residential development and affordable housing.</p> <p>•The types of commercial uses allowed should be limited to those compatible with the residential focus of the area. Retail uses, restaurants, and taverns should be prohibited.</p> <p>•Establish building and site design standards that require pedestrian orientation, horizontal and vertical modulation, peaked roofs, parking lot placement in side and rear yards, and other elements to increase compatibility with surrounding residential uses. Building mass should be oriented away from low density areas.</p> <p>•Building heights should not exceed the maximum elevations of adjacent multifamily residential development to the east.</p> <p>•To encourage residential redevelopment some height increase is justified. Buildings exceeding two stories must be developed with residential uses above the ground floor.</p> <p style="text-align: center;">NRH 3</p> <p>•This area functions as a transition between the mixed-use retail/residential uses to the north along NE 116th Street and established residential areas to the south.</p> <p>•Stand-alone offices or residential uses or mixed-use office/multifamily uses are appropriate.</p> <p>•The types of commercial uses allowed should be compatible with the residential focus of the area. Retail uses, restaurants, and taverns are prohibited.</p>	<ul style="list-style-type: none"> ○ Residential uses: 5 stories (with ground floor commercial). <ul style="list-style-type: none"> • Commercial uses are required to meet “landscape category B,” which requires a 15 foot wide buffer adjacent to residential uses. • Development is subject to design review for compliance with the Design Guidelines for Pedestrian Oriented Business Districts. <p>This area is shown on both the neighborhood plan land use map (Figure NRH-4) and the Zoning Map as “<i>NRH 2.</i>” NRH 2 Zoning Code regulations that implement plan policies are:</p> <ul style="list-style-type: none"> • Office and residential uses are allowed. • There is no density limit for residential (controlled by building height, etc.). • Retail uses (including restaurants and taverns) are not permitted. • Development is subject to design review for compliance with the Design Guidelines for Pedestrian Oriented Business Districts. • The maximum height of residential uses is 30 ft above Slater Ave. The maximum height of other uses is 30 ft. above average building elevation (which is lower than Slater Ave.). <p>This area is shown on both the neighborhood plan land use map (Figure NRH-4) and the Zoning Map as “<i>NRH 3.</i>” NRH 3 Zoning Code regulations that implement plan policies are:</p> <ul style="list-style-type: none"> • There is no density limit for residential (controlled by building height, etc.) • Retail uses (including restaurants and taverns) are not permitted • The maximum height of all uses is 30 ft. above average

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<ul style="list-style-type: none"> •Provide flexibility in density to encourage residential development and affordable housing. •Building height should not exceed three stories to provide a transition to the established multifamily and single-family homes to the east and south. •Impacts from development should be mitigated adjoining established single-family areas located to the east and south. •A 15-foot-wide heavily landscaped buffer should be provided, and building mass should be oriented away from low density areas. Design standards should require pedestrian orientation, horizontal modulation, and blank wall treatments, to increase compatibility with surrounding residential uses. Peaked roofs are encouraged. Property abutting the publicly owned open space to the east should provide pedestrian connection to 124th Avenue NE. <p style="text-align: center;">NRH 4</p> <ul style="list-style-type: none"> •Allow general commercial uses north of NE 116th and east of Slater Avenue NE. •The existing North Park Business Center includes some wholesale/manufacturing uses as a carryover from when the area was designated for industrial development. Continue to allow new wholesale/manufacturing uses in the existing structures if they maintain or enhance compatibility with nearby residential development. Relocate nonconforming businesses to sites that do not adjoin residential development and are specifically designated for industrial uses and development, if and when redevelopment occurs. •Limit building height to a maximum of three stories to reflect the scale of multifamily residential development surrounding much of NRH 4. •Some height increase is justified to encourage residential redevelopment and affordable housing. Buildings exceeding two stories must be developed with residential uses on one floor. •Bring parking lot landscaping and design into conformance as redevelopment occurs. •Establish building and site design standards for redevelopment to require pedestrian orientation, horizontal modulation, blank wall treatments, parking lot landscaping, lighting and noise limits, and 15-foot landscape buffers between commercial development and adjacent residential uses. 	<ul style="list-style-type: none"> building elevation. The height is restricted to 25 ft. within 100 ft. of a low density zone • Office uses are required to meet “<i>landscape category B,</i>” which establishes a 15 foot wide buffer adjacent to residential uses. Multi-family residential uses are required to meet “<i>landscape category D,</i>” which establishes a 5 ft. wide buffer adjacent to residential uses • Development is subject to design review for compliance with the Design Guidelines for Pedestrian Oriented Business Districts. • The desired connection to the public open space may be required through the design review process. The design review procedures in the Zoning Code establish the authority of the Design Review Board to review projects for consistency with: “<i>The applicable neighborhood plans contained in the Comprehensive Plan for areas where Design Review is required.</i>” <p>This is area shown on both the neighborhood plan land use map (Figure NRH-4) and the Zoning Map as “<i>NRH 4.</i>” NRH 4 Zoning Code regulations that implement plan policies are:</p> <ul style="list-style-type: none"> • Retail, office, residential and limited light industrial uses are allowed • Industrial uses are only allowed within the existing structure on the property (built originally under light industrial zoning) • For all uses other than residential, the maximum building height is 30 ft. For residential use, the maximum is 35 ft. • Commercial uses are required to meet “<i>Landscape Category A</i>” or “<i>Landscape Category B,</i>” which establish a 15 foot wide buffer adjacent to residential uses. • Development is subject to design review for compliance with the Design Guidelines for Pedestrian Oriented Business Districts <p>Nonconforming parking lot landscaping is governed by City-wide regulations. Landscaping must be brought into conformance when:</p> <ul style="list-style-type: none"> • Floor area is increased, or

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GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p style="text-align: center;">NRH 5</p> <ul style="list-style-type: none"> • Allow office and residential uses with a density of 24 units per acre at the following two locations where existing office uses are currently located: <ul style="list-style-type: none"> – At the southeast corner of 120th Street and Slater Avenue NE. – At the property surrounded by the Ridgewood Village multifamily development abutting Slater Avenue NE. • The types of commercial uses allowed should be compatible with the residential focus of the area. Retail uses, restaurants, and taverns are prohibited. <p style="text-align: center;">NRH 6</p> <ul style="list-style-type: none"> • Allow either stand-alone residential use with a density of 24 units per acre or office use on the ground floor and residential uses above on the lot abutting Slater Avenue NE between the Totem Firs and Slater Park multifamily developments. • The types of commercial uses allowed should be compatible with the residential focus of the area. Retail uses, restaurants, and taverns are prohibited. 	<ul style="list-style-type: none"> • The use is changed and the new use requires more parking, or • An alteration is made to the structure and the cost of work exceeds 50% of the replacement cost of the structure. <p>This area is shown on both the neighborhood plan land use map (Figure NRH-4) and the Zoning Map as “NRH 5.” NRH 5 Zoning Code regulations that implement plan policies are:</p> <ul style="list-style-type: none"> • Office use is allowed. • Residential use is allowed with a maximum permitted density is 1 unit/ 1800 sq. ft. of lot area (= 24.2 units/ acre). • No retail uses (including restaurant and taverns) are allowed. <p>This area is shown on both the neighborhood plan land use map (Figure NRH-4) and the Zoning Map as “NRH 6.” NRH 6 Zoning Code regulations that implement plan policies are:</p> <ul style="list-style-type: none"> • Residential use is allowed with a maximum permitted density is 1 unit/ 1800 sq. ft. of lot area (= 24.2 units/ acre). • Office use is allowed only on the ground floor. • No retail uses (including restaurant & taverns) are allowed.
<p>Goal NRH 20 – Support the goals and policies found in the NE 85th Street Subarea chapter of the Comprehensive Plan for land development.</p>	<p>This goal acknowledges that a portion of the NE 85th St. Corridor is within the North Rose Hill Neighborhood.</p>
<p>Goal NRH 21 – Maintain and enhance the arterial street network.</p> <p>Policy NRH 21.1: Enhance the arterial street network with the following improvements: The Plan lists specific standards for the following streets:</p> <ul style="list-style-type: none"> • 124th Avenue NE • 132nd Avenue NE • NE 116th Street • Slater Avenue NE 	<p>Implementation of this policy will require construction of improvements by the City, with funding prioritized through the Capital Improvement Program. In addition, the Zoning Code requires that developers improve adjacent City rights of way consistent with adopted street standards.</p>
<p>Goal NRH 22 – Manage traffic impacts within the neighborhood to enhance neighborhood mobility and provide for more equitable distribution of traffic on neighborhood streets.</p>	

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GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>Policy NRH 22.1: Prepare a traffic calming analysis and program for the existing and proposed street network.</p> <p>Policy NRH 22.2: Consider alternative design to conventional “grid patterned” streets to address topographic and sensitive area constraints, aesthetics, and safety of children and pedestrians/bicyclists, while at the same time considering emergency vehicular access.</p> <p>Policy NRH 22.3: Map where anticipated street connection locations could be considered with future infill development in order to provide predictability in the development process and for the neighborhood.</p> <p style="padding-left: 40px;">Narrative associated with this policy refers to Figure NRH6 and Table NRH-1 which map and list potential street connections. The narrative states that the feasibility of the connections and their exact locations are to be determined at the time of development.</p>	<p>The Public Works Department initiated a neighborhood-wide analysis. Data was collected and presented to the neighborhood. The neighborhood decided not to pursue additional traffic calming measures. Further implementation of this policy will occur through the normal procedures of the City's Neighborhood Traffic Program.</p> <p>Implementation of this policy will occur during City approval of proposed subdivisions and Planned Unit Developments.</p> <p>Implementation of the connections will occur during the review of proposed subdivisions and Planned Unit Developments.</p>
<p>Goal NRH 23 – Control development adjoining 124th and 132nd Avenues NE to enhance safety and efficiency of circulation.</p> <p>Policy NRH 23.1: Discourage direct access.</p> <p style="padding-left: 40px;">The narrative text associated with this policy states: <i>“If driveways to 124th and 132nd Avenues NE must be provided, separation of at least 300 feet should be required.”</i></p> <p>Policy NRH 23.2: Design buildings and landscape adjoining development to minimize potential noise and visual impacts generated by traffic on 124th and 132nd Avenues NE.</p>	<p>Implementation of this policy will occur during City approval of proposed development permits.</p> <p>It is unclear how implementation of this policy will occur. The City does not have regulations for this purpose.</p>
<p>Goal NRH 24 – Avoid development of unimproved rights-of-way impacted</p>	

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GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>by sensitive areas.</p> <p>Policy NRH 24.1: Do not improve the following specific right-of-way segments:</p> <ul style="list-style-type: none"> • 126th Avenue NE, south of NE 100th Street. • 120th Avenue NE, from NE 92nd Street to NE 90th Street. • NE 92nd Street, west of 122nd Avenue NE. 	<p>The segment of 126th Avenue NE mentioned is within Woodlands Park and will remain unopened as part of the park. Maintenance of the other unopened rights of way will occur through the development review process. Drainage basin regulations in the Zoning Code restrict the building of new roads within a wetland, stream or buffer.</p>
<p>Narrative text prior to goal 25 states: "...bicycle lanes should be located on 132nd Avenue NE, 124th Avenue NE and Slater Avenue NE."</p> <p>Goal NRH 25 – Maintain and enhance the street network for all modes of transportation.</p> <p>Policy NRH 25.1: Encourage mobility and the use of nonmotorized transportation by providing appropriate facilities for pedestrians and bicyclists throughout the North Rose Hill neighborhood and between neighborhoods.</p> <p>Policy NRH 25.2: Develop the following new nonmotorized connections to provide convenient and safe pedestrian mobility between the business districts and residential areas in the neighborhood: (Connections are listed.)</p>	<p>Implementation of this goal and these policies will require construction of improvements by the City, with funding prioritized through the Capital Improvement Program. In addition, the Zoning Code requires that developers improve adjacent City rights of way consistent with adopted street standards.</p>
<p>Goal NRH 26 – Prioritize acquisition of a new neighborhood park where park level of service is deficient.</p> <p>Policy NRH 26.1: Acquire suitable land in the northwest portion of the neighborhood for neighborhood park development.</p> <p>Policy NRH 26.2: Consider other locations for park and open space acquisition as opportunities arise.</p>	<p>Implementation of this goal and these policies will require land acquisition and improvement by the City, with funding prioritized through the Capital Improvement Program.</p>
<p>Goal NRH 27 – Seek opportunities to develop community meeting places.</p>	

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GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>Policy NRH 27.1: Provide a community gathering place at Woodlands Park in conjunction with the development of the Williamson property.</p> <p style="padding-left: 40px;">Narrative text associated with this policy mentions a picnic shelter as an example.</p>	<p>Implementation of this policy will require construction of improvements by the City, with funding prioritized through the Capital Improvement Program. In addition, the neighborhood has been fund raising and organizing to build a new playground.</p>
<p>Goal NRH 28 – Seek opportunities to develop off-street trails for recreational use that connect activity nodes and neighborhoods.</p> <p>Policy NRH 28.1: Explore the potential for a trail connecting the North Rose Hill neighborhood to the South Rose Hill and Totem Lake neighborhoods within the Seattle City Light Power Line Easement.</p>	<p>Implementation of this policy will require construction of improvements by the City, with funding prioritized through the Capital Improvement Program. In addition, through the development review process, City staff has required and will continue to require developers to improve streets and sidewalks and trails within the City Light easement.</p>
<p>Goal NRH 29 – Create a stormwater collection and transmission system that decreases peak flows, reduces flooding, and that protects and improves water quality.</p> <p>Policy NRH 29.1: Protect and improve water quality through the use of the best available source control and treatment practices.</p> <p>Policy NRH 29.2: Mitigate stormwater impacts of past and future development through reduction of the height and duration of peak flows.</p>	<p>Implementation of these policies occurs through the development review process as well as through City constructed improvements. The City has adopted the King County Surface Water Manual and requires new development to make the improvements required by the manual. The City also constructs major storm water improvements using funds collected through the City’s Storm Water Utility and prioritized through the Capital Improvement Program.</p>
<p>Goal NRH 30 – Enhance and protect the Forbes Creek and Juanita Creek Basins in the North Rose Hill neighborhood.</p> <p>Policy NRH 30.1: Investigate water quality and Forbes Lake flooding/levels and develop projects and programs to address identified problems.</p> <p>Policy NRH 30.2: Give funding priority to projects and programs that address identified water quality and lake flooding/level problems.</p>	<p>Implementation of these policies occurs through storm water improvements constructed by the City using funds collected by the City’s Surface Water Utility and prioritized through the Capital Improvement Program.</p>
<p>Goal NRH 31 – Provide sanitary sewers to those areas currently on septic</p>	

Regulations Implementing the North Rose Hill Neighborhood Plan

GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>systems pursuant to the Sanitary Sewer Comprehensive Plan.</p> <p>Policy NRH 31.1: Install new sanitary sewer systems concurrent with new development.</p> <p>Policy NRH 31.2: Maintain individual property owners' existing septic systems in high working order.</p> <p>Policy NRH 31.3: Eliminate failing septic systems.</p>	<p>Implementation of this policy occurs during City approval of proposed development permits. New structures are required to connect to a public sewer if a sewer line is located within 330 feet of the property. Otherwise, a septic system may be used if approved by the King County Health Dept.</p> <p>There is no regulation or action of the City to implement this policy. Maintenance of septic systems is the responsibility of property owners.</p> <p>The City encourages property owners to eliminate septic systems and connect to the public sewer through the Emergency Sewer Program. Through this program, the City will pay for a sewer extension if property owners agree to pay the City back over a period of time.</p>
<p>Goal NRH 32 – Provide water service to new development in accordance with the Water Comprehensive Plan.</p> <p>Policy NRH 32.1: Provide potable water to meet water quality and fire flow standards.</p> <p>Policy NRH 32.2: Encourage the efficient use of and conservation of potable water by the adoption of appropriate development standards.</p>	<p>Implementation of this policy occurs during City approval of proposed development permits.</p> <p>New construction is required to meet the International Building Code, which includes requirements for low flow toilets.</p>
<p>Goal NRH 33 – Ensure that public improvements and private development contribute to neighborhood quality and identity in the North Rose Hill Business District.</p> <p>Policy NRH 33.1: Establish building and site design standards that apply to all new, expanded, or remodeled commercial, multifamily, or mixed-use buildings.</p> <p>Policy NRH 33.2: Utilize the design review process to administer building and site design standards applicable to commercial, multifamily, and mixed-use development. Design review will ensure compliance with these standards.</p>	<p>Policies 33.1 and 33.2 are implemented through new zoning regulations that were adopted for the North Rose Hill Business District. The new regulations require that most new development be approved through a design review process. Through this process, development is reviewed for compliance with design regulations and Design Guidelines for Pedestrian Oriented Business Districts.</p>

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GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>Policy NRH 33.3: Minimize the appearance of parking areas through location and shared facilities. Parking in front of buildings is discouraged. Combined lots that serve more than one business or use are encouraged.</p> <p>Policy NRH 33.4: Include high quality materials, the use of public art, bicycle and pedestrian amenities, directional signs on all arterials, and other measures for public buildings, and public infrastructure, such as streets, and parks.</p>	<p>This policy will be implemented through City-wide parking regulations in the Zoning Code that encourage shared parking and by design regulations and guidelines that limit parking in front of buildings.</p> <p>Implementation of this policy will occur as follows:</p> <ul style="list-style-type: none"> • Building materials are addressed by design regulations in the Zoning Code and the Design Guidelines for Pedestrian Oriented Business Districts. • Bicycle and pedestrian amenities are addressed in Chapter 105 of the Zoning Code. • Street improvement requirements are established by Chapter 110 of the Zoning Code. • Park improvements will require construction of by the City, with funding prioritized through the Capital Improvement Program.
<p>Goal NRH 34 – Provide transitions between the commercial and residential uses in the neighborhood.</p> <p>Policy NRH 34.1: Establish site and building development requirements such as landscape buffers and height regulations that address transition areas and protect nearby residential neighborhoods.</p>	<p>Implementation of this policy is through City-wide Zoning Code regulations. For all non-residential zones, zoning regulations assign each permitted use a “Landscape Category.” Chapter 105 of the Zoning Code establishes a buffering requirement based on the Landscape Category and the abutting use.</p>
<p>Goal NRH 35 – Promote high quality design by establishing building and site design standards that apply to all new innovative residential designs and styles like attached, clustered, compact single-family, or cottage housing in low density zones.</p> <p>Policy NRH 35.1: Establish design standards that address: building placement on the site, clustering, open space preservation, building scale in proportion with the lot and with the surrounding neighborhood, preservation of existing vegetation, and integration with detached single-family homes.</p>	<p>The City is now in the process of evaluating whether to allow such alternative types of housing City-wide, and if so under what conditions and design standards.</p>
<p>Goal NRH 36 – Provide streetscape improvements throughout the neighborhood that contribute to a sense of neighborhood identity and</p>	

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GOALS AND POLICIES	IMPLEMENTING REGULATIONS
<p>enhanced visual quality.</p> <p>Policy NRH 36.1: Establish a street tree plan for the neighborhood. Trees bordering streets can unify the neighborhood’s landscape.</p> <p>Policy NRH 36.2: Develop center landscape medians and/or other enhancements along 132nd and 124th Avenues NE with extensive greenery to visually soften and enhance these arterials.</p> <p>Policy NRH 36.3: Incorporate design features into pedestrian routes.</p>	<p>City staff maintains a list of trees that are acceptable for planting as street trees City-wide. There is not a plan for street trees that is specific to North Rose Hill.</p> <p>Implementation of these policies will require construction of street improvements by the City with funding prioritized through the Capital Improvement Program. In addition, the Zoning Code requires that developers improve adjacent City rights of way consistent with adopted street standards. The street standards include street trees planted adjacent to sidewalks.</p>
<p>Goal NRH 37– Develop gateway features that strengthen the character and identity of the neighborhood.</p> <p>Policy NRH 37.1: Use public and private efforts to establish gateway features at the locations identified in Figure NRH-10.</p>	<p>Implementation of this policy will require construction of street improvements by the City, with funding prioritized through the City Capital Improvement Program. Implementation also may occur through the development review process if the required gateway improvements are within the general scope of normal right of way improvements.</p>
<p>Goal NRH 38 – Preserve territorial views.</p> <p>Policy NRH 38.1: Preserve the territorial view of the Totem Lake commercial area from NE 120th Street.</p>	<p>This policy will be implemented by City actions to keep the right of way unobstructed.</p>



MEMORANDUM

Date: January 23, 2006

To: David Ramsay

From: Eric Shields

Subject: Zoning Code Consistency with the Comprehensive Plan

On two recent occasions, issues arose in which there were inconsistencies between zoning regulations and the Comprehensive Plan. These incidents prompted Council members to question the overall extent and implications of inconsistencies. This memorandum discusses:

- The legal authority of the Comprehensive Plan and Zoning Code;
- Recent cases where inconsistencies were discovered; and
- How to avoid further inconsistencies and correct existing inconsistencies.

In preparing this memorandum I have consulted with Robin Jenkinson, City Attorney.

Legal Authority of the Comprehensive Plan and Zoning Code

The Comprehensive Plan is a document that sets forth the City's long range (20 year) plan for managing growth. It is a policy document that serves as a guide to other City actions, such as adopting development regulations and capital improvement decisions. Growth hearings board and court decisions have ruled that a Comprehensive Plan may not be used to directly regulate development unless a provision of a plan is specifically incorporated by reference into a zoning regulation. In such cases, where there is a conflict between the Zoning Code and Comprehensive Plan, the Zoning Code will prevail.

The Zoning Code establishes regulations that apply to the use and development of private property. Under the Growth Management Act, zoning regulations must be consistent with the Comprehensive Plan.

When Is the Comprehensive Plan Used in Kirkland's Development Review Process

For developments that merely require administrative approval, such as building permits, the Planning Department evaluates applications only for compliance with the Zoning Code and other applicable development regulations, not the Comprehensive Plan. However, for three types of development applications, Kirkland zoning regulations specifically require some level of review for consistency with the Comprehensive Plan. The three types of applications are discussed below:

Properties Governed by Zoning Map Suffixes The Kirkland Zoning Map shows a notation (called a suffix) on approximately twelve properties. Most of the properties containing a suffix have already been developed, so there are few remaining that will be affected by this method of regulation in the future.

There are four different suffixes, each of which is explained in the legend of the map. The explanation for each suffix includes the following statement:

Development proposal must be consistent with the appropriate neighborhood plan policies, specifically applicable to this property, contained in the Comprehensive Plan.

The explanation for one of the suffixes goes on to state that the development must be processed through Process IIA. Another suffix requires approval through Process IIB. Yet another suffix, which applies to only one property, provides a restriction on the location of a certain type of land use. An example of a property governed by a suffix is the property rezoned to allow expansion of the Honda automobile dealership on NE 85th St. for which the NE 85th St. Subarea Plan establishes an extensive list of development standards.

In light of the court and hearing board cases referenced above, enforcement of the applicable neighborhood policies through the Zoning Map suffixes could be challenged. The policies are typically more restrictive than the zoning regulations that would otherwise apply. Such a conflict could be interpreted in favor of the zoning regulations. On the other hand, the City might argue that using the policies as regulations is acceptable since the policies are applied to specifically identified properties on the Zoning Map. We would certainly be on firmer ground, however, if the policies were more explicitly incorporated into the Zoning Code.

Quasi-judicial Land Use Decisions The Zoning Code requires some uses or development proposals to be approved using one of several types of quasi judicial processes (e.g. processes I, IIA and IIB). For each of these processes, the Code includes a criterion that allows for some consideration of the Comprehensive Plan. Specifically, the decision maker may approve such an application only upon finding that the application:

...is consistent with all applicable development regulations and, to the extent that there is no applicable development regulation, the Comprehensive Plan.

Design Review Similarly, for applications that require approval by the Design Review Board, the Zoning Code directs the DRB to review applications for consistency with design guidelines, design regulations and:

The downtown plan, Juanita Business District Plan, the Totem Lake Neighborhood Plan and goals and policies in the North Rose Hill Neighborhood Plan for the North Rose Hill Business District contained in the Comprehensive Plan.

In light of the Growth Hearings Board and court decisions mentioned above, using the Comprehensive Plan in the review of the above types of applications is somewhat problematic. While decisions indicate that zoning regulations may incorporate the Comprehensive Plan by reference, there is still the potential for conflict between the Zoning Code and the Comprehensive Plan. This is particularly problematic when the reference to the Comprehensive Plan is very general and implies that the project will be reviewed against City-wide policies rather than just area-specific or property-specific policies. In addition, by referencing the Comprehensive Plan, the zoning regulations mislead the public into thinking of the Comprehensive Plan as a regulatory document,

Recent Cases Where There Were Inconsistencies

1. **Motorcycle Sales** In response to an inquiry about locating a motorcycle sales business in the NRH 1 zone, a difference in wording between language in the Zoning Code and Comprehensive Plan was discovered. The North Rose Hill chapter of the Comprehensive Plan states: “Car and boat dealerships...are prohibited” in the NRH 1A subarea. In contrast, within the Zoning Code, a special regulation for the NRH 1A zone prohibits: “vehicle or boat sales or rental facilities.” Clearly, there is a difference in wording that could have and, in retrospect, should have been resolved during the drafting of the plan and zoning. At the time, there was little or no thought to the consequences of the difference.

(As an aside, I should add that there was also no thought given to the possibility of an indoor vehicle or car sales business, so neither the plan nor zoning addressed such a circumstance. This points to the fact that plans and zoning regulations rarely anticipate all situations and so there is constantly the need for interpretation and subsequent amendments.)

2. **Almond Condos** Inconsistencies were also an issue during the Design Review Board (DRB) review of the Almond Condominiums also located in North Rose Hill. Two inconsistencies were discussed.

Buffers The first was a difference in the width of a buffer along the boundary of the proposed condominiums with adjacent single family uses. The North Rose Hill Neighborhood Plan states that the buffer should be 10 ft. in width. The Zoning Code establishes different buffer requirements for offices (10 ft. in width) and multi-family uses (5 ft. in width). The zoning regulations are consistent with the way buffering is required in similar situations elsewhere in the City. Staff has concluded that the language in the Comprehensive Plan was carried over from the previous neighborhood plan. In that plan, only offices were allowed on the Almond property. When multi-family was allowed as a permitted use with the new plan, a change to the Comprehensive Plan buffering language should have been made (or else the zoning regulations should have been changed). As it turned out, the applicant designed the site to provide a 10 ft. wide buffer.

Tree Grove Protection The other issue that was characterized as an inconsistency during the Almond project review had to do with protection of a grove of trees. The North Rose Hill Neighborhood Plan includes a general policy that states: “*Protect notable trees and groves of trees.*” However, the plan does not define or identify specific notable trees or groves of trees. The Almond property contained a number of trees in the SW portion of the site which the DRB concluded constituted a grove worthy of saving. During the review of the project, the Board, asked the applicant to explore site plan alternatives that saved as many of the trees as possible, but the applicants indicated that other development constraints on the property (most notably the Seattle City Light transmission line easement on the east side of the property) prevented them from doing so. The applicants noted that the Zoning Code includes the following language:

The City may require minor alterations in the arrangement of buildings and other elements of the proposed development in order to achieve the maximum retention of significant trees. The City may not require an alteration which will result in a significant added expenditure to the applicant or in a decrease in the number of units or bulk of structures permitted.

As a result, the DRB reluctantly approved the application without saving the number of trees they desired. As an aside, the DRB was also generally unimpressed with the overall design of the development and concluded that existing design regulations and guidelines do not provide sufficient tools to address this kind of situation.

I believe that this is not primarily a case of an inconsistency between the Comprehensive Plan and zoning regulations. It does, however, raise other issues:

- **How should a general policy within a neighborhood plan be interpreted and applied to site specific development applications?** Was it the intent of the North Rose Hill Neighborhood Plan that tree protection policies be implemented through neighborhood specific regulations? I don't believe so. During the North Rose Hill planning process, the staff and Planning Commission were aware that city-wide tree regulations would soon be updated and concluded that it would be appropriate for those regulations to govern tree preservation in North Rose Hill. Unfortunately, the Almond application preceded completion of the new regulations.
- **How extensively should the DRB review projects for consistency with the Comprehensive Plan?** As noted above, the Zoning Code gives the DRB authority to review an application for consistency with "...goals and policies in the North Rose Hill Neighborhood Plan for the North Rose Hill Business District contained in the Comprehensive Plan." (emphasis added) In addressing tree preservation, the DRB referred to a general neighborhood-wide policy about protecting groves of trees.
- **To what degree should the DRB have authority to require major changes in site plans for the purpose of saving trees?** Are additional design guidelines needed?

How to Avoid and Correct Inconsistencies

Following are ideas for what we can do to avoid inconsistencies in the future as well as to identify and correct possible inconsistencies that may already exist:

- The City would be on firmer legal ground in enforcing neighborhood plan policies through a Zoning Map suffix if we either incorporated the policies as regulations in the appropriate Zoning Code Use Zone Charts, or at least revised the Use Zone Charts to specifically reference the policies.
- In preparing neighborhood plans and code amendments, we need to do a better job of proofreading. Part of the process should be to carefully compare the text of the plan and zoning and make sure they agree. In recent years, this aspect of the process may have suffered somewhat due to the overall large number of projects within the Planning Department. This may have been compounded by the fact that many projects are targeted for adoption at the end of the year, creating a workload crunch. In the future it may be better to do somewhat fewer projects at the same time and/or stagger completion dates.

Also, to help sort out potential problems with regulatory language, it would be desirable for planners who are involved in the day to day review of development activities to review and suggest changes to draft code amendments. Involving the City Attorney's Office early in the code development process, such as was done in drafting the new tree regulations, is also helpful.

In preparing zoning regulations and design guidelines for the Rose Hill and Totem Lake Business Districts, we have made a concerted effort to ensure that regulations are consistent with the adopted neighborhood plans.

- Preparing zoning regulations simultaneously with a neighborhood plan is helpful. Wording nuances may arise during the drafting of zoning regulations that may not have been easily foreseen during the drafting of policies. To ensure consistency, it is helpful to have the option of changing the wording of a policy rather than the regulation.
- In drafting neighborhood policies, it may be advisable to avoid using language that sounds regulatory. Because the plan is fundamentally a guide, policies should typically be broader and less specific than

regulations.

- Despite our best efforts, some inconsistencies or ambiguities are likely to occur on occasion. The Planning Department keeps a long list of potential code amendments. However, our ability to process code amendments is limited due to other higher work program priorities. In the future, I would suggest giving higher priority to such code amendments to allow us to catch up. Similarly, it is important to consider corrections to the Comprehensive Plan, including neighborhood plans, as part of our annual amendment process.

If there is a high level of concern about inconsistencies, the City Council could direct that the Planning Department and Planning Commission focus on identifying and correcting inconsistencies as a major work program project. This would involve reviewing neighborhood plans and zoning regulations to ensure there is agreement. Where there is not, changes to the plans or neighborhood specific zoning revisions would be proposed. With such a project, there would be no need to review the neighborhoods that are now under consideration as separate projects: Totem Lake, NE 85th St. Corridor, Highlands, Norkirk or Market. We may also be able to exclude the Houghton and Lakeview Neighborhoods, since those are next up for review. Another approach would be to focus only on the North Rose Hill neighborhood plan since that is a recently updated plan where inconsistencies may be of particular concern.

Cc: City Council
Planning Commission
Design Review Board
Planning Staff
Robin Jenkinson
Kari Page

Es: Zoning Code Consistency with the Comprehensive Plan



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
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MEMORANDUM

To: David Ramsay, City Manager

From: Erin J. Leonhart, Public Works Facilities & Administrative Manager
Daryl Grigsby, Public Works Director

Date: June 22, 2006

Subject: KING COUNTY WASTEWATER CONTRACT – 2006 UPDATE 1

Kirkland's Sewer History

Starting in the early 1940's, Kirkland's sewage was primarily discharged into Lake Washington. The Municipality of Metropolitan Seattle (METRO), a self-governing cooperative, was created by public vote in 1958 to address regional sewage and water quality problems. Four years later, METRO began conveying and treating Kirkland's wastewater. In January 1996, King County merged with METRO and is now called the King County Department of Natural Resources, Wastewater Treatment Division (King County). This eliminated the self-governing cooperative and placed wastewater treatment authority with the King County Council.

Metropolitan Water Pollution Abatement Advisory Committee

The Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC) was created under RCW 35.58.210 to advise METRO (and later, King County) in matters relating to the performance of the water pollution abatement function. MWPAAC is comprised of one member from each organization contracting with King County for wastewater conveyance and treatment. Districts are required to appoint elected officials to MWPAAC while cities are not restricted and typically appoint staff. Erin Leonhart, Public Works Facilities and Administrative Manager, is Kirkland's current MWPAAC representative. MWPAAC meets monthly to discuss wastewater issues and programs.

Originally, MWPAAC had a direct advisory relationship with the METRO Council. Now, MWPAAC advises the Regional Water Quality Committee who gives input to the King County Council. The Regional Water Quality Committee is comprised of:

- Six King County Councilmembers (six votes)
- Four Elected Officials from the Suburban Cities Association (two votes)
- Two Seattle City Councilmembers (two votes)
- Two Sewer District Commissioners (two votes)

King County Wastewater Contracts

King County provides sewage disposal service to 34 local governments in King and south Snohomish counties under long-term agreements. These agreements were initially due to terminate in 2016 but most

were extended to 2036 in the late 1980's (this includes Kirkland). King County has requested amendments to the existing contracts. The three issues King County would like to address are:

1. Allowance for mid-year emergency rate increases;
2. Reduce the contract agency approval percentage for contract amendments from 100% to 90%; and
3. Extend the contract period to 2056 to allow for long-term debt.

The MWPAAC Contract Amendment Subcommittee (of which Erin Leonhart is a member) was formed to evaluate the issues and discuss the contract with County staff. Working with all members of MWPAAC, the subcommittee identified a number of issues members felt needed to be reviewed as part of the contract amendment discussions. The three priority items approved by the MWPAAC membership and submitted to the County for discussion were:

1. Institution of an operating board with a more direct advisory relationship with King County Council;
2. Restrict King County's ability to mandate agreements they make with non-contract agencies (environmental interests, etc.); and
3. Include within the contracts a method to determine amount of King County administrative costs paid by contracted entities.

All three of these were rejected by King County so MWPAAC has had additional discussions and made other recommendations. One overarching concern is that the existing contracts are still in a co-op format since they were created under METRO when members were self-governing. Another is a belief that costs are rapidly increasing and adversely impacting rates. The new Brightwater Treatment Plant, for example, was initially estimated to cost \$880 million and is now \$1.6 billion. The latest list of discussion points from the MWPAAC Membership are:

1. The contract should be a bi-lateral contract for wastewater treatment services;
2. There should be a mechanism in the contract that guarantees growth will pay for 95% of growth; and
3. The County needs to be restricted from using wastewater funds for any items other than the treatment of wastewater (an example is water re-use) and a new contract should contain cost containments.

The MWPAAC Subcommittee on Contract Amendment is continuing to meet independently as well as with King County to continue discussions about contract amendments. Each agency has an individual contract for wastewater treatment services; so, King County will approach each agency to request changes to existing contracts. The MWPAAC Subcommittee is working to ensure consistency across the contracts with member agencies.

In a letter to King County Council Chair Phillips dated April 12, 2006 (attached), King County Executive Sims expressed concern about rate impacts related to the contracts, which have only been amended by four agencies to date. The Regional Water Quality Committee (RWQC) has also discussed the contracts and the Suburban Cities Association, as an organization with members on the RWQC, has the contract as a topic for review.

Erin Leonhart will continue to participate in the MWPAAC Committee and Subcommittee meetings and report any developments. Erin is also available to answer any questions related to this contract.

Attachment: April 12, 2006 Letter to King County Council Chair Phillips



King County

Ron Sims

King County Executive

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April 12, 2006

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KING COUNTY COUNCIL

The Honorable Larry Phillips
Chair, King County Council
Room 1200
COURTHOUSE

Dear Councilmember Phillips:

Enclosed is a proposed ordinance adopting the 2007 sewer rate and setting the 2007 capacity charge. The contracts with our component sewer agencies require that King County adopt the 2007 sewer rate by June 30, 2006. Also enclosed in this transmittal package are the supporting documents required by Financial Policy 13 in K.C.C. 28.86.160.

I am pleased to transmit a proposed King County monthly sewer rate of \$28.50 per residential customer equivalent (RCE) and a capacity charge of \$34.05 for 2007, with the intention of holding the sewer rate stable through 2008. This is consistent with County Council direction in 2004 in adopting the \$34.05 capacity charge for a three-year term. The enclosed ordinance reaffirms that the 2007 capacity charge will be set at \$34.05.

The very good news is that as a result of an improved RCE picture, sound financial practices, low interest rates and continued cost savings and operating efficiencies identified by our employees, we are able to propose a two-year sewer rate that is below what we anticipated in last year's budget forecast. The following table identifies the rate savings in my 2007-2008 rate proposal forecast as compared with last year's budget forecasts.

	2007	2008	2009
2006 Adopted Budget Forecast	\$29.25	\$29.25	\$34.56
2007-2008 Rate Proposal	\$28.50	\$28.50	\$34.43

These rate proposals were developed pursuant to the county's adopted financial policies for the wastewater utility and continue the program's commitment to rate stability, predictability, and equity, while providing the revenues and debt service coverage needed to preserve the utility's credit rating and assure access to capital markets to meet its capital needs. Our continued favorable debt ratings are essential to keeping down costs of the planned borrowing needed to finance the Regional Wastewater Services Plan (RWSP). As detailed later in this letter, it may be possible to lower the proposed 2007-2008 rate below what is being proposed. Such an opportunity may occur from the bond sale now planned for May 1, 2006, by the Wastewater Treatment Division (WTD). If a lower interest rate is achieved and bonds are refinanced I will be submitting an amended rate proposal.



Key Assumptions/Financial Forecast

As required by Financial Policy 13 in K.C.C. 28.86.160, enclosed for council review is a detailed financial forecast for the wastewater utility for the period 2006-2011 (Attachment A), as well as a table outlining the key assumptions used in developing the proposed sewer rate (Attachment B). The remainder of this transmittal letter provides the discussion of critical forecasting factors and policy options that are also required by Financial Policy 13.

1. Rate Stabilization Reserve

Starting with the 2005-2006 sewer rates, a rate stabilization reserve which allows deferring the recognition of operating revenues into a future year was used to create multi-year rates. As stated in Financial Policy 12:

“King County should attempt to adopt a multi-year sewer rate to provide stable costs to sewer customers. If a multi-year rate is established and when permitted upon retirement by the county of certain outstanding sewer revenue bonds, a rate stabilization reserve account shall be created to ensure that adequate funds are available to sustain the rate through completion of the rate cycle.”

This will be used again in the 2007–2008 rate. At the end of 2005 there was \$14.5 million in the rate stabilization reserve. Based on the current forecast, it appears that only \$2.5 million will be needed in 2006. The remaining reserve of \$12 million, along with an additional deferral of \$6.9 million from 2007, will be used to create the two-year 2007-2008 rate.

The following table identifies the changes between last year’s forecast and the current 2007–2008 rate proposal for operating revenue deferrals between years.

	2005	2006	2007	2008
2006 Adopted Rate Forecast	(\$14.5 M)	\$7.25 M	\$7.25M	
2007-2008 Rate Proposal	(\$14.5 M)	\$2.5 M	(\$6.9 M)	\$18.9M

I remain committed to the principle of rate stability in setting the sewer rate. In developing this proposal, I also considered a three-year rate, but since that would require a rate increase of nearly 24 percent (from \$25.60 in 2006 to \$31.67 in 2007), I have opted for a two-year rate scenario, which results in a smaller increase of 11.3 percent in 2007 to be carried over two years.

2. Capital Program

During 2005 capital expenditures were \$21.9 million less than projected. The total difference between expected and actual capital spending in 2005 is the result of the activity in each project in which each had an assumed accomplishment rate of 85 percent. In 2005 across all projects the accomplishment rate was 78 percent. The Brightwater Treatment Plant and Conveyance

The Honorable Larry Phillips

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projects accomplished 73.5 percent of planned due to lower spending on mitigation, property acquisition, and engineering. Other major contributions to the \$21.9 million difference include the delay of planned construction spending for the Juanita Bay Pump Station (permit issues), the Hidden Lake Pump Station (unqualified bidders), and the Densmore Stormwater Improvement (design modifications) projects. Additionally, actual spending was substantially less than budgeted for two major projects: Denny Way CSO and Henderson, as some of the close-out activities originally planned for 2005 shifted into 2006.

Relative to the adopted 2006 sewer rate of \$25.60, the wastewater capital program and associated debt-financing assumptions drive about 88 percent of my proposed rate increase. While I continue my commitment to capital cost containment during implementation of the Regional Wastewater Services Plan (RWSP), recent cost trends and two emergency projects have increased cost estimates for the 2006-2008 time frame which impact this rate proposal. The emergency projects are Barton Force Main and Ballard Siphon projects with costs of \$3.7 million and \$12.9 million. They require the immediate attention of the utility. The cost trend for Brightwater Treatment Plant Project indicates that overall costs have increased \$138 million compared to last year's pre-design estimate. The increase in the project cost estimate reflects increases in mitigation costs and commodity prices. My proposal incorporates these increases.

The financial forecast included in this transmittal presents capital program cash requirements of \$243.6 million in 2006, \$295.4 million in 2007, and \$418.2 million in 2008. This is an \$80.7 million increase from projections made during the 2006 rate forecast. These new estimates are equal to the projections included in the 2006 adopted WTD budget, plus the changes in Brightwater and the two emergency projects. A stringent review of capital projections, realizing cost reductions, identifying advantageous project phasing to minimize rate impacts, and continual review of planning assumptions have contained capital cost increases at this level.

The current proposal reflects WTD's ability to successfully and efficiently complete capital projects. We are assuming an accomplishment rate of 85 percent in the rate forecast in order to assure adequate revenues are available to support the capital program. From a historical perspective, as large projects move into their construction phase, accomplishment rates tend to climb. During the construction phase of the West Point Treatment Plant, the accomplishment rate climbed as high as 96 percent. If the accomplishment rate were set at 80 percent, the RCE rate would need to be \$28.18, and at 90 percent the rate would need to be \$28.84. I believe that 85 percent represents a prudent assumption in light of WTD's recent actual performance relative to capital budgets.

Other key assumptions with respect to the capital program address the cost of borrowing to support the projected capital outlays during the rate period. We assumed that interest rates for future bond issues will rise somewhat from their current level, consistent with a general consensus among bond market analysts.

For future parity bonds in 2007–2008, we assume an interest rate of 5.5 percent, or 0.76 percent higher than the rate obtained on our 2005 bond sale. To provide funding for 2006, the utility is planning a bond sale on May 1, 2006. Long-term interest on bonds has drifted higher in the last couple weeks, but is currently less than 5.0 percent. If the interest rate remains at this level, we will refinance about \$80 million in outstanding bonds at lower rates. The assumed interest rate of 5.25 percent for debt issued in 2006 and no refinancing was used to guard against possible rate climbs during the next month. A reduction of 25 basis points on this borrowing cost assumption and the bond refinancing could allow a monthly sewer rate reduction of \$0.11 for the two-year period. If the May 1, 2006, bond sale produces these lower rates, I will be submitting an amended rate proposal incorporating the difference. The staff in WTD and the Finance and Business Operations Division will work together on future bond issues to acquire the most cost-effective form of debt needed to support the capital program given market conditions at the time of issuance.

3. Capacity Charge

The proposed 2007 capacity charge rate remains at \$34.05 in accordance with our agreement to hold the rate constant from 2005 through 2007. The capacity charge is a monthly charge levied on new connections to the wastewater system in accordance with KCC 28.84.050 and KCC 28.86.160. It is set at a level to ensure that new sewer connections, over the long-term, will pay for the costs of the new capacity required to serve them (that is, “growth pays for growth”). Additionally, the revenues received from the capacity charge are included in calculating debt service coverage; therefore, the level of the capacity charge influences the level at which the monthly RCE rate must be set.

During 2005, new capacity charge equivalents grew by 9,628, compared to the forecast of 9,000. Even with this growth there was a small decline in overall capacity charge revenues from \$17.5 million in 2004 to \$17.0 million in 2005. This decline in revenues was attributable to the discount rate used to calculate connection charge payoffs being lowered from 8.0 percent to 5.5 percent at the beginning of 2005. This change induced a high number of prepayments in late 2004, followed by a correspondingly sharp decline in 2005 prepayments. The assumed number of upfront payments in future years has been changed in this forecast to recognize this shift in payment patterns. Through February of 2006, new connections are on pace to reach 8,500 for the year. The number of new connections assumed for 2006–2008 has been changed from 9,000 to 8,500 to match the most recent data.

While not under consideration in this legislation, the preliminary estimate of the capacity charge for 2008 has changed relative to last year’s projection. It should be stressed that council is, in no way, adopting a new level of the capacity charge through this current legislation. Adopting the two-year sewer rate proposal does not predetermine the capacity charge level for 2008. Based on the most recent cost trend information for the RWSP, projected 2008 capacity charge rates have increased from \$43.25 plus 3 percent per year, thereafter changing to \$50.00 plus 3 percent per year thereafter.

These estimates are preliminary and will be thoroughly analyzed and updated during the upcoming year. New information will include actual Brightwater contract bids, revised long-term RCE projections and possible adjustment to other long-term capital projects. The intended 2008 sewer rate of \$28.50 will not be changed by this update process. If there is any revenue surplus in 2008 it will be placed in the rate stabilization reserve for future rate relief. If there is any revenue deficit in 2008 it will be managed by reducing capital expenditures in 2008.

4. RCE Growth

Last year's sewer rate forecast assumed 0.6 percent growth in 2005 followed by a 2.2 percent decrease in RCEs in 2006 reflecting an anticipated drought. Actual growth in 2005 was only 0.3 percent because the drought did not occur. Based on a survey conducted of our ten largest sewer component agencies, representing approximately 85 percent of the total RCE base, we now expect annual growth of 0.5 percent through 2009. In comparison to last year's forecast, RCEs are now projected higher by 16,973 in 2006, 16,997 in 2007, and 13,684 in 2008. This would produce additional operating revenues of \$5.2 million, \$5.8 million, and \$4.7 million in 2006, 2007, and 2008, respectively. While the most recent long-term forecast shows continued customer growth and a need for increased treatment capacity, in the short term, we expect RCE growth to remain relatively flat. It should also be noted that flows experienced at the plants reached all time monthly highs during the recent rains of December and January in spite of the low RCE growth.

5. Operating Expenditures

The wastewater utility's operating program achieved very favorable expense results in 2005. Operating expenses were \$83.2 million, which is \$3.6 million below what was estimated in last year's forecast. A large portion of this savings is the result of the Productivity Initiative program to which WTD remains firmly committed. As evidence of the program's success, actual operating expenses in 2004 and 2005 increased only 0.13 percent and 0.55 percent respectively. For context, the results for 2005 were achieved in a year when chemical costs alone rose 37.7 percent or \$1.1 million, reflecting the increase in the price of petroleum-based products. WTD was able to offset these expenses through lower labor and energy costs.

In 2006 we project operating expenses to be \$92.3 million. This is an increase of 10.9 percent over 2005 expenses of \$83.2 million. While most expense increases are driven purely by inflation, there are several areas where WTD is seeing increases well above normal inflation. Some of the larger dollar expenses showing these types of increases include: salary and benefit expenses, expected to increase 11.2 percent or \$3.6 million due to benefit costs, COLAs, and new labor agreements; chemicals, 24.7 percent or \$1.0 million; and electricity increases of 8.0 percent or \$0.6 million, due to higher volumes and rate increases.

In 2007 and 2008, WTD is projecting operating expenditures of \$95.7 million and \$99.0 million, or an annual increase of 3.8 percent and 3.4 percent, respectively.

6. Investment Income

While long-term borrowing interest rates have remained near historical lows, investment interest rates have been climbing over the last couple years. In last year's rate forecast we had assumed an investment earning rate of 3.5 percent for 2006, 2007, and 2008. Rates for 2006 have already climbed to 4.0 percent and for 2007 and 2008 we are now assuming an interest-earning rate of 4.5 percent. The forecasted investment income for 2006, 2007, and 2008 is now \$1.4 million, \$3.2 million, and \$2.0 million higher, respectively.

7. Component Agency Contract Status

The 2007-2008 rates assume that term of the contracts with the component agencies has not been extended by the end of 2006, restricting the term of new bonds to 29 and 28 years respectively. If it were possible to issue 35 year bonds as they have been historically, the two year rate could have been \$.30 lower (see attachment A, bond terms). The county has been attempting to amend and extend the 34 contracts with the component sewerage agencies for the last four years with little success. To date, only the cities of Carnation and Renton, Vashon Sewer District and the Muckleshoot Indian Tribe, have extended contracts. Delays in extending the contracts prior to issuing major debt for Brightwater will negatively and significantly impact both the sewer and the capacity charge rates. It is in the best interest of all ratepayers, both new and existing, that we create the motivation for the cities and sewer districts to extend and amend the contracts as soon as possible so that King County can extend the debt repayment period and lower the sewer and capacity charge rates.

Two major issues have so far prevented these contract amendments. First for many non-Seattle agencies it is Culver expense related items. Some non-Seattle agencies have long held the position that the Culver policy and related expenditures must be eliminated before they are willing to amend and extend the contract. Yet I know these funds are very important to the council and are used every day by groups and organizations committed to improving the water quality and health of the region. I would not support elimination of the Culver fund without proposing to the council some other way to fund these excellent programs.

Second, the City of Seattle has advocated locking into the contract the current capacity charge methodology that defines how growth pays for growth. I have not accepted Seattle's proposal because for the next fifty years this would not allow the normal political process involving the Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC), Regional Water Quality Committee (RWQC) and the King County Council to amend the capacity charge policies and rates in the future as necessary without having to reopen and renegotiate 50 year contracts.

The Honorable Larry Phillips

April 12, 2006

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I remain committed to the fundamental principle we agreed to more than six years ago in the Robinswood Agreement (Attachment C), that growth would pay for growth, and I have been willing to include this policy in the 50 year contracts. However, I believe that how this policy is implemented through the specific methodology of what is a growth related project and how those cost are recovered should be flexible over the next 50 years, particularly since the projects post-Brightwater have not yet been designed to address either growth or existing system upgrades. I believe that these cost allocations, as well as the specific methodology for recovering growth related costs, should be left to future MWPAAC, RWQC, and council deliberations and decisions. The City of Seattle has not held this view and we have been at an impasse for four years.

8. A new Robinswood Agreement

Because of the impending serious consequence of the 4-year deadlock on extending and amending the contracts, which will cost all ratepayers if not resolved quickly, I am asking the RWQC to immediately take-up the issue of getting these contracts amended and extended by the end of the year such that the majority of Brightwater debt can be long term, with lower sewer rate and capacity charge impacts. We are informed by our financial advisor that contracts representing 75% of the rate base are necessary for us to secure long term debt. That means everyone must be at the table for a sustainable solution.

In October of 1998 the region came together and reached "the Robinswood Agreement" on many of these same issues. Robinswood did not solve all of our problems, but it allowed us to adopt the RWSP and bring Brightwater into existence. I believe we can use that model again to overcome our differences and protect both the waters of Puget Sound and the ratepayers of the region. Therefore, I will be asking members of the council and the RWQC to join me in a second regional summit at Robinswood or a similar location to resolve these issues in May.

Let me be clear. This effort is critical. If we cannot reach an agreement in a second Robinswood process, I must take the actions I deem necessary to break the stalemates and keep the wastewater system together and keep sewer rates and capacity charges as low as possible.

If the region cannot unite, I must consider proposing RWSP policy changes soon to motivate agencies to extend and amend the contracts. These policy changes could include the elimination of Culver funds, new capacity charge allocation methodologies, new definitions of "growth pays for growth", a reopening of the Combined Sewer Overflow (CSO) benefit charge issue, and reallocation of CSO costs between the rate and the capacity charge. Everything would be on the table. My goal is to avoid having to make such proposals which may create winners and losers. By working together, we can find a win-win for everyone.

My staff will be contacting you and members of the RWQC soon with details about the new Robinswood summit. I ask that you join me.



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, AICP, Planning Director
Tony Leavitt, Planner

Date: June 21, 2006

Subject: Highlands 25 Final Subdivision, File No. FSB06-00001

QUASI-JUDICIAL

RECOMMENDATION

Approve with conditions the Final Subdivision for the Highlands 25 Plat. The City Council may do so by adopting the enclosed Resolution.

BACKGROUND DISCUSSION

The Preliminary Subdivision was heard by the Hearing Examiner on June 2, 2005. The Hearing Examiner approved the project with conditions on June 10, 2005. A concurrency test was passed for traffic on February 11, 2005 and for water and sewer on November 9, 2004. A Determination of Non-significance was issued for the proposal on May 12th, 2005. The proposal included the following general elements:

- Subdivide 8 existing lots, 6.68 total acres, into 25 lots for single-family residences within a RS 8.5 zone with a minimum lot size of 8,500 square feet. The proposed lots will range in size from 8,467 square feet to 11,427 square feet, with an average lot size of 8,697 square feet. Since fourteen of the lots were less than the minimum lot size requirement of 8,500 square feet, the subdivision was reviewed and approved through the lot averaging provisions of Kirkland Subdivision Code Section 22.28.040.
- Primary access to the subdivision would be from NE 95th Street. Two new public right-of-ways would be dedicated within the subdivision for access to the new lots.
- The applicant, with the encouragement of the Public Works Department, incorporated Low Impact Development (LID) elements into the project design as part of the land surface modification application.

The applicant is not proposing any modifications to the size, configuration, or location of any of the lots, access easements, or the open space tract approved with the preliminary subdivision.

Memo to City Council
June 21, 2006
Page 2

The Planning Director recommends approval of the final subdivision with the conditions outlined in the staff advisory report dated June 20, 2006 (See Enclosure 1).

ENCLOSURES

1. Staff Advisory Report dated June 20, 2006

cc: File FSB06-00001



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.828.1257
www.ci.kirkland.wa.us

MEMORANDUM ADVISORY REPORT FINDINGS, CONCLUSION, AND RECOMMENDATIONS

To: Eric R. Shields, AICP, Planning Director
From: Tony Leavitt, Planner *TL*
Date: June 20, 2006
File: HIGHLANDS 25 FINAL SUBDIVISION, FILE FSB06-00001

I. RECOMMENDATION

Recommend approval of the Final Subdivision application for the Highlands 25 Plat subject to the following conditions:

- A. The application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, Building and Fire Code, and Subdivision Ordinance. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 1, Preliminary Subdivision Notice of Approval, is provided in this memo to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations.
- B. Prior to recording the final plat mylar with King County the applicant shall:
 1. Submit a title report no more than 30 days old from the date the final plat mylar was signed by the owners. The title report shall reflect that all taxes and assessments for the subject property have been paid.
 2. Have a registered land surveyor set the exterior plat boundary and all interior lot corners.

II. BACKGROUND

- A. The applicant is Craig Sears of Highlands 24, LLC
- B. This is a Final Subdivision application to approve a 25-lot subdivision on a 6.68-acre site (see Attachment 2).
- C. The Preliminary Subdivision (File No. PSB04-00001) was approved by the Hearing Examiner on June 17, 2004. See Attachment 3 and discussion under the History section below.
- D. The site is located at 8024 and 8034 124th Avenue NE (See Attachment 2).

ENCLOSURE 1

FSB06-00001 CC MEMO

III. HISTORY

The Preliminary Subdivision was heard by the Hearing Examiner on June 2, 2005. The Hearing Examiner approved the project with conditions on June 10, 2005. A concurrency test was passed for traffic on February 11, 2005 and for water and sewer on November 9, 2004. A Determination of Non-significance was issued for the proposal on May 12th, 2005. The proposal included the following general elements:

1. Subdivide 8 existing lots, 6.68 total acres, into 25 lots for single-family residences within a RS 8.5 zone with a minimum lot size of 8,500 square feet. The proposed lots will range in size from 8,467 square feet to 11,427 square feet, with an average lot size of 8,697 square feet. Since fourteen of the lots were less than the minimum lot size requirement of 8,500 square feet, the subdivision was reviewed and approved through the lot averaging provisions of Kirkland Subdivision Code Section 22.28.040.
2. Primary access to the subdivision would be from NE 95th Street. Two new public right-of-ways would be dedicated within the subdivision for access to the new lots.
3. The applicant, with the encouragement of the Public Works Department, incorporated Low Impact Development (LID) elements into the project design as part of the land surface modification application.

IV. ANALYSIS

Section 22.16.080 of the Kirkland Municipal Code discusses the conditions under which the final plat may be approved by the City Council. These conditions are as follows:

1. Consistency with the preliminary plat, except for minor modifications allowed under Kirkland Municipal Code Section 22.16.080; and
2. Consistency with the provisions of the Subdivision Ordinance and RCW 58.17.

The applicant has not proposed any modifications to the size, configuration or location of any of the lots, access easements, or the open space tract approved with the preliminary subdivision.

The applicant has complied with all of the conditions that were placed on the preliminary subdivision application approved by the Hearing Examiner, except for those conditions that must be accomplished prior to Final Plat recording. The applicant has submitted a bond to ensure future completion of the remaining public improvements required as part of the preliminary subdivision.

V. CHALLENGE, JUDICIAL REVIEW, AND LAPSE OF APPROVAL

- A. Section 22.16.070 of the Kirkland Municipal Code states that any person who disagrees with the report of the Planning Director may file a written challenge to City Council by delivering it to the City Clerk not later than the close of business of the evening City Council first considers the final plat.
- B. Section 22.16.110 of the Subdivision Ordinance allows the action of the City in granting or denying this final plat to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.
- C. Section 22.16.130 of the Kirkland Municipal Code requires that the final plat be submitted to the City for recording with King County within four (4) years of the date of approval of the

preliminary plat, unless specifically extended in the decision on the plat, or the decision becomes void: provided, however, that in the event judicial review is initiated per Section 22.16.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.

VI. APPENDICES

Attachments 1 through 3 are attached.

1. Preliminary Subdivision Notice of Approval, including Development Standards
2. Final Plat
3. Approved Preliminary Plat

Review by Planning Director:

I concur ✓ I do not concur _____

Comments: _____


Eric R. Shields, AICP
6/20/06
Date



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

PRELIMINARY SUBDIVISION

NOTICE OF APPROVAL

FILE NO: PSB04-00001

PROJECT NAME: The Highlands Preliminary Plat

PROJECT ADDRESS: 16XX NE 95th Street

APPLICANT OR AGENT: Craig Sears

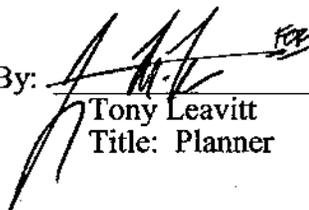
CITY OF KIRKLAND APPROVAL DATE: June 10, 2005 Hearing Examiner Decision
June 14, 2005 Decision Release Date

LAPSE OF APPROVAL DATE(S): Under Section 150.135 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 150, within four (4) years after the final approval on the matter (June 10, 2009), or the decision becomes void.

This NOTICE OF APPROVAL is granted subject to the attached conditions and development standards. Failure to meet or maintain strict compliance shall be grounds for revocation in accordance with the Kirkland Zoning Ordinance No. 3719 as amended.

The applicant must also comply with any federal, state or local statutes, ordinances or regulations applicable to this project. This Notice of Approval does not authorize grading or building without issuance of the necessary permits from the Kirkland Building Department.

CITY OF KIRKLAND
PLANNING AND COMMUNITY DEVELOPMENT

By: 
Tony Leavitt
Title: Planner

Attachments:

Conditions of Approval
Development Standards

ATTACHMENT <u>1</u>
FSB06-00001 Memo

CONDITIONS OF APPROVAL

PROJECT: The Highlands Preliminary Plat

File No: PSB04-00001

Date Complete CONDITIONS

Based on Statements of Fact and Conclusions (Section III), and Attachments in this report, we recommend approval of the application subject to the following conditions:

2. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.

Comments: _____

3. Prior to the issuance of a land surface modification permit, the tree preservation and removal plan (Attachment 4) shall be revised to retain all significance trees on the site, except any trees located within the proposed public right-of-ways, easement roads or location of utilities

- a. With the Land Surface Modification permit for the plat infrastructure improvements, the applicant shall submit a copy to the Planning Department of the approved tree preservation and removal plan approved for the plat with the required changes as conditioned above. Only those significant trees required to be removed for installation of plat improvements may be removed in conjunction with the Land Surface Modification permit. Any proposed changes to the approved plan must be approved by the Planning Department. If site disturbance is proposed within the drip lines of any trees required to be saved, an arborist report amendment may be required by the Planning Department to address specific grading impacts to the trees and recommended mitigating measures.

- b. With the submittal of the building permit on each new lot created with the short plat, the applicant shall submit a copy of the tree preservation and removal plan approved with the Land Surface Modification permit. Any proposed changes to the approved tree preservation and retention plan must be approved by the Planning Department in conjunction with the building permits.
- c. As part of the building permit approval, the City may require minor alterations to the arrangements of structures on each lot and elements in the proposed development in order to achieve the maximum retention of these significant trees (see Conclusion II.F.4).

Comments: _____

-
- 4. As part of the land surface modification permit application, the applicant shall submit plans for the installation of the required improvements as described in Attachment 3 including a 5-foot wide paved walkway within a 10-foot wide pedestrian walkway easement (see Conclusion II.F.2).

Comments: _____

-
- 5. Prior to approval of the final subdivision, the applicant shall work with the Planning Department to determine the extent of the Natural Greenbelt Protective Easement for the protection of the row of fir trees on proposed lots 14, 15, & 16 (see Conclusion II.F.4).

Comments: _____



CITY OF KIRKLAND

Planning and Community Development Department

123 Fifth Avenue, Kirkland, WA 98033 425.587-3225

www.ci.kirkland.wa.us

DEVELOPMENT STANDARDS LIST

File: PSB04-00001, The Highlands Preliminary Plat

Subdivision Standards

22.28.030 Lot Size. Unless otherwise approved in the preliminary subdivision or short subdivision approval, all lots within a subdivision must meet the minimum size requirements established for the property in the Kirkland zoning code or other land use regulatory document.

22.28.050 Lot Dimensions. For lots smaller than 5,000 square feet, the lot width at the back of the required front yard shall not be less than 50 feet unless the garage is located at the rear of the lot or the lot is a flag lot.

22.28.130 Vehicular Access Easements. The applicant shall comply with the requirements found in the Zoning Code for vehicular access easements or tracts.

22.28.210 Significant Trees. The applicant shall retain at least twenty-five percent of the healthy significant trees, together with any associated groundcover or understory vegetation necessary to assure long-term health and prevent erosion. The tree retention plan is shown on Attachment 4. All trees designated to be saved under the tree retention plan must be retained, unless a modification to the tree retention plan is approved by the Department of Planning and Community Development.

22.32.010 Utility System Improvements. All utility system improvements must be designed and installed in accordance with all standards of the applicable serving utility.

22.32.030 Stormwater Control System. The applicant shall comply with the construction phase and permanent stormwater control requirements of the Municipal Code.

22.32.050 Transmission Line Undergrounding. The applicant shall comply with the utility lines and appurtenances requirements of the Zoning Code.

22.32.060 Utility Easements. Except in unusual circumstances, easements for utilities should be at least ten feet in width.

27.06.030 Park Impact Fees. New residential units are required to pay park impact fees prior to issuance of a building permit. The impact fee for new single-family dwelling units is \$612. The impact fee for new multifamily dwelling units is \$430. Exemptions and/or credits may apply pursuant to KMC 27.06.050 and KMC 27.06.060. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision in the amount of \$612 for a single family unit and \$430 for a multi-family unit.

Prior to Recording:

22.16.030 Final Plat - Lot Corners. The exterior plat boundary, and all interior lot corners shall be set by a registered land surveyor.

22.16.040 Final Plat - Title Report. The applicant shall submit a title company certification which is not more than 30 calendar days old verifying ownership of the subject property on the date that

the property owner(s) (as indicated in the report) sign(s) the subdivision documents; containing a legal description of the entire parcel to be subdivided; describing any easements or restrictions affecting the property with a description, purpose and reference by auditor's file number and/or recording number; any encumbrances on the property; and any delinquent taxes or assessments on the property.

22.16.150 Final Plat - Improvements. The owner shall complete or bond all required right-of-way, easement, utility and other similar improvements.

22.28.050 Lot Dimensions. The owner of the property shall sign a covenant to ensure that the garage will be located at the rear of any lot which is smaller than 5,000 square feet, has a lot width at the back of the required front yard less than 50 feet, and is not a flag lot.

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

22.32.080 Performance Bonds. In lieu of installing all required improvements and components as part of a plat or short plat, the applicant may propose to post a bond, or submit evidence that an adequate security device has been submitted and accepted by the service provider (City of Kirkland and/or Northshore Utility District), for a period of one year to ensure completion of these requirements within one year of plat/short plat approval.

Prior to occupancy:

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

22.32.090 Maintenance Bonds. A two-year maintenance bond may be required for any of the improvements or landscaping installed or maintained under this title.

Zoning Code Standards

95.35 Plant Replacement. The applicant shall replace any plants required by this Code that are unhealthy or dead for a period of two years after initial planting.

105.10.2 Pavement Setbacks. The paved surface in an access easement or tract shall be set back at least 5 feet from any adjacent property which does not receive access from that easement or tract. An access easement or tract that has a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from it. Screening standards are outlined in this section.

110.60.2 Public Pedestrian Walkways. The height of solid (blocking visibility) fences along pedestrian pathways that are not directly adjacent a public or private street right-of-way shall be limited to 42 inches unless otherwise approved by the Planning or Public Works Directors. All new building structures shall be setback a minimum of five feet from any pedestrian access right-of-way, tract, or easement that is not directly adjacent a public or private street right-of-way.

110.60.8 Street Trees. All trees planted in the right-of-way must be approved as to species by the City. All trees must be two inches in diameter at the time of planting as measured using the standards of the American Association of Nurserymen with a canopy that starts at least six feet above finished grade and does not obstruct any adjoining sidewalks or driving lanes.

115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning official.

115.40 Fence Location. Fences over 6 feet in height may not be located in a required setback yard. A detached dwelling unit abutting a neighborhood access or collector street may not have a fence over 3.5 feet in height within the required front yard. No fence may be placed within a high waterline setback yard or within any portion of a north or south property line yard, which is coincident with the high waterline setback yard.

115.42 Floor Area Ratio (F.A.R.) limits. Floor area for detached dwelling units is limited to a maximum floor area ratio in low density residential zones. See Use Zone charts for the maximum percentages allowed. This regulation does not apply within the disapproval jurisdiction of the Houghton Community Council.

115.43 Garage Setback Requirements for Detached Dwelling Units in Low Density Zones. The garage must be set back five feet from the remaining portion of the front façade of a dwelling unit if: the garage door is located on the front façade of the dwelling unit; and the lot is at least 50 feet wide at the front setback line; and the garage width exceeds 50 percent of the combined dimensions of the front facades of the dwelling unit and the garage. This regulation does not apply within the disapproval jurisdiction of the Houghton Community Council.

115.75.2 Fill Material. All materials used as fill must be non-dissolving and non-decomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations including: wood decks; access easements or tracts serving more than one lot that does not abut a right-of-way; detached dwelling unit driveways that are outside the required front yard; grass grid pavers; outdoor swimming pools; and pedestrian walkways. See Section 115.90 for a more detailed explanation of these exceptions.

115.95 Noise Standards. The City of Kirkland adopts by reference the Maximum Environmental Noise Levels established pursuant to the Noise Control Act of 1974, RCW 70.107. See Chapter 173-60 WAC. Any noise, which injures, endangers the comfort, repose, health or safety of persons, or in any way renders persons insecure in life, or in the use of property is a violation of this Code.

115.115.3.g Rockerries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

115.115.3.n Covered Entry Porches. In low density residential zones, covered entry porches on detached dwelling units may be located within 13 feet of the front property line if certain criteria in

this section are met. This incentive is not effective within the disapproval jurisdiction of the Houghton Community Council.

115.115.3.o Garage Setbacks. In low density residential zones, garages meeting certain criteria in this section can be placed closer to the rear property line than is normally allowed in those zones.

115.115.5.a Driveway Width and Setbacks. For a detached dwelling unit, a driveway and/or parking area shall not exceed 20 feet in width in any required front yard, and shall not be closer than 5 feet to any side property line unless certain standards are met.

115.135 Sight Distance at Intersection. Areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction as described in this section.

150.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs.

Prior to issuance of a grading or building permit:

95.15.4 Tree Protection Techniques. In order to provide the best possible conditions for the retention of significant trees, the applicant shall construct a temporary but immovable 4 foot high chain-link fence generally corresponding to the drip line of each tree or group of trees shown on the tree retention plan to be retained (see Attachment 4). Additional tree protection measures may be required of the applicant. The protective fencing must remain in place throughout the demolition, clearing, grading, excavation, and construction processes, including the construction of homes. No grading, operation of heavy equipment, stockpiling, or excavation may occur inside the protective fences.

27.06.030 Park Impact Fees. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision in the amount of \$612 for a single family unit and \$430 for a multi-family unit.

CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

Date: 3/31/2005

DEVELOPMENT STANDARDS

CASE NO.: PSB04-00001

PCD FILE NO.: PSB04-00001

FIRE DEPARTMENT CONDITIONS

3 new fire hydrants are required as shown. Subject hydrants shall be installed and fully operational prior to any combustible construction. All new hydrants as well as the existing hydrant in front of 11644 shall be equipped with 5" Stortz fittings.

"NO PARKING - FIRE LANE" signs, curb stenciling, and painting required for the private access roads serving lots 9, 13, 21 and 22.

Due to inadequate fire flow in the area, all new homes shall be provided with fire sprinkler systems (13D type).

BUILDING DEPARTMENT COMMENTS

Building permits submitted on July 1, 2004 or after must comply with the 2003 International Building, Residential and Mechanical Codes and the 2003 Uniform Plumbing Code as adopted and amended by the State of Washington and the City of Kirkland.

Structure must comply with Washington State Energy Code; and the Washington State Ventilation and Indoor Air Quality Code.

Plumbing meter and service line shall be sized in accordance with the UPC

Due to size of project (multiple building lots), geotechnical report required to address development activity. Report must be prepared by a Washington State licensed Professional Engineer. Recommendations contained within the report shall be incorporated into the design of the Short Plat and subsequent structures.

PUBLIC WORKS CONDITIONS

General Conditions:

1. All public improvements associated with this project including street and utility improvements, must meet the City of Kirkland Public Works Pre-Approved Plans and Policies Manual. A Public Works Pre-Approved Plans and Policies manual can be purchased from the Public Works Department, or it may be retrieved from the Public Works Department's page at the City of Kirkland's web site at www.ci.kirkland.wa.us.
2. This project will be subject to Public Works Permit and Connection Fees. At the pre-application stage, the fees can only be estimated. It is the applicant's responsibility to contact the Public Works Department by phone or in person to determine the fees. The fees can also be reviewed the City of Kirkland web site at www.ci.kirkland.wa.us. The applicant should anticipate the following fees:
 - o Water and Sewer connection Fees (paid with the issuance of a Building Permit)

- o Side Sewer Inspection Fee (paid with the issuance of a Building Permit)
- o Septic Tank Abandonment Inspection Fee
- o Water Meter Fee (paid with the issuance of a Building Permit)
- o Right-of-way Fee
- o Review and Inspection Fee (for utilities and street improvements).
- o Traffic Impact Fee (paid with the issuance of Building Permit). For additional information, see notes below.

3. Prior to submittal of a Building or Zoning Permit, the applicant must apply for a Concurrency Test Notice. Contact Thang Nguyen, Transportation Engineer, at 425-576-2901 for more information. A separate Concurrency Permit will be created.

4. Building Permits associated with this proposed project will be subject to the traffic impact fees per Chapter 27.04 of the Kirkland Municipal Code. The impact fees shall be paid prior to issuance of the Building Permit(s).

5. Any existing single family homes within this project which are demolished will receive a Traffic Impact Fee credit. This credit will be applied to the first Building Permit that is applied for within the subdivision (and subsequent Building Permits if multiple houses are demolished). The credit amount for each demolished single family home will be equal to the most currently adopted Traffic Impact Fee schedule.

6. All civil engineering plans which are submitted in conjunction with a building, grading, or right-of-way permit must conform to the Public Works Policy titled ENGINEERING PLAN REQUIREMENTS. This policy is contained in the Public Works Pre-Approved Plans and Policies manual.

7. All street improvements and underground utility improvements (storm, sewer, and water) must be designed by a Washington State Licensed Engineer; all drawings shall bear the engineers stamp.

8. All plans submitted in conjunction with a building, grading or right-of-way permit must have elevations which are based on the King County datum only (NAVD 88).

9. A completeness check meeting is required prior to submittal of any Building Permit applications.

10. All subdivision recording mylar's shall include the following note:

Utility Maintenance: Each property owner shall be responsible for maintenance of the sanitary sewer or storm water stub from the point of use on their own property to the point of connection in the City sanitary sewer main or storm water main. Any portion of a sanitary sewer or surface water stub, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Public Right-of-way Sidewalk and Vegetation Maintenance: Each property owner shall be responsible for keeping the sidewalk abutting the subject property clean and litter free. The property owner shall also be responsible for the maintenance of the vegetation within the abutting landscape strip. The maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Sanitary Sewer Conditions:

1. The existing sanitary sewer main within the NE 95th St right-of-way and along the east side of lots 22-25, is adequate to serve all the lots within the proposed project.

2. Extend 8-inch sewer mains along the new public roads to provide sewer to all of the lots. The sewer main extensions depicted on sheet 3 of the submittal are adequate. Provide a plan and profile design for the sewer line extensions.

3. All new and existing sewer manholes must be accessible for maintenance purposes. The following access conditions will apply:

" A 12 ft. wide paved access shall be extended to the new manhole at the northeast corner of lot 25.

" A note shall be included on the Subdivision recording mylar stating that if a fence is constructed along the north property line of lot 25, a 3 ft. wide gate shall be provided at the northeast property corner for sewer manhole maintenance access.

" The existing manhole at the southeast corner of lot 22 shall have a 12 ft. wide paved access from the end of the existing paved access, provided for the existing detention pond, to the south of lot 21. Prior to adding the new paving, additional structural fill will need to be added to the east end of the detention pond berm so the paving can be extended to within approximately 10 ft of the existing sewer manhole.

4. Provide a 6-inch minimum side sewer stub to each lot.

Water System Conditions:

1. The applicant shall extend the existing public water system to provide water service for each lot. The subdivision shall install the following water system improvements:

A. Loop an 8-inch water main from NE 95th St. south along Road B, south within a 15 ft. wide utility easement between lots 20- 21 & , 22-23 (under the pedestrian path), and connect to the existing 8-inch water main on the south side of lot 21.

B. Extend an 8-inch water main from NE 95th Street along Road A and terminate the extension with a blow-off or hydrant (Fire Dept. will determine where the hydrants should be located).

2. Provide a separate 1" minimum water service from the water main to the meter for each lot; City of Kirkland will set the water meter.

3. The existing water services may be used provided that they are in the right location, are not galvanized, and are sized adequately to serve the building (per the Uniform Plumbing Code).

4. The existing water flows are inadequate for minimum fire flow for this project; see the Fire Department Conditions for the fire sprinkler requirements.

Surface Water Conditions:

1. Provide temporary and permanent storm water control per the 1998 King County Surface Water Design Manual. The conceptual storm water detention system, as depicted on sheet 3, is approved by the Public Works Department.

2. The developer and the Public Works Department have discussed and agreed that some recreational play equipment and/or a sport court over the top of the detention system should be installed as an amenity for the proposed development. The Homeowners Association (HOA) will be responsible for maintenance of the landscaping and recreational equipment while the City will be responsible for maintenance of the detention system. Since the recreational area is within public right-of-way, it may be used by the public; it is anticipated that residents within this development as well as the surrounding neighborhood may use the area. Language shall be included on the Subdivision Recording Mylar stating the use and maintenance of the recreational area. In addition, the developer shall sign and record a Maintenance Agreement in conjunction with the establishment of the HOA.

3. Provide a level one off-site analysis (based on the King County Surface Water Design Manual, core requirement #2).

4. Any off-site storm water must by-pass the on-site storm water detention system or accounted for in the design of the detention system.

5. Provide an erosion control plan with Building or Land Surface Modification Permit application. The plan shall be in accordance with the 1998 King County Surface Water Design Manual.

6. The National Pollutant Discharge Elimination System (NPDES) Phase II Final Rule requires operators of small construction sites (disturbing between 1 and 5 acres of land) to obtain a Construction Storm water General Permit through the Washington State Department of Ecology. Information about the permit can be obtained at:

Washington State Department of Ecology <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>
U.S. EPA Office of Wastewater Management <http://cfpub.epa.gov/npdes/stormwater/const.cfm>

Specific question can be directed to:

Jeff Killelea

PO Box 47600

Olympia, WA 98504-7600

(360) 407-6127

jkil461@ecy.wa.gov

7. Construction drainage control shall be maintained by the developer and will be subject to periodic inspections. During the period from April 1 to October 31, all denuded soils must be covered within 15 days; between November 1 and March 31, all denuded soils must be covered within 12 hours. If an erosion problem already exists on the site, other cover protection and erosion control will be required.

8. Provide a separate storm drainage connection for each lot. The drainage system on each lot shall contain a 10 ft. minimum length drywell as part of the conveyance system to the storm system in the street. These drywells will be installed with each new single-family home.

9. Provide a plan and profile design for the storm sewer system.

10. A 10' minimum paved maintenance access shall be provided to the detention facility. The Public Works Surface Water Maintenance Division shall review and approve the final design of the detention facility.

Street Improvement Conditions:

1. The subject property abuts NE 95th Street and the two new access streets (roads A & B). These streets are Neighborhood Access type streets. Zoning Code sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property. Section 110.30-110.50 establishes that these streets must be improved with the following:

NE 95th Street

A. Widen the street to 12 ft. from centerline to face of curb.

B. Install storm drainage, curb and gutter, a 4.5 ft. planter strip with street trees 30 ft. on-center, and a 5 ft. wide sidewalk. The sidewalk and planter strip shall be installed along both property frontages; the sidewalk along the south side can terminate at the driveway apron for tract B.

C. Underground all existing overhead utility lines along the property frontage on NE 95th St.

Road A

A. Dedicate 45 ft in width of public right-of-way for the east/west leg and 40 ft. in width of public right-of-way for the north/south leg. (dedication for the cul-de-sac discussed below).

B. Improve the street with 24 ft of paving (face of curb to face of curb), vertical curb and gutter, a 4.5 ft wide landscape strip with street trees 30 ft. on-center, and a 5 ft. wide sidewalk. A sidewalk is not required along the I-405 sound wall or around the perimeter of the cul-de-sac (it is required along the frontage of lots 13, 14, and 15).

C. The cul-de-sac shall be encompassed in an 80 ft. diameter right-of-way with vertical curb and gutter set at 70 ft. in diameter, and 4.5 ft. wide landscape strip behind the curb with street trees 30 ft. on-center.

Road B

A. Dedicate 35 ft in width of public right-of-way (30 ft in width around the turn-around).

B. Improve the street with 20 ft of paving (face of curb to face of curb), vertical curb and gutter, a 4.5 ft wide landscape strip with street trees 30 ft. on-center, and, along one side of the street, a 5 ft. wide sidewalk.

C. The turn-around shall be improved with paving and vertical curb and gutter per Public Works Standard R.16. Street trees shall be planted around the perimeter at 30 ft. on-center where feasible.

D. Install an 8 ft. wide asphalt path within a 10 ft. wide pedestrian easement from the south end of Road B to the south property lines of lots 21 and 22 and along the south property line of lot 21 to the existing path at the southwest corner of lot 21.

Note: The City is encouraging the use of Low Impact Design methods to lessen the impacts of surface water run-off. One of option that is being encouraged by the City is the use of Street Edge Alternative (SEA) design concepts being used in the City of Seattle. As the engineering design plans are developed for this project, the developer may proposed to use some or all of the SEA street design standards. If these standards are accepted by the Public Works Department, some slight modifications to the road standards, such as the type of curb and the design of the landscape strips, will be necessary. However, no elements such as street trees, sidewalks, or the width of the street, will be eliminated or modified.

2. A 2-inch asphalt street overlay will be required where more than three utility trench crossings occur with 150 lineal ft. of street length or where utility trenches parallel the street centerline. Grinding of the existing asphalt to blend in the overlay will be required along all match lines.

3. The driveway for each lot shall be long enough so that parked cars do not extend into the access easement or right-of-way (20 ft. min.)

4. Prior to the final of the building or grading permit, pay for the installation of stop and street signs at the new intersections.

5. Install "NO PARKING ANYTIME" signs along one side of Road A and B

6. Install new monuments at the intersection of NE 95th St. with Road A and Road B, at the terminus of Road A and Road B, and at the centerline radius points of tangency along Road A and B.

7. It shall be the responsibility of the applicant to relocate any above-ground or below-ground utilities which conflict with the project associated street or utility improvements.

8. Underground all new and existing on-site utility lines and overhead transmission lines.

9. New street lights are required per Puget Power design and Public Works approval. Design must be submitted prior to issuance of a grading or building permit.

HIGHLANDS 25

VOL/PAGE

A PORTION OF NW 1/4, SECTION 4, TOWNSHIP 25 N., RANGE 5 E., W.M.
KING COUNTY, WASHINGTON

DEDICATION

KNOW ALL PEOPLE BY THESE PRESENTS THAT WE, THE UNDERSIGNED OWNERS OF INTEREST IN THE LAND HEREBY SUBDIVIDED, HEREBY DECLARE THIS PLAT TO BE THE GRAPHIC REPRESENTATION OF THE SUBDIVISION MADE HEREBY, AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS AND ALLEYS NOT SHOWN AS PRIVATE HEREON AND DEDICATE THE USE THEREOF FOR ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES, AND ALSO THE RIGHT TO LAY ALL NECESSARY SIDWALKS, CURBS AND FILLS UPON THE LOTS SHOWN THEREON IN THE ORIGINAL REASONABLE GRADING OF SAID STREETS AND ALLEYS AND FURTHER DEDICATE TO THE USE OF THE PUBLIC ALL THE EASEMENTS AND TRACTS SHOWN ON THIS PLAT FOR ALL PUBLIC PURPOSES AS INDICATED THEREON, INCLUDING BUT NOT LIMITED TO PARKS, OPEN SPACES, UTILITIES AND DRAINAGE UNLESS SUCH EASEMENTS OR TRACTS ARE SPECIFICALLY IDENTIFIED ON THIS PLAT AS BEING DEDICATED OR CONVEYED TO A PERSON OR ENTITY OTHER THAN THE PUBLIC, IN WHICH CASE WE DO HEREBY DEDICATE SUCH STREETS, EASEMENTS, OR TRACTS TO THE PERSON OR ENTITY IDENTIFIED AND FOR THE PURPOSE STATED.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED, WAIVE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS AND ANY PERSON OR ENTITY DERIVING TITLE FROM THE UNDERSIGNEDS, ANY AND ALL CLAIMS FOR DAMAGES AGAINST THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS WHICH MAY BE OCCASIONED BY THE ESTABLISHMENT, CONSTRUCTION, OR MAINTENANCE OF RIVERS AND/OR DRAINAGE SYSTEMS WITHIN THE SUBDIVISION OTHER THAN CLAIMS RESULTING FROM INADEQUATE MAINTENANCE BY THE CITY OF KIRKLAND.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED, AGREE FOR INDEMNITIES, THEIR HEIRS AND ASSIGNS TO INDEMNIFY AND HOLD THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY DAMAGE, INCLUDING ANY COSTS OF DEFENSE, CLAIMED BY PERSONS WHOSE OR WHOSE THIS SUBDIVISION TO HAVE BEEN CAUSED BY ALTERATIONS OF THE GROUND SURFACE, VEGETATION, DRAINAGE, OR SURFACE OR SUBSURFACE WATER FLOWS WITHIN THE SUBDIVISION OR BY ESTABLISHMENT, CONSTRUCTION OR MAINTENANCE OF THE ROADS WITHIN THE SUBDIVISION. PROVIDED, THIS WAIVER AND INDEMNIFICATION SHALL NOT BE CONSTRUED AS RELINQUISHING THE CITY OF KIRKLAND, ITS SUCCESSORS OR ASSIGNS, FROM LIABILITY FOR DAMAGES, INCLUDING THE COST OF DEFENSE, RESULTING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF KIRKLAND, ITS SUCCESSORS OR ASSIGNS.

THIS SUBDIVISION, DEDICATION, WAIVER OF CLAIMS AND AGREEMENT TO HOLD HARMLESS IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DECISIONS OF SAID OWNERS.

IN WITNESS WHEREOF WE SET OUR HANDS AND SEALS.

HIGHLANDS 25, LLC
BY: _____
ITS: _____

ACKNOWLEDGMENT

STATE OF WASHINGTON
COUNTY OF KING

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT
SIGNED THIS INSTRUMENT ON DATE STATED THAT HE/SHE WAS AUTHORIZED TO EXECUTE THE
INSTRUMENT AND ACKNOWLEDGED IT AS THE
OF HIGHLANDS 25, LLC, TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES
AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATE: _____
SIGNATURE OF
NOTARY PUBLIC: _____
PRINTED NAME: _____
TITLE: _____
RESIDES AT: _____
BY APPOINTMENT EXPIRES: _____

COVENANTS

ALL LOTS AND TRACTS WITHIN THIS PLAT ARE SUBJECT TO THE COVENANTS RECORDED THIS
DAY OF _____, 20____, LINDER RECORDING INC., RECORDS OF KING
COUNTY, WASHINGTON.

APPROVALS

KIRKLAND CITY COUNCIL

APPROVED BY THE KIRKLAND CITY COUNCIL THIS ____ DAY OF _____, 20____.

ATTEST:

DEPARTMENT OF PUBLIC WORKS

EXAMINED AND APPROVED THIS ____ DAY OF _____, 20____.

CITY ENGINEER (DIRECTOR)

CITY OF KIRKLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

EXAMINED, REVIEWED, AND APPROVED BY THE CITY OF KIRKLAND PURSUANT TO THE SHORT
SESSION PROVISIONS OF TITLE 22 (LAND SUBDIVISION), KIRKLAND MUNICIPAL CODE,
THIS ____ DAY OF _____, 20____.

DIRECTOR, DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

CITY TREASURER CERTIFICATE

I HEREBY CERTIFY THAT THERE ARE NO DELINQUENT LOCAL IMPROVEMENT ASSESSMENTS AND
SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION AND THAT ALL SPECIAL
ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION ON ANY OF THE PROPERTY HEREIN
CONTAINED DEDICATED AS STREETS, ALLEYS OR FOR ANY OTHER PUBLIC USE, ARE PAID IN FULL
THIS ____ DAY OF _____, 20____.

TREASURER, CITY OF KIRKLAND

FINANCE DIRECTOR CERTIFICATE

I HEREBY CERTIFY THAT ALL PROPERTY TAXES ARE PAID, THAT THERE ARE NO DELINQUENT
SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION AND THAT ALL SPECIAL
ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION ON ANY OF THE PROPERTY HEREIN
CONTAINED DEDICATED AS STREETS, ALLEYS OR FOR ANY OTHER PUBLIC USE, ARE PAID IN FULL
THIS ____ DAY OF _____, 20____.

MANAGER, FINANCE DIVISION DEPUTY

KING COUNTY DEPARTMENT OF ASSESSMENTS

EXAMINED AND APPROVED THIS ____ DAY OF _____, 20____.

KING COUNTY ASSESSOR DEPUTY KING COUNTY ASSESSOR

ACCOUNT NUMBER

COUNTY RECORDING OFFICIAL'S INFORMATION BLOCK (WAC 332-130-050)

LAND SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT OF HIGHLANDS 25 IS BASED UPON AN ACTUAL
SURVEY AND SUBDIVISION OF SECTION 25, TOWNSHIP 23 NORTH, RANGE 5 EAST, W.M.,
THAT THE COURSES AND DISTANCES ARE SHOWN CORRECTLY THEREON; THAT THE
MONUMENTS WILL BE SET AND THE LOT AND BLOCK CORNERS WILL BE STAKED CORRECTLY ON
THE GROUND AS CONSTRUCTION IS COMPLETED AND THAT I HAVE FULLY COMPLIED WITH THE
PROVISIONS OF THE PLATTING REGULATIONS.



DAVID B. MATTHEWS, P.L.S.
CERTIFICATE NO. 36304
CONCEPT ENGINEERING, INC.
455 RAINIER BLVD. N.
ISSAQUAH, WA. 98027
PHONE: (425) 392-8055

RECORDING CERTIFICATE RECORDING NO.

FILED FOR RECORD AT THE REQUEST OF THE KIRKLAND CITY COUNCIL THIS ____ DAY OF
_____, 20____, AT ____ MINUTES PAST ____ M. AND RECORDED IN
VOLUME ____ OF PLATS, PAGE(S) ____ RECORDS OF KING
COUNTY, WASHINGTON.

DIVISION OF RECORDS AND ELECTIONS

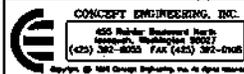
MANAGER SUPERINTENDENT OF RECORDS

A PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 25 NORTH,
RANGE 5 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON.

JOB NO 25344

SHEET 1 OF 6

CITY OF KIRKLAND FILE NO. PSB04-00001



ATTACHMENT 2

FSB06-00001 Memo

HIGHLANDS 25

A PORTION OF NW 1/4, SECTION 4, TOWNSHIP 25 N., RANGE 5 E., W.M.
KING COUNTY, WASHINGTON

VOL/PG

LEGAL DESCRIPTION

PARCEL A

THAT PORTION OF LOTS 4 AND 5, BLOCK 47, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 20 OF PLATS, PAGE 14, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT AN INTERSECTION OF THE SOUTHERLY LINE OF SAID LOT 3 WITH A LINE DRAWN PARALLEL WITH AND 125 FEET WESTERLY OF (MEASURED AT RIGHT ANGLES TO) THE CENTERLINE SURVEY OF SECONDARY STATE HIGHWAY NUMBER 2-A, KIRKLAND ADDITION;

THENCE NORTHERLY ALONG SAID PARALLEL LINE TO THE NORTH LINE OF SAID LOTS 4 AND 5;

THENCE WESTERLY ALONG SAID NORTHERLY LINES TO THE MOST NORTHERLY CORNER OF SAID LOT 4;

THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 4 A DISTANCE OF 125 FEET;

THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINES OF SAID LOTS 4 AND 5 TO A LINE 145 FEET WESTERLY OF (MEASURED AT RIGHT ANGLES) AND PARALLEL WITH THE CENTERLINE OF SAID SECONDARY STATE HIGHWAY 2-A;

THENCE SOUTHERLY ALONG SAID PARALLEL LINE TO THE SOUTHERLY LINE OF SAID LOTS 4 AND 5;

THENCE EASTERLY ALONG SAID SOUTHERLY LINES TO THE POINT OF BEGINNING.

PARCEL B

THE SOUTHERLY 102 FEET IN WIDTH OF LOT 3, BLOCK 47, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 20 OF PLATS, PAGE 14, IN KING COUNTY, WASHINGTON.

PARCEL C
LOT 2, BLOCK 47, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 20 OF PLATS, PAGE 14, IN KING COUNTY, WASHINGTON.

PARCEL D
TRACT "A", EDWARD PLACE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 122 OF PLATS, PAGES 26 THROUGH 28, IN KING COUNTY, WASHINGTON.

PARCEL E

LOT 3, BLOCK 47, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 20 OF PLATS, PAGE 14, IN KING COUNTY, WASHINGTON;
EXCEPT THE SOUTHERLY 102 FEET IN WIDTH OF SAID LOT 3.

PARCEL F

THAT PORTION OF LOTS 4 AND 5, BLOCK 47, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 20 OF PLATS, PAGE 14, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 4;

THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 4 A DISTANCE OF 125 FEET TO THE TRUE POINT OF BEGINNING;

THENCE EASTERLY, PARALLEL WITH THE NORTHERLY LINES OF SAID LOTS 4 AND 5 TO A LINE PARALLEL WITH AND 145 FEET WESTERLY OF THE CENTERLINE OF SECONDARY STATE HIGHWAY NO. 2-A;

THENCE SOUTHERLY ALONG SAID PARALLEL LINE TO THE SOUTHERLY LINES OF SAID LOTS 4 AND 5;

THENCE WESTERLY ALONG SAID SOUTHERLY LINES TO THE SOUTHWEST CORNER OF SAID LOT 4;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID LOT 4 TO THE TRUE POINT OF BEGINNING.

PARCEL G

LOTS 13 AND 14, BLOCK 48, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 20 OF PLATS, PAGE 14, IN KING COUNTY, WASHINGTON;
EXCEPT THOSE PORTIONS THEREOF CONVEYED TO THE STATE OF WASHINGTON FOR HIGHWAY PURPOSES BY DEEDS RECORDED UNDER RECORDING NUMBERS 4302327 AND 6008938.

PARCEL H

LOTS 10, 11, AND 12, BLOCK 48, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 20 OF PLATS, PAGE 14, IN KING COUNTY, WASHINGTON;
EXCEPT THOSE PORTIONS THEREOF LYING SOUTHEASTERLY OF THE NORTHWESTERLY MARGIN OF THE STATE HIGHWAY AS CONVEYED TO THE STATE OF WASHINGTON BY DEEDS RECORDED UNDER RECORDING NUMBERS 4302328, 4304407, AND 6008938.

MERIDIAN

WASHINGTON STATE PLANE COORDINATE SYSTEM (NAD 83/W) NORTH ZONE.

BASIS OF BEARINGS

N29°25'10"E BETWEEN FOUND MONUMENTS ON CENTERLINE OF 117TH PLACE NE.

REFERENCES

PLAT OF BURKE & FARRAR'S KIRKLAND ADDITION, DIVISION NO. 14, VOL. 20, PG. 14.

PLAT OF EDWARD PLACE, VOL. 122, PGS. 26-28.

PLAT OF TWO KINGS, VOL. 151, PGS. 50-52.

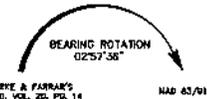
TITLE REPORT FROM CHICAGO TITLE CO., ORDER NO. 1175446 PROVIDED BY CLIENT.

KIRKLAND SHORT PLAT NO. 55-1-86-43, VOL. 52, PG. 163.

KIRKLAND B.L.A. NO. 11-01-21, VOL. 150, PGS. 73-73A.

RECORD OF SURVEY, VOL. 182, PG. 187.

W.S.D.O.T. RIGHT-OF-WAY MAP FOR SR 406, NORTHUP INTERCHANGE TO NE 140TH ST.



CONCEPT ENGINEERING, INC.
455 Robler Boulevard North
Burien, Washington 98147
(425) 242-8266 FAX (425) 242-0100
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JOB NO 25344
SHEET 2 OF 6



VOL/PG

HIGHLANDS 25

A PORTION OF NW 1/4, SECTION 4, TOWNSHIP 26 N., RANGE 5 E., W.M.
KING COUNTY, WASHINGTON

VOL/PC

GENERAL NOTES

1. PARKING IS NOT PERMITTED ON TRACT "A" AND TRACT "B".
2. DATED
3. WATER AND SEWER CONNECTION FEES (PAID WITH THE ISSUANCE OF A BUILDING PERMIT)
4. THERE IS AN EXISTING UNDERGROUND DETENTION FACILITY IN THE NE 1/4 1/4 STREET NORTH OF WAY NEAR THE BOUNDARY WITH 1-100. THE DEVELOPER AND THE CITY OF KIRKLAND HAVE AGREED THAT THE DEVELOPER WILL INSTALL SOME RECREATIONAL PLAY EQUIPMENT AND LANDSCAPING OVER THE TOP OF THE DETENTION SYSTEM IN THE NE 1/4 1/4 STREET NORTH OF WAY AS AN AMENITY FOR THE PROPOSED DEVELOPMENT. THE HIGHLANDS 25 HOMEOWNERS ASSOCIATION (HOA) SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE LANDSCAPING AND RECREATIONAL EQUIPMENT WHILE THE CITY SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE UNDERGROUND DETENTION SYSTEM. SINCE THE RECREATIONAL AREA IS WITHIN PUBLIC RIGHT OF WAY, IT MAY BE USED BY THE PUBLIC. IT IS ANTICIPATED THAT RESIDENTS WITHIN THIS DEVELOPMENT AS WELL AS THE SURROUNDING NEIGHBORHOOD WILL USE THE AREA. THE PLAY AND RECREATION AREA IS TO BE MAINTAINED BY THE HOA. SHOULD THE HOA BE DISSOLVED, MAINTENANCE OF THE PARK AND RECREATION AREA SHALL BE AN EQUAL AND UNDIVIDED RESPONSIBILITY OF THE INDIVIDUAL LOT OWNERS WITHIN THIS PLAT.
5. THE DRIVEWAY FOR EACH LOT SHALL BE LOW ENOUGH SO THAT PARKED CARS DO NOT EXTEND INTO THE ACCESS EASEMENT OR RIGHT-OF-WAY (20 FT. MIN).
6. UTILITY MAINTENANCE. EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE SANITARY SEWER OR STORM STUB FROM THE POINT OF USE ON THEIR PROPERTY TO THE POINT OF CONNECTION IN THE CITY SANITARY SEWER MAIN OR STORM WATER MAIN. ANY PORTION OF A SANITARY SEWER OR SURFACE WATER STUB, WHICH SHOWNLY SERVES MORE THAN ONE PROPERTY, SHALL BE JOINTLY MAINTAINED AND REPAIRED BY THE PROPERTY OWNERS SHARING SUCH STUB. THE JOINT USE AND MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
7. PUBLIC RIGHT-OF-WAY DESIGN AND VEGETATION MAINTENANCE. EACH OWNER SHALL BE RESPONSIBLE FOR KEEPING THE SIDEWALK ADJACENT TO THE SUBJECT PROPERTY CLEAN AND LITTER FREE. THE PROPERTY OWNER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATION WITHIN THE ADJUTING LANDSCAPE STRIP. THE MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
8. ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL NUMBER 8001, ASSIGNMENT OF STREET NUMBERS AND ROAD SIGNAGE.
9. TRACT "A" IS A PRIVATE ACCESS TRACT FOR INGRESS, EGRESS AND UTILITIES FOR THE BENEFIT OF THE OWNERS OF LOT 12 AND LOT 13. DIMENSIONS OF LOT 12 AND LOT 13 WITHIN THIS PLAT INCLUDE AN EQUAL AND UNDIVIDED OWNERSHIP INTEREST IN TRACT "A" AND AN EQUAL AND UNDIVIDED RESPONSIBILITY FOR THE MAINTENANCE OF SAID TRACT.
10. TRACT "B" IS A PRIVATE ACCESS TRACT FOR INGRESS, EGRESS AND UTILITIES FOR THE BENEFIT OF THE OWNERS OF LOTS 20 THROUGH 23. DIMENSIONS OF LOTS 20 THROUGH 23 WITHIN THIS PLAT INCLUDE AN EQUAL AND UNDIVIDED OWNERSHIP INTEREST IN TRACT "B" AND AN EQUAL AND UNDIVIDED RESPONSIBILITY FOR THE MAINTENANCE OF SAID TRACT.
11. TRACT "C", A PUBLIC UTILITY TRACT, IS HEREBY CONVEYED TO THE CITY OF KIRKLAND.
12. INSTRUMENTATION FOR THIS SURVEY WAS A 5 SECOND THEODOLITE AND AN ELECTRONIC DISTANCE MEASURING UNIT. PROCEDURES USED IN THIS SURVEY WERE FIELD TRAVERSE, MEETING OR EXCEEDING STANDARDS SET BY NCE 310-100-000.
13. NEIGHBORHOOD TREE 4-FOOT TALL AND HIGHER WILL BE MAINTAINED BY THE HIGHLANDS 25 HOMEOWNERS ASSOCIATION. RIGHT OF ENTRY FOR MAINTENANCE AND REPAIR SHALL BE PERMITTED BY THE OWNERS OF LOTS WITH NEIGHBORHOOD TREE 4-FOOT TALL AND HIGHER.
14. DATED
15. THE 20'-FOOT PUBLIC WATER EASEMENT WITHIN LOT 21 AND TRACT B IS HEREBY DEDICATED TO THE PUBLIC FOR WATER UTILITY PURPOSES.
16. THE 10'-FOOT PUBLIC SIDEWALK EASEMENT WITHIN LOT 21 AND TRACT B IS HEREBY DEDICATED TO THE PUBLIC FOR SIDEWALK PURPOSES AND SHALL BE MAINTAINED BY THE HIGHLANDS 25 HOMEOWNERS ASSOCIATION.
17. THE 10'-FOOT TREE PRIVATE DRAINAGE EASEMENT WITHIN LOTS 5 AND LOT 6 IS FOR THE BENEFIT OF LOT 8 AND LOT 7. THE OWNERS OF SAID LOTS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THAT PORTION OF THE DRAINAGE FACILITIES THEY HAVE BENEFIT OF USE AND SHALL EQUALLY SHARE IN THE MAINTENANCE OF THAT PORTION OF THE DRAINAGE FACILITIES LIVED IN COMMON.
18. THE 10'-FOOT TREE PRIVATE SANITARY SEWER EASEMENT WITHIN LOT 7 IS FOR THE BENEFIT OF LOT 8. THE OWNERS OF SAID LOTS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THAT PORTION OF THE SANITARY SEWER FACILITIES THEY HAVE BENEFIT OF USE AND SHALL EQUALLY SHARE IN THE MAINTENANCE OF THAT PORTION OF THE DRAINAGE FACILITIES LIVED IN COMMON.
19. THE SAME TREE REMOVAL ESTABLISHES ON ALL PRESENT AND FUTURE OWNERS AND USERS OF THE LAND AN OBLIGATION TO LEAVE NEARBY TREES. REMOVAL OF TREES REQUIRES AUTHORIZATION BY THE CITY OF KIRKLAND.
20. DRAINAGE SYSTEM MAINTENANCE - THE HIGHLANDS 25 HOMEOWNERS ASSOCIATION SHALL BE RESPONSIBLE FOR THE DAY TO DAY MAINTENANCE OF THE DRAINAGE SYSTEMS IN THE RIGHT-OF-WAY OR IN EASEMENTS CONSTRUCTED WITH THIS DEVELOPMENT INCLUDING THE LOTS INCLUDED IN THE HIGHLANDS 25 HOMEOWNERS ASSOCIATION. DAY TO DAY MAINTENANCE SHALL INCLUDE MOWING, WEEDING AND REPLACING ANY PLANT MATERIAL AND KEEPING THE SHOULDS CLEAR OF STUMPS WHICH COULD IMPROVE DRAINAGE. THE CITY WILL MAINTAIN ALL PAVED AND STRUCTURED CONNECTING RIGHT-OF-WAY WATER.

RESTRICTIONS

- SUBJECT TO
1. PUGET SOUND POWER & LIGHT COMPANY EASEMENT FOR ELECTRIC DISTRIBUTION LINE, RECORDING NO. 342523 (SHOWN HEREON).
 2. PUGET SOUND POWER & LIGHT COMPANY EASEMENT FOR ELECTRIC TRANSMISSION AND/OR DISTRIBUTION LINE, RECORDING NO. 421701 (SUPERSEDED WITH LTVG OVER THE POWER FACILITIES AS CONSTRUCTED WITHIN UNDER WAY PARCEL 03).
 3. CITY OF KIRKLAND EASEMENT FOR SEWER AND/OR WATER LINE, RECORDING NO. 820200040 (SHOWN HEREON).
 4. EASEMENTS AND RESERVATIONS CONTAINED IN DEED, RECORDING NO. 772324.
 5. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF BETWEEN DONALD G. SMITH AND THE CITY OF KIRKLAND, RECORDING NO. 82422816.
 6. REINSTATEMENT OF ACCESS TO STATE HIGHWAY NUMBER 2-4 AND OF LOT, NEW AND AIR BY DEED TO THE STATE OF WASHINGTON, RECORDING NOS. 4302324, 4302327, 4306401, 4302755 & 8206630.
 7. TERMS AND CONDITIONS OF NOTICE OF CHANGES BY WATER, SEWER, AND/OR STORM AND SURFACE WATER UTILITIES, RECORDING NO. 810640004.

EASEMENT PROVISIONS

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO PUGET SOUND ENERGY, THE CITY OF KIRKLAND (AS TO STORM DRAINAGE AND WATER), VERIDON COMMUNICATIONS, INC., COMCAST CABLE TELEVISION, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS UNDER AND UPON 1) THE EXTERIOR 10 FEET, PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF LOTS 1 THROUGH 10, THE SOUTH LINE OF LOT 11, LOTS 17 THROUGH 23, THE WEST LINE OF LOT 24, TRACT "B" AND TRACT "C" AND 2) THE EXTERIOR 15 FEET, PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF LOTS 11 AND 12, LOTS 14 THROUGH 15, THE WEST LINE OF LOT 18, LOT 20, THE WEST LINE OF LOT 23 AND TRACT "A" IN WHICH TO INSTALL, LAY, CONSTRUCT, REPAIR, OPERATE AND MAINTAIN UNDERGROUND EGRESS, MAINS, CABLES AND WIRES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION AND OTHER PROPERTY WITH UTILITY SERVICES, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSE HEREIN STATED. THESE EASEMENTS ENTERED UPON FOR THESE PURPOSES SHALL BE RESTORED AS NEAR AS POSSIBLE TO THEIR ORIGINAL CONDITION BY THE UTILITY, NO LINES OR WIRES FOR THE TRANSMISSION OF ELECTRIC CURRENT, TELEPHONE OR CABLE TV SHALL BE PLACED OR BE PERMITTED TO BE PLACED UPON ANY LOT UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO A BUILDING.

NATURAL GREENBELT PROTECTIVE EASEMENT

THE AREA DESIGNATED HEREON AS "N.G.P.E." IS HEREBY DEDICATED TO THE CITY OF KIRKLAND AS A NATURAL GREENBELT PROTECTIVE EASEMENT. NO TREE TRIMMING, TREE TOPPING, TREE CUTTING, OR TREE REMOVAL, NOR STUMP OR BRUSH-CUTTING OR REMOVAL, (UNLESS APPLICATION OF PESTICIDES, HERBICIDES OR FERTILIZERS) NOR CONSTRUCTION, CLEARING, OR ALTERATION ACTIVITIES SHALL OCCUR WITHIN THE EASEMENT AREA WITHOUT PRIOR WRITTEN APPROVAL FROM THE CITY OF KIRKLAND. APPLICATION FOR SUCH WRITTEN APPROVAL TO BE MADE TO THE KIRKLAND DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT WHO MAY REQUIRE INSPECTION OF THE PREMISES BEFORE ISSUANCE OF THE WRITTEN APPROVAL AND FOLLOWING COMPLETION OF THE ACTIVITIES, ANY FURTHER CONSTRUCTION OR ALTERATION SUCH ACTIVITY IN VIOLATION OF THIS PARAGRAPH OR THE TERMS OF ANY WRITTEN APPROVAL, ISSUED PURSUANT HERETO, SHALL BE SUBJECT TO THE ENFORCEMENT PROVISIONS OF CHAPTER 17C, ORDINANCE 3719, THE KIRKLAND ZONING CODE, IN SUCH EVENT, THE KIRKLAND DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT MAY ALSO REQUIRE, WITHIN THE IMMEDIATE VICINITY OF ANY DAMAGED OR FALLEN VEGETATION, RESTORATION OF THE AFFECTED AREA BY PLANTING SHOULDS OF COMPARABLE SIZE AND FOR TREES OF THREE INCHES OR MORE IN DIAMETER MEASURED ONE FOOT ABOVE GRADE. THE DEPARTMENT ALSO MAY REQUIRE THAT THE DAMAGED OR FALLEN VEGETATION BE REMOVED.

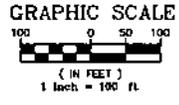
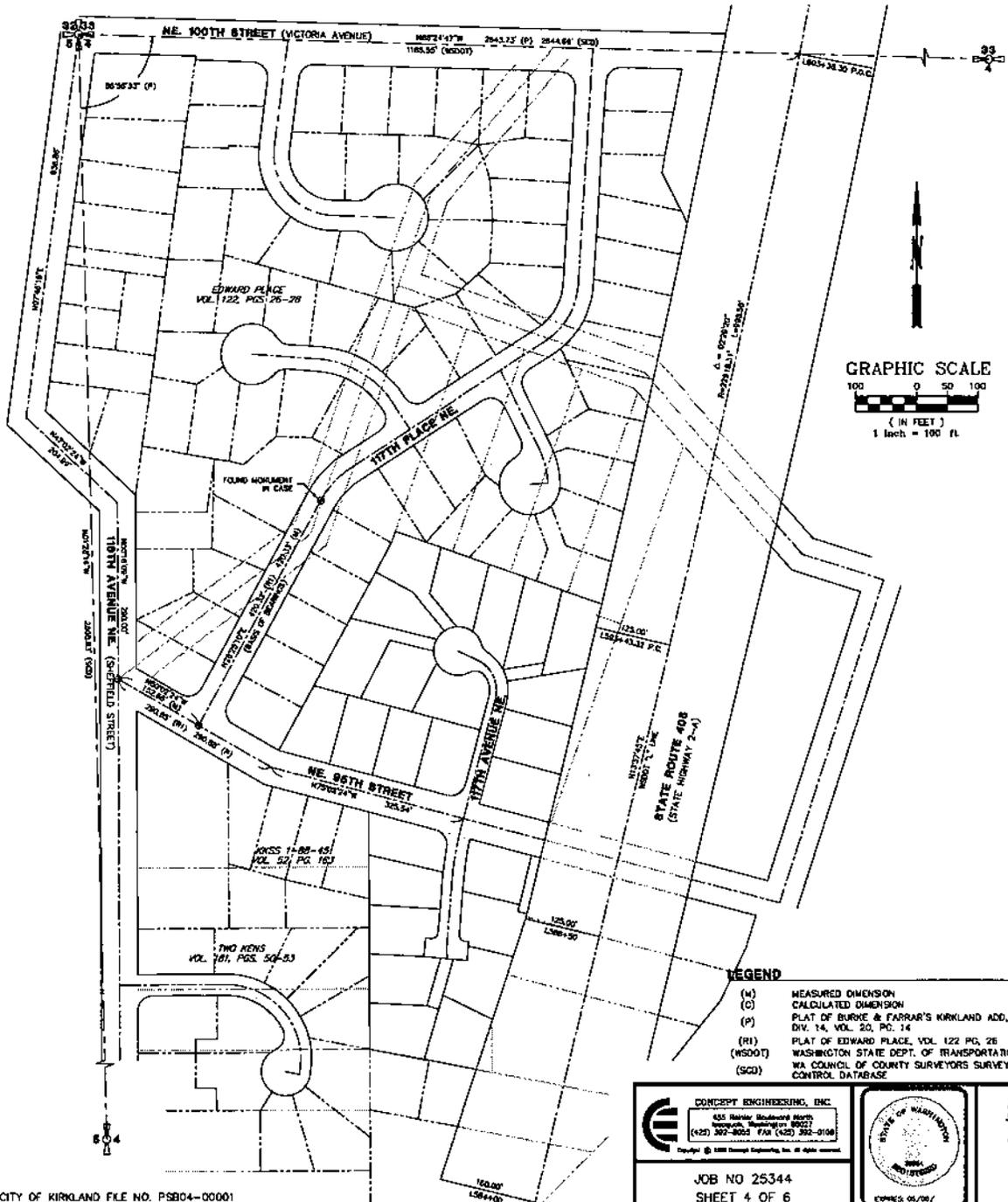
THE OWNERS OF LOTS 14 THROUGH 16 AGREE TO DEFEND, PAY, AND HAVE HARMLESS THE CITY OF KIRKLAND, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS OF EVERY NATURE (WHATEVER, REAL OR PERSONAL) WHICH MAY BE MADE AGAINST THE CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES FOR ANY DAMAGE TO PROPERTY OR INJURY TO ANY PERSON ARISING OUT OF THE EXISTENCE OF SAID NATURAL GREENBELT PROTECTIVE EASEMENT OVER SAID OWNERS PROPERTY OR THE ACTIONS OF THE UNDERGROUND OWNERS IN CARRYING OUT THE RESPONSIBILITIES UNDER THIS AGREEMENT, INCLUDING ALL COSTS AND EXPENSES, AND RECOVER ATTORNEY'S FEES AS MAY BE INCURRED BY THE CITY OF KIRKLAND IN DEFENSE THEREOF. EXCEPTING THEREFROM ONLY SUCH CLAIMS AS MAY ARISE SOLELY OUT OF THE NEGLIGENCE OF THE CITY OF KIRKLAND, ITS OFFICERS, AGENTS, OR EMPLOYEES.

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<p>JOB NO 25344 SHEET 3 OF 6</p>			
<p>EXP. 06/09/7</p>			

HIGHLANDS 25

A PORTION OF NW 1/4, SECTION 4, TOWNSHIP 25 N., RANGE 5 E., W.M.
KING COUNTY, WASHINGTON

VOL/PG

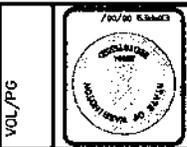


- LEGEND**
- (M) MEASURED DIMENSION
 - (C) CALCULATED DIMENSION
 - (P) PLAT OF BURKE & FARRAR'S KIRKLAND ADD. DIV. 14, VOL. 20, PG. 14
 - (RI) PLAT OF EDWARD PLACE, VOL. 122 PG. 26
 - (WSDOT) WASHINGTON STATE DEPT. OF TRANSPORTATION
 - (SCD) WA COUNCIL OF COUNTY SURVEYORS SURVEY CONTROL DATABASE

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 435 Rainier Boulevard North
 Seattle, Washington 98107
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JOB NO 25344
SHEET 4 OF 6



CONCEPT ENGINEERING, INC.
 1435 Market Boulevard, Suite 200
 Everett, WA 98203
 (425) 335-8000 Fax: (425) 335-0100

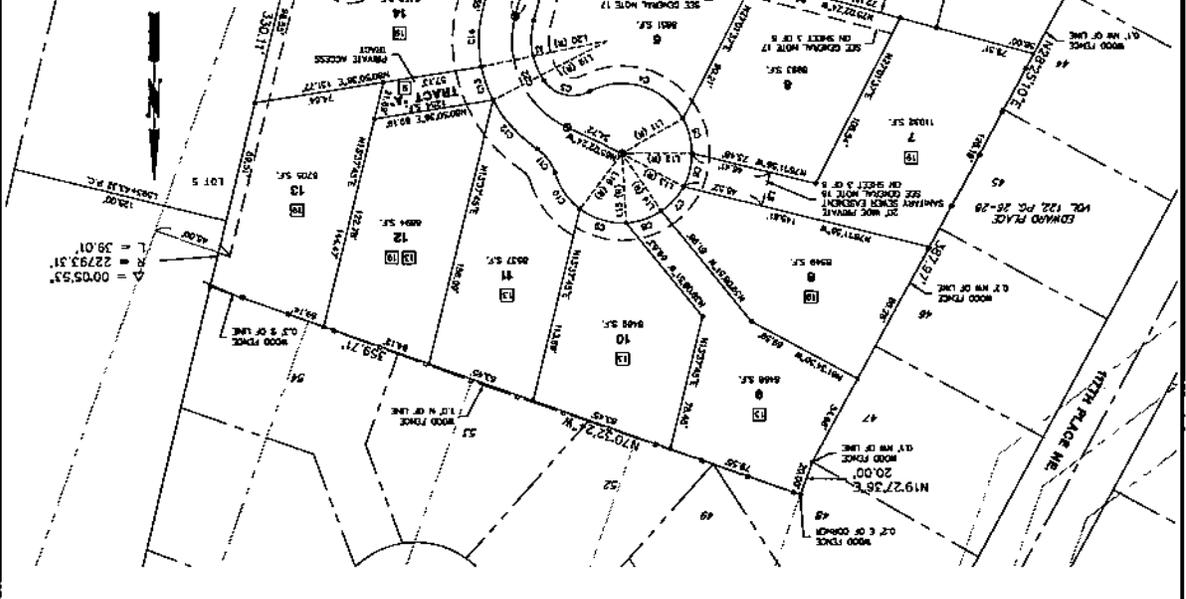
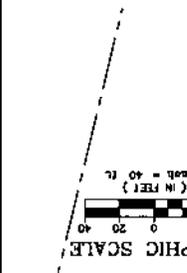
JOB NO 25344
 SHEET 5 OF 6
 N.O.P.E. NATURAL GREENBELT PROTECTIVE EASMENT
 MONUMENT IN CASE #2810
 SET REBAR & CAP, CEI #2810
 SEE GENERAL NOTE # ON SHEET 3 OF 6
 LEGEND

CITY OF KIRKLAND FILE NO. PS804-00001

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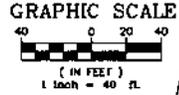
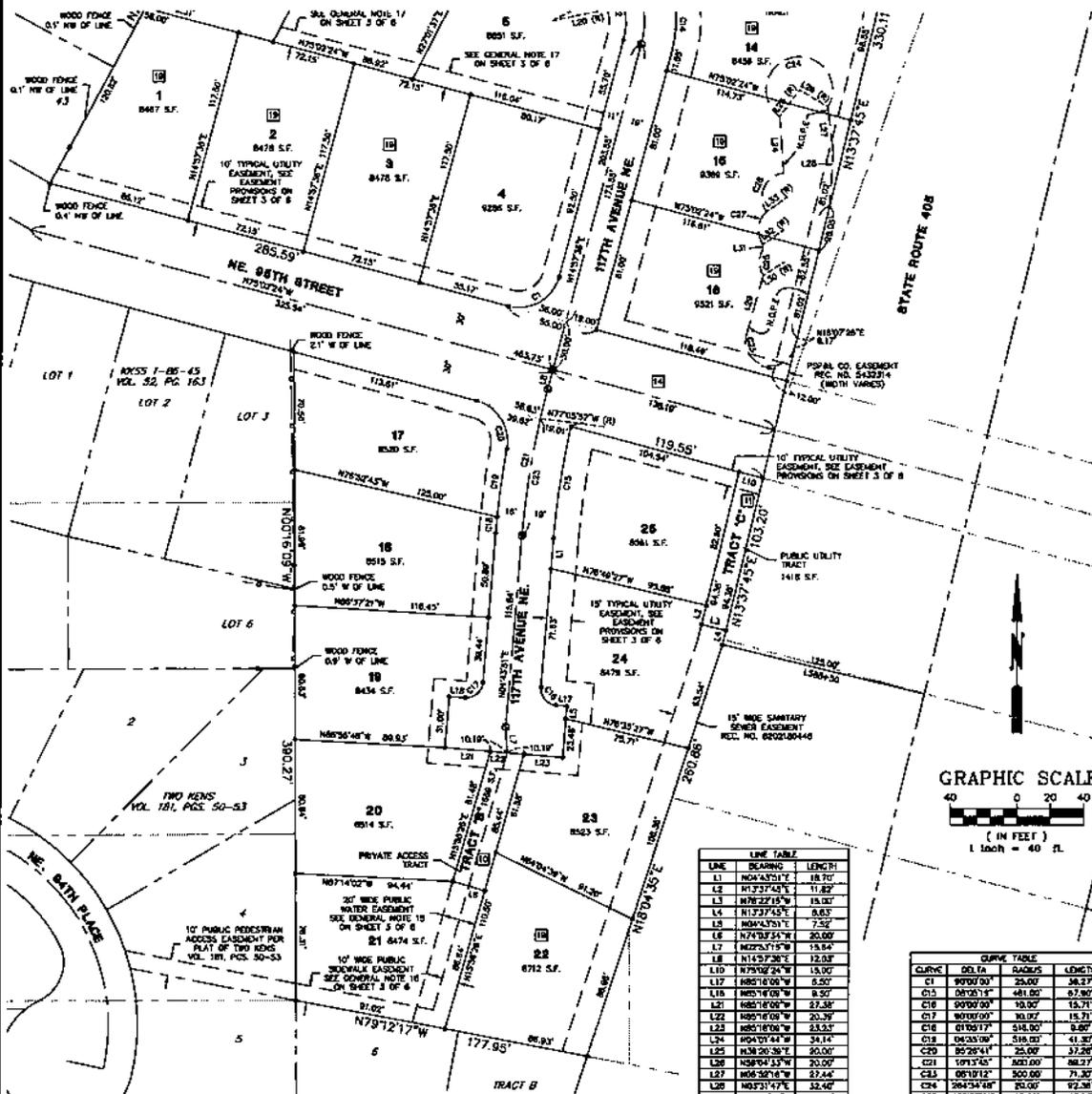
A PORTION OF NW 1/4, SECTION 4, TOWNSHIP 25 N., RANGE 8 E., W.M.
 KING COUNTY, WASHINGTON
HIGHLANDS 25

VOL/PG

HIGHLANDS 25

A PORTION OF NW 1/4, SECTION 4, TOWNSHIP 26 N., RANGE 5 E., W.M.
KING COUNTY, WASHINGTON

VOL/PG



LINE	BEARING	LENGTH
L1	N84°45'00"E	18.00'
L2	N73°27'45"W	11.82'
L3	N78°22'18"W	18.00'
L4	N73°27'45"E	8.63'
L5	N84°45'00"E	7.50'
L6	N74°02'54"W	30.00'
L7	N82°51'15"W	18.84'
L8	N14°57'30"E	12.00'
L9	N78°02'00"W	18.00'
L10	N82°16'00"W	8.50'
L11	N82°16'00"W	8.50'
L12	N82°16'00"W	8.50'
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L30	N82°16'00"W	8.50'
L31	N82°16'00"W	8.50'
L32	N82°16'00"W	8.50'
L33	N82°16'00"W	8.50'

CURVE	DELTA	CHORDS	LENGTH
C1	90°00'00"	25.00'	38.27'
C2	90°00'00"	10.00'	15.71'
C3	90°00'00"	18.00'	28.71'
C4	90°00'00"	18.00'	28.71'
C5	90°00'00"	18.00'	28.71'
C6	90°00'00"	18.00'	28.71'
C7	90°00'00"	18.00'	28.71'
C8	90°00'00"	18.00'	28.71'
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C14	90°00'00"	18.00'	28.71'
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C17	90°00'00"	18.00'	28.71'
C18	90°00'00"	18.00'	28.71'
C19	90°00'00"	18.00'	28.71'
C20	90°00'00"	18.00'	28.71'

LEGEND
 ○ MONUMENT IN CASE
 • SET REBAR & CAP, CEI #28101
 □ SEE GENERAL NOTE # ON SHEET 3 OF 6
 M.G.P.E. NATURAL GREENBELT PROTECTIVE EASEMENT

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 Tukwila, Washington 98077
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JOB NO 25344
 SHEET 6 OF 6

CITY OF KIRKLAND FILE NO. PSB04-00001

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS, AND DECISION**

APPLICANT: Craig Sears of Highlands 24, LLC

FILE NO. PSB04-00001

APPLICATION:

1. **Site Location:** At the 116th block of NW 95th Street (Exhibit A, Attachment 1)
2. **Request:** To allow the subdivision of eight existing lots totaling 6.68 acres into 25 single family lots in an RS 8.5 zoning district.
3. **Review Process:** Hearing Examiner conducts a public hearing and makes the final decision.
4. **Major Issues:** Compliance with the following:
 1. KMC 22.12.230, plat approval criteria
 2. KMC 22.28.040, lot averaging
 3. KMC 22.28.170, pedestrian walkways
 4. KMC 22.28.210, significant tree retention

SUMMARY OF RECOMMENDATION AND DECISION:

Department of Planning and Community Development: Approve with conditions

Hearing Examiner Decision: Approve with conditions

PUBLIC HEARING:

After reviewing the official file, which included the Department of Planning and Community Development Advisory Report and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the Highlands application was opened at 7:03 p.m., June 2, 2005, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington, and was closed at 8:10 p.m. Participants at the public hearing and the exhibits offered and entered are listed in this report. A verbatim recording of the hearing is available in the City Clerk's office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development.

ATTACHMENT 3

PSB04-00001 Memo

Hearing Testimony

The following persons testified at the public hearing:

From the City:

Tony Leavitt, Project Planner: Described the history and details of the application, the major issues and review criteria, concerns raised by the public and staff responses, and staff's review and recommendation (see Exhibit A). Mr. Leavitt entered Exhibit B into the record.

Thang Nguyen, Traffic Engineer: Responded to several questions from the public and the Hearing Examiner, clarifying statements made in the traffic review, describing the basis of the traffic analysis and the procedures used, and summarizing the pending improvements along 116th Avenue NE (see also Exhibit A, Attachment 5, Enclosures 4 & 5). Rob Jammerman of Public Works entered Exhibit E into the record, consisting of an excerpt from the City's current Capital Improvement Program (CIP).

From the Applicant:

Applicant representatives were not in attendance.

From the Community:

Karen Story, Highlands Neighborhood Assoc. (see also Exhibit C)

Steve Hager, Highlands Neighborhood Assoc. (see also Exhibit D)

Zita Gustin, Highlands Neighborhood Assoc.

Gail Baerny, neighbor

Sue Keller, I-5 Expansion Neighborhood Group

The above individuals, while not opposed to the project, all raised similar concerns over traffic and pedestrian safety. Exhibits B, C and D are representative of these issues. In large part the concerns revolved around providing pedestrian improvements off-site on nearby roads, in particular 116th Avenue and roadway improvements around 85th and 114th. In addition, they noted improvements to the shoulder at the corner of NE 95th and 116th Avenue were needed including widening, a safe walking surface, removal of vegetation for improved sight distance and elimination of some mail boxes in the right-of-way (note that Ms. Story showed photos of the current condition of the intersection).

FINDINGS AND CONCLUSIONS:

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

1. The Facts and Conclusions regarding the Site Description on pages 3 and 4 in Exhibit A, Planning Division Advisory Report, May 26, 2005, accurately reflects the site circumstances, zoning requirements and land use, and are hereby adopted by reference.

2. The description of Public Comments and associated staff responses on pages 4 through 6 in Exhibit A, Planning Division Advisory Report, May 26, 2005 are accurate and supported by hearing testimony and hereby adopted by reference. Additionally:

- a. Public testimony questioned the accuracy of the required traffic analysis since it in part relied on traffic counts that may not have reflected the actual amount of local traffic, citing that an on-site kennel was not at full operation at the time of these counts. As noted by Mr. Nguyen at the hearing and in Exhibit A, Attachment 5, Enclosure 4, the traffic analysis is adjusted to show a *net* difference between the existing site-generated traffic and an estimate of traffic from the proposed project; in this case approximately 108 new trips. In other words, existing traffic *from the site* is not added to the estimated traffic since those existing trips are being eliminated by the project. If the site-generated count had been higher, then the net number of *new* trips would be lower.

FINDING: The traffic analysis has been performed correctly and in a manner consistent with existing City procedures.

- b. Several requests were made by those in attendance that project approval be conditioned on providing several off-site pedestrian and roadway improvements, particularly noting the need for sidewalks both north and south of NE 95th along 116th Avenue. Relative to 116th Avenue, pedestrian and roadway improvements are already a funded part of the City's CIP, scheduled to commence in 2006 (see Exhibit E). Additionally, as explained by Mr. Nguyen, site-generated traffic must reach an established threshold before off-site mitigation can be required of a project. This project does not meet that threshold. City staff has also indicated that they are aware of the need for improvements at the corner of NE 95th Street and 116th Avenue NE and it is their intent to make the improvements, though no specific timing was offered.

FINDING: It appears that off-site pedestrian and roadway upgrades requested by the public will be provided as part of the City's CIP process.

3. The Fact and Conclusion regarding compliance with KMC 22.28.040, lot averaging, on pages 7 and 8 in Exhibit A, Planning Division Advisory Report, May 26, 2005, are accurate and are hereby adopted by reference.
4. The Facts and Conclusions regarding compliance with KMC 22.28.170, pedestrian walkways, on pages 8 through 9 in Exhibit A, Planning Division Advisory Report, May 26, 2005, are accurate and are hereby adopted by reference.
5. The Facts and Conclusions regarding compliance with KMC 22.28.210, significant tree retention, on pages 9 through 11 in Exhibit A, Planning Division Advisory Report, May 26, 2005, are accurate and are hereby adopted by reference.
6. The Fact and Conclusion regarding compliance with the Comprehensive Plan on page 11 in Exhibit A, Planning Division Advisory Report, May 26, 2005, are accurate and are hereby adopted by reference.

DECISION:

Based upon the foregoing findings of fact and conclusions, this application is APPROVED subject to the recommended conditions #2 through #5 found on pages 2 and 3 of Exhibit A.

Entered this 10th day of June, 2005 per authority granted by Section 150.65, Ordinance 2740, Zoning Code. This decision constitutes the final decision of the City of Kirkland unless an appeal is filed as specified below.


Donald B. Largen
Hearing Examiner Pro Tem

EXHIBITS:

The following exhibit was offered and entered into the record:

- A. Department of Planning and Community Development Staff Advisory Report dated May 26, 2005
- B. Packet of 6 e-mails received from the following individuals:
 - Caprice Leinonen
 - Paul Hahn
 - Connie Ballou
 - Debi Black
 - Neil Levinson
 - Nat Ballou
- C. Statement notes submitted by Karen Story
- D. Statement notes submitted by Steve Hager
- E. 6-year City Capital Improvement Program excerpt submitted by Rod Jammerman

PARTIES OF RECORD:

Karen Story, 9017 Slater Ave NE, Kirkland, WA 98033
Steve Hager, 9723 11th Ave NE, Kirkland, WA 98033
Zita Gustin, 9452 114th Ave NE, Kirkland, WA 98033
Gail Baerny, 9440 114th Ave NE, Kirkland, WA 98033
Sue Keller, 11337 NE 104th St., Kirkland, WA 98033
Caprice Leinonen, 9018 116th Ave NE, Kirkland, WA 98033

Paul Hahn, 11607 NE 102nd PL, Kirkland, WA 98033
Connie & Nat Ballou, 11126 NE 104th Way, Kirkland, WA 98033
Debi Black, sweetdbs@hotmail.com
Neil Levinson, 11631 NE 95th St., Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

A. APPEALS

Appeal to City Council: Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant and any person who submitted written or oral testimony or comments to the Hearing Examiner. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., June 28, 2005 fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

B. JUDICIAL REVIEW

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

Under Section 150.135 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 150, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 150.130, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 150 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

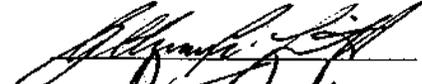
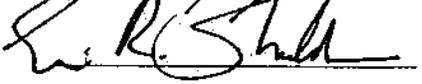


CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

ADVISORY REPORT FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner

From:  Tony Leavitt, Project Planner
 Eric R. Shields, AICP, Planning Director

Date: May 26, 2005

File: THE HIGHLANDS PRELIMINARY SUBDIVISION, PSB04-00001

Hearing Date and Place: June 2, 2005, 7:00 pm
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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EXHIBIT

A

HE Dec. PSB04-00001

I. INTRODUCTION

A. APPLICATION

1. Applicant: Craig Sears of Highlands 24, LLC
2. Site Location: 116XX NE 95th Street (see Attachment 1)
3. Request: A request to subdivide 8 existing lots, 6.68 total acres, into 25 lots for single-family residences within a RS 8.5 zone with a minimum lot size of 8,500 square feet (see Attachment 2). The proposed lots will range in size from 8,467 square feet to 11,427 square feet, with an average lot size of 8,697 square feet. Primary access to the subdivision would be from NE 95th Street. Two new public right-of-ways would be dedicated within the subdivision for access to the new lots. All existing structures on the subject properties have been demolished.
4. Review Process: Preliminary subdivision. Hearing Examiner conducts public hearing and makes final decision.
5. Summary of Key Issues and Conclusions:
 - Compliance with the Lot Size Averaging Provisions of KMC section 22.28.040 (see Section II.F.1)
 - Pedestrian Easement Requirements (see Section II.F.2)
 - Significant Tree Retention (see Section II.F.4)

B. RECOMMENDATIONS

1. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following conditions:
2. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.
3. Prior to the issuance of a land surface modification permit, the tree preservation and removal plan (Attachment 4) shall be revised to retain all significance trees on the site, except any trees located within the proposed public right-of-ways, easement roads or location of utilities.
 - a. With the Land Surface Modification permit for the plat infrastructure improvements, the applicant shall submit a copy to the Planning Department of the approved tree preservation and removal plan approved for the plat with the required changes as conditioned above. Only those significant trees required to be removed for installation of plat improvements may be removed in conjunction with the Land Surface Modification permit. Any proposed changes to the approved plan must be approved by the Planning Department. If site disturbance

is proposed within the drip lines of any trees required to be saved, an arborist report amendment may be required by the Planning Department to address specific grading impacts to the trees and recommended mitigating measures.

- b. With the submittal of the building permit on each new lot created with the short plat, the applicant shall submit a copy of the tree preservation and removal plan approved with the Land Surface Modification permit. Any proposed changes to the approved tree preservation and retention plan must be approved by the Planning Department in conjunction with the building permits.
 - c. As part of the building permit approval, the City may require minor alterations to the arrangements of structures on each lot and elements in the proposed development in order to achieve the maximum retention of these significant trees (see Conclusions II.F.4).
4. As part of the land surface modification permit application, the applicant shall submit plans for the installation of the required improvements as described in Attachment 3 including a 5-foot wide paved walkway within a 10-foot wide pedestrian walkway easement (see Conclusion II.F.2).
 5. Prior to approval of the final subdivision, the applicant shall work with the Planning Department to determine the extent of the Natural Greenbelt Protective Easement for the protection of the row of fir trees on proposed lots 14, 15, & 16 (see Conclusion II.F.4).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:
 - a. Facts:
 - (1) Size: 290,984 square feet (6.68 acres)
 - (2) Land Use: The site contained 5 residences and numerous detached structures prior to their demolition earlier this year.
 - (3) Zoning: RS 8.5, Residential Single-family with a minimum lot size of 8,500 square feet.
 - (4) Terrain: The subject property has a gradual rolling to flat type terrain. The steepest slope of the property is approximately 15 percent, with the highest slope near the north edge of the subject property.
 - (5) Vegetation: The subject property contains a total of 104 significant trees. The applicant is proposing to retain 51 significant trees or 49 percent of the significant trees (see Attachment 4). Tree Retention is further discussed in Section II.F.4.
 - b. Conclusions: The size, land use, zoning, terrain, and vegetation of the subject property are not constraining factors in the review of this applicant.

2. Neighboring Development and Zoning:
 - a. Facts: The subject property is surrounded by single-family residences to the south, north and west and all surrounding properties are zoned the same as the subject property. Interstate 405 is to the east of the subject property.
 - b. Conclusion: The neighboring development and zoning are not constraining factors in the review of this application.

B. PUBLIC COMMENT

The initial public comment period ran from February 24th until March 18, 2005. The Planning Department received 8 comment emails during this time frame (see Attachment 5, Enclosures 7-14). Below is a summary of the comments that were received along with staff response:

- Traffic

Neighbors raise concerns about the impacts of additional traffic on existing streets (including NE 95th Street), cut-through traffic on 117th Place NE, existing traffic on 116th Avenue NE, and site distance at the 116th Avenue and 95th Street intersection.

Staff Response: The City's Transportation Engineer, Thang Nguyen, addresses these concerns in an attached memo (see Attachment 5, Enclosure 15). He concludes the following:

- *The existing street pavement is able to support the additional trips generated by the proposed development.*
- *The proposed project will generate less net traffic on NE 95th Street than the existing traffic from 117th Place NE.*
- *Staff does not believe that the proposed project will create cut-through traffic on 117th Place NE. 117th Place NE does not provide a convenient connection to any traffic generators such as shopping centers, employment centers that would encourage cut through traffic from the proposed development.*
- *Staff is aware of the speeding situation on 116th Avenue NE. Noel Schoneman, the Neighborhood Traffic Control Coordinator, is working with residents to install two new speed cushions; one north of NE 94th Street, the second south of NE 91st Street. The speed hump just south of NE 95th Street will be replaced by a speed cushion. These traffic calming devices should reduce speed.*
- *The City will check the sight distance at the intersection of NE 95th Street/116th Avenue NE and take appropriate measures.*

- Significant Tree Retention

Some neighbors raise concerns that the removal of trees near Interstate 405 will result in the loss of a natural noise barrier.

Staff Response: The applicant is proposing to retain a significant amount of these existing trees on proposed lots 15 and 16. The protection of these trees is addressed in section II.F.4 of this report.

- Parking

Neighbors raise concerns about potential parking impacts including inadequate on-street parking.

Staff Response: The City of Kirkland Zoning Code only requires that the applicant provide 2 onsite parking stalls per new residence. The proposed development will be required to comply with this code requirement as part of each building permit application. Most single family residences have at least four onsite parking stalls (2 in the garage and 2 in the driveway in front of the garage). Additionally on street parking will be allowed on both sides of NE 95th Street and on one side of each of the new right-of-ways.

- Intersection Improvements

Neighbors express concerns about traffic related impacts to the NE 95th Street, 116th Avenue NE, and 117th Avenue NE right-of-ways and intersections.

Staff Response: The City's Transportation Engineer addresses these concerns by stating the following in his memo:

- *The proposed project generates insignificant amount of traffic (6 AM peak hour trips and 15 PM peak hour trips) and would not warrant a traffic signal or 4-way Stop control at 116th Ave NE/NE 95th Street intersection or widening of 116th Avenue NE.*
- *The future traffic volume at the intersection of 117th Place NE/NE 95th Street does not warrant a STOP sign.*
- *There is a plan to improve the intersection of NE 85th Street/114th Avenue NE to help ease congestion that backs up onto 116th Avenue NE during the morning peak hour.*

- Public Improvements

In the comments to staff, the neighbors suggest that the City look at requiring the applicant to install crosswalks across 117th Place NE and 116th Avenue NE and install sidewalks along NE 116th Avenue NE

Staff Response: As part of the development, the applicant will be required to install sidewalks along the portion of NE 95th Street abutting the subject property and sidewalks along the two new public right-of-ways (see Attachment 3).

Staff concludes the following regarding these requests:

- *The Kirkland Zoning Code limits the requirement to install public improvements to only the right-of-ways abutting the subject property.*
- *In general, crosswalks are installed to connect with pedestrian facilities such as school walk route, sidewalks and trail to provide safe connectivity when there is high usage and high traffic volume. The low volume on 117th Place NE does not warrant a crosswalk.*

- *As indicated in the City's Comprehensive Plan, there are plans to install curb, gutter, sidewalk, and street trees along the east side of 116th Avenue NE from the existing sidewalk north of NE 100th Street to NE 94th Street. This project is scheduled to be completed in 2009. Once sidewalks are installed along 116th Avenue NE, Public Works will evaluate the need for a crosswalk across 116th Avenue NE at NE 95th Street*

- Impacts on Existing Utilities

Neighbors raise concerns about the impacts on existing utility services that the development will have.

Staff Response The proposed development passed a concurrency test for water and sewer (Section II.D). Additionally, the Public Works Department is requiring, as a condition of the preliminary subdivision, that the applicant comply with sanitary sewer, water system, and surface water requirements. The applicant will be required to underground all offsite utilities in the portion of NE 95th Street fronting the property and all onsite utilities.

The Public Works Department is also encouraging the use of Low Impact Design methods to lessen the impacts of surface water run-off. One option that is being encouraged by the City is the use of Street Edge Alternative (SEA) design concepts being used in the City of Seattle. As the engineering design plans are developed for this project, the developer may propose to use some or all of the SEA street design standards. If these standards are accepted by the Public Works Department, some slight modifications to the road standards, such as the type of curb and the design of the landscape strips, will be necessary. However, no elements such as street trees, sidewalks, or the width of the street will be eliminated or modified.

C. STATE ENVIRONMENTAL POLICY ACT (SEPA)

A Determination of Nonsignificance (DNS) was issued on May 12th, 2005. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 5.

D. CONCURRENCY

The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for traffic on February 11, 2005 (see Attachment 5, Enclosure 5). A concurrency test for water and sewer was passed on November 9, 2004 (see Attachment 3).

E. APPROVAL CRITERIA

1. PRELIMINARY PLATS

- a. Facts: Municipal Code section 22.12.230 states that the Hearing Examiner may approve a proposed plat only if:
 - (1) There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and
 - (2) It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Hearing Examiner shall be guided by

the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

Zoning Code section 150.65 states that the Hearing Examiner may approve a proposed plat only if:

- (3) It is consistent with the all applicable development regulations, including but not limited to the Zoning Code and Subdivision Code, and to the extent there is no applicable development regulation, the Comprehensive Plan.
- b. Conclusion: The proposal complies with Municipal Code section 22.12.230 and Zoning Code section 150.65. It is consistent with the Comprehensive Plan (see Section II G). With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations (see Sections II.F and II.H) and there are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools. It will serve the public use and interest and is consistent with the public health, safety, and welfare because proposal will create infill residential development while meeting the goals of the Comprehensive Plan for the Highlands neighborhood.

F. DEVELOPMENT REGULATIONS

1. General Lot Layout and Site Development Standards

a. Facts:

- (1) Municipal Code section 22.28.030 requires all lots to meet the minimum size requirements established for the property in the Kirkland Zoning Code or other regulatory documents. Lots not meeting the minimum size requirements may be allowed pursuant to Municipal Code Section 22.28.040.
- (2) Municipal Code section 22.28.040 states that the minimum lot area shall be deemed to have been met if the average lot area is not less than the minimum lot area required of the zoning district in which the property is located. Lots that contain less area than required for the zoning district shall be located so as to have the least impact on surrounding properties and public rights-of-way.
- (3) Under this provision 75% of the number of lots in a subdivision may contain an area less than the required minimum for the zoning district if the proposed lots are no more than 5% smaller than the minimum lot size required for the zoning district.
- (4) The minimum lot size for the RS 8.5 zoning district is 8,500 square feet.
- (5) The average lot area for the 25 proposed lots is 8,697 square feet.
- (6) Fourteen (14) of the proposed lots, or 56% of the number of the lots in the subdivision, contain an area less than the required minimum for the RS 8.5 zoning district.

- (7) The fourteen lots that are less than the prescribed minimum lots size are:
- Lots 1, 11, & 24: 8,467 square feet (0.39% short)
 - Lot 9: 8,468 square feet (0.38% short)
 - Lot 10: 8,469 square feet (0.36% short)
 - Lots 14 & 18: 8,470 square feet (0.35% short)
 - Lot 15: 8,472 square feet (0.33% short)
 - Lot 17: 8,473 square feet (0.32% short)
 - Lots 2 & 3: 8,478 square feet (0.26% short)
 - Lots 19 & 25: 8,479 square feet (0.25% short)
 - Lot 23: 8,488 square feet (0.14% short)

b. Conclusion: The proposed subdivision meets the provisions of Kirkland Municipal Code section 22.28.040 for lot averaging. The average lot area is not less than the minimum lot area required in the RS 8.5 zone. Less than seventy-five percent of the number of lots in the short plat contain an area less than the prescribed minimum for this zoning district and none of the lots being created contain an area more than five percent less than prescribed. These smaller lots, due to their small lot area shortages, will not have an impact on surrounding properties and public rights-of-way.

2. Access – Walkways

a. Facts:

- (1) Municipal Code section 22.28.170 establishes that the City may require the installation of pedestrian walkways by means of dedicated rights-of-ways, tracts, or easements if a walkway is indicated as appropriate in the comprehensive plan, if it is reasonably necessary to provide efficient pedestrian access to a designated activity center of the city, or if blocks are unusually long.
- (2) The Highlands Neighborhood Comprehensive Plan states that sidewalks or other small scale improvements are encouraged to facilitate pedestrian and bicycle travel in the neighborhood.
- (3) Zoning Code section 110.60 states that the Public Works Director may require the applicant to install public pedestrian walkways when the walkway is reasonably necessary as a result of the development activity. Pedestrian access may be required to connect existing or planned dead end streets, through streets, or other pedestrian access.
- (4) The Public Works Department is recommending that the applicant dedicate a 10 foot wide pedestrian easement from the south end of the new southern access road (Road B) to the southwest corner of Lot 21 (see Attachment 3 for requirement and Attachment 2 for location). The

sidewalk is required to be 5 feet wide within the easement and connect to the existing sidewalk and pedestrian easement that already exists within the subdivision to the west.

- b. Conclusion: Pursuant to Municipal Code section 22.28.170 and Zoning Code section 110.60, as part of the land surface modification permit application the applicant should submit plans to dedicate a pedestrian easement and install the associated improvements as required by the Public Works Department.

3. Bonds and Securities

a. Facts:

- (1) Municipal Code section 22.32.080 states that in lieu of installing all required improvements and components as part of a plat, the applicant may propose to post a bond for a period of one year to ensure completion of these requirements within one year of the decision approving the plat or short plat.
- (2) Zoning Code section 175.10.2 establishes the circumstances under which the City may consider the use of a performance security in lieu of completion of certain site work prior to occupancy. The City may consider a performance security only if: the inability to complete work is due to unavoidable circumstances beyond the control of the applicant; there is certainty that the work can be completed in a reasonable period of time; and occupancy prior to completion will not be materially detrimental to the City or properties adjacent to the subject site.

b. Conclusions:

- (1) Site and right-of-way improvements required as a result of the plat should be completed prior to recording, unless a security device to cover the cost of installing the improvements and guaranteeing installation within one year of the date of final plat approval is submitted.
- (2) In order to ensure timely completion of all required site and right-of-way improvements, such improvements should be completed prior to occupancy, unless the applicant can demonstrate compliance with the criteria in Zoning Code section 175.10.2.

4. Natural Features - Significant Vegetation

a. Facts:

- (1) Kirkland Municipal Code Section 22.28.210 and Ordinance No. 3865 require that at least 25% of all significant trees on the site and all significant trees located within 10 feet of existing and proposed property lines be retained, provided that areas where structures will be located, areas required for access and areas to be cleared for required roads, utilities, sidewalks, trails or storm drainage improvements are exempt from this requirement. In addition, Zoning Code Section 95.15 the City may require minor alterations in the arrangement of buildings and other

elements of the proposed development in order to achieve maximum retention of significant trees.

- (2) The subject site contains a total of 196 trees according to the arborist report submitted by the applicant (see Attachment 5, Enclosure 6). 92 of the trees were found to be non-significant due to their small size, poor health, poor structure, or a combination of these factors. As a result, there are a total of 104 significant trees on the site. The significant tree preservation and removal plan submitted with the plat application provides for retention of 51 trees or 49 % of the trees on the site (see Attachment 4).
- (3) Kirkland Zoning Code section 95.45 states that the City may require the applicant to dedicate development rights, air space, or an open space easement to the City to ensure compliance with any of the requirements of this chapter.
- (4) Kirkland Municipal Code section 22.28.220 (Preservation of natural features—Easements) states that the city shall require open space or drainage easements or other similar mechanisms to ensure compliance with the preservation of natural vegetation.
- (5) The Kirkland Natural Resource Management Plan states that some effective tools for preservation of healthy, mature wooded stands of trees include the use of NGPE's.
- (6) Comprehensive Plan Policy NE-3.2 looks to preserve healthy mature native vegetation whenever feasible (see Attachment 7). This policy also states that of special importance is the retention of significant stands of native evergreen trees. Needless removal or destruction of such vegetation should not be allowed.
- (7) There are approximately 32 existing significant fir trees on proposed lots 14, 15, and 16.
- (8) The existing significant fir trees on proposed Lots 14, 15, and 16 are significant grove of trees that provide a natural barrier between Interstate 405 and the properties surrounding the subject property.

b. Conclusions:

- (1) The applicant should retain all of the significant trees on the site at the plat approval stage, except for any tree that are required to be removed for installation of the right-of-ways, easement road, and/or utilities.

- (2) A copy of the approved tree preservation and removal plan, with any required changes outlined in the conditions of approval, is required to be submitted with the Land Surface Modification permit. Only those significant trees that need to be removed for installation of the plat improvements can be removed in conjunction with the Land Surface Modification permit. An arborist report amendment may be required to address hazardous trees that need to be removed or grading impacts to trees proposed for retention.
- (3) A copy of the tree preservation and removal plan approved with the Land Surface Modification permit is required to be submitted with the building permit on each lot. Any proposed changes to the plan should be approved by the Planning Department.
- (4) As part of the building permit approval, the City may require minor alterations to the arrangements of structures on each lot and elements in the proposed development in order to achieve the maximum retention of these significant trees.
- (5) The existing significant fir trees on lots 14, 15, and 16 are a significant grove of trees that benefit the subject property and surrounding properties. While some of the trees may need to be removed to accommodate public improvements and/or structures, the remaining trees should be protected by a Natural Greenbelt Protective Easement (see Attachment 8). Prior to approval of the final subdivision, the applicant should work with the Planning Department to determine the extent of the Natural Greenbelt Protective Easement for the protection of the row of fir trees on proposed lots 14, 15, & 16.

G. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the Highlands neighborhood. The Highlands Neighborhood Land Use Map designates the subject property for low density residential use with a density of five units per acre (see Attachment 6). Comprehensive Plan Policy NE-3.2 looks to preserve healthy mature native vegetation whenever feasible (see Attachment 7). This policy also states that of special importance is the retention of significant stands of native evergreen trees. Needless removal or destruction of such vegetation should not be allowed.
2. Conclusion: The proposal is consistent with the Comprehensive Plan for the Highlands Neighborhood. In order to ensure compliance with Comprehensive Plan Policy NE-3.2, the applicant should comply with Conclusion II.F.4.

H. DEVELOPMENT REVIEW COMMITTEE

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards Sheet, Attachment 3.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

III. MINOR MODIFICATIONS

The Department of Planning and Community Development shall be administratively authorized to approve modifications to the approved site plan, unless:

- A. There is a change in use and the Zoning Code establishes different or more rigorous standards for the new use than for the existing use; or
- B. The Planning Director determines that there will be substantial changes in the impacts on the neighborhood or the City as a result of the change.

IV. APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

A. APPEALS

Appeal to City Council:

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant and any person who submitted written or oral testimony or comments to the Hearing Examiner. A party who signed a petition may not appeal unless such party also submitted independent written comments or information. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

B. JUDICIAL REVIEW

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.

V. LAPSE OF APPROVAL

Under Section 22.16.130 of the Subdivision Ordinance, the owner must submit a final plat application to the Planning Department, meeting the requirements of the Subdivision Ordinance and the preliminary plat approval, and submit the final plat for recording, within four years following the date the preliminary plat was approved or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 22.16.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.

VI. APPENDICES

Attachments 1 through 8 are attached.

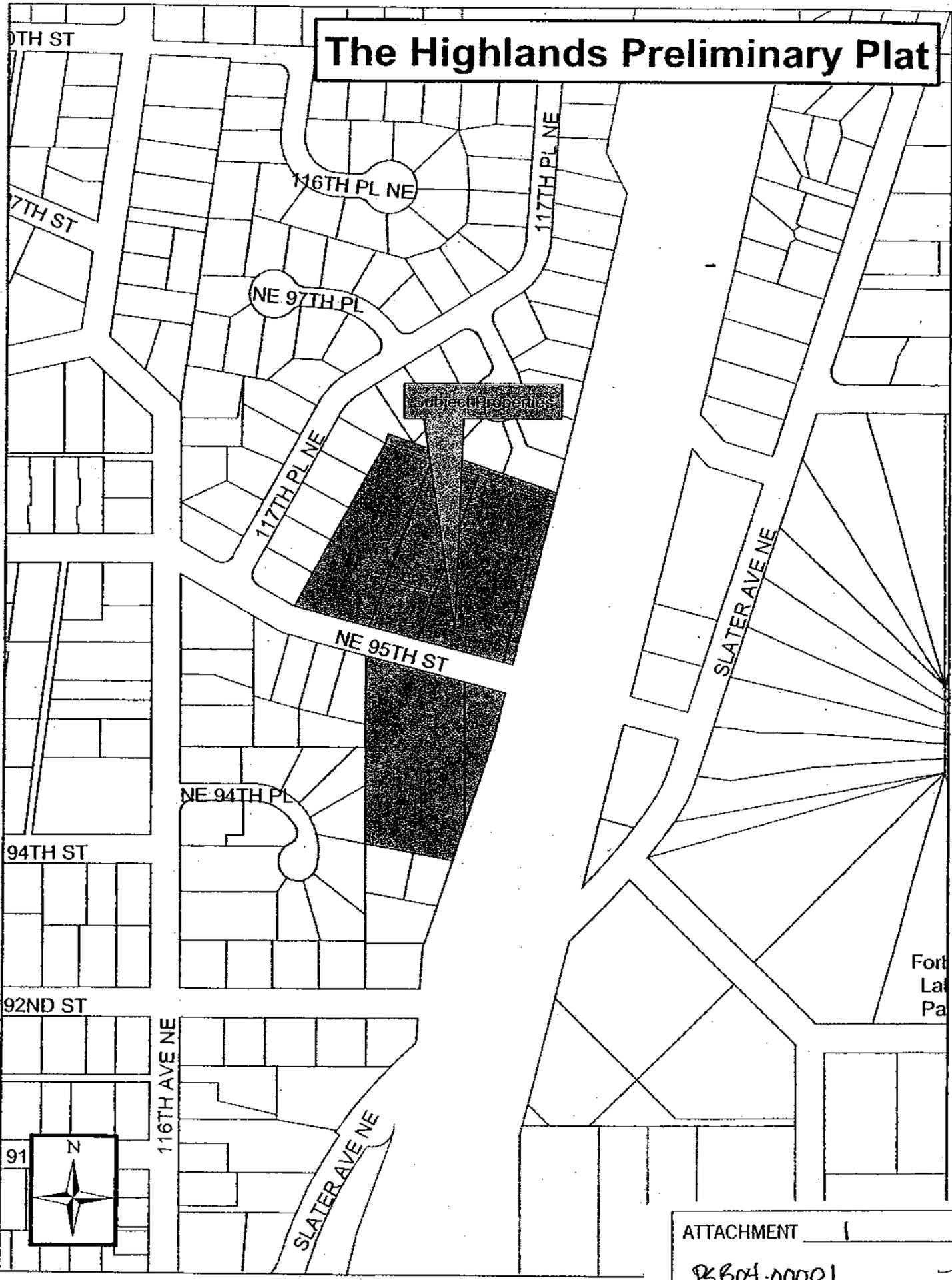
1. Vicinity Map
2. Development Plans
3. Development Standards
4. Tree Retention Plan
5. SEPA Determination
6. Highlands Neighborhood Land Use Map
7. Comprehensive Plan Policy NE-3.2
8. Natural Greenbelt Protective Easement

VII. PARTIES OF RECORD

Applicant: Craig Sears, Highlands 24 LLC, 7947 159th Place NE, Suite 102; Redmond, WA 98052
Party of Record: Cynthia Johnson, 11617 NE 95th Street, Kirkland, WA 98033
Party of Record: Andrea Gerth, 9707 117th Place NE, Kirkland, WA 98033
Party of Record: Mark and Kris Jacobs, 9610 117th Place NE, Kirkland, WA 98033
Party of Record: Stacy Kovats, 9495 116th Avenue NE, Kirkland, WA 98033
Party of Record: Highlands Neighborhood Association, c/o Karen Story, 9017 Slater Avenue NE, Kirkland, WA 98033
Party of Record: Zita Gustin, 9452 116th Avenue NE, Kirkland, WA 98033
Party of Record: Gail Baerny, 9440 114th Avenue NE, Kirkland, WA 98033
Party of Record: Gary and Vicki Ebat-Selke, 9513 117th Place NE, Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

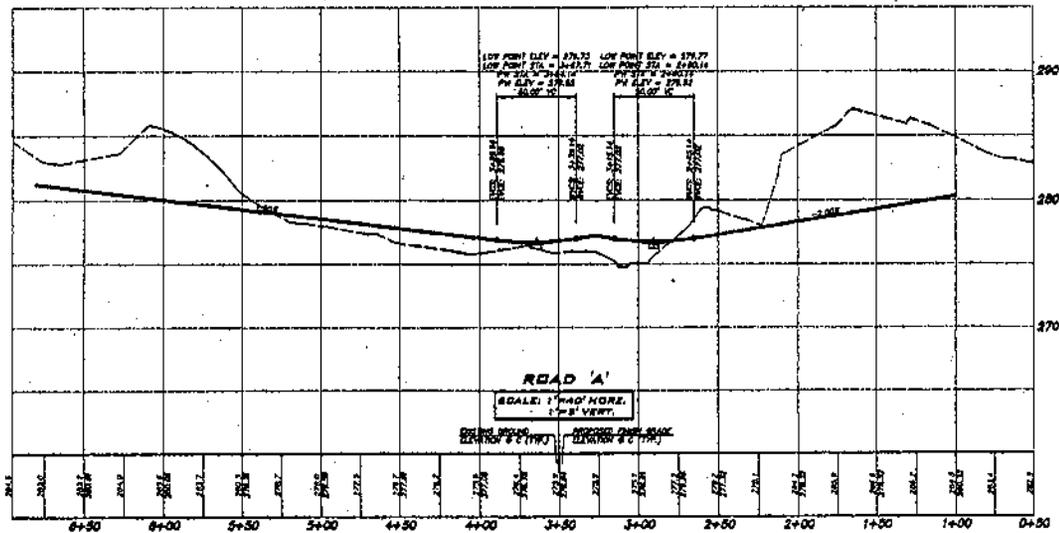
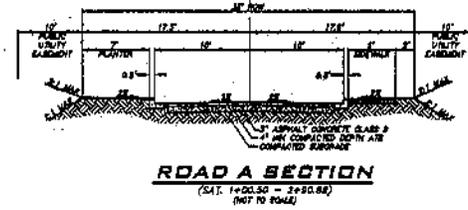
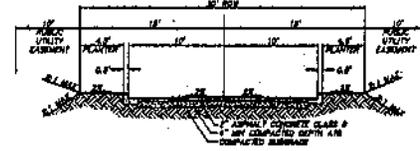
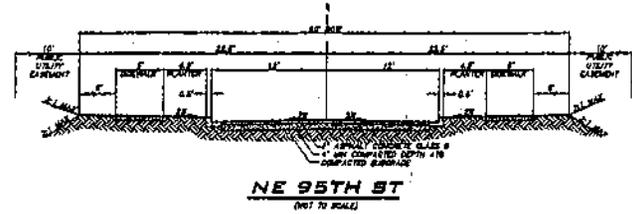
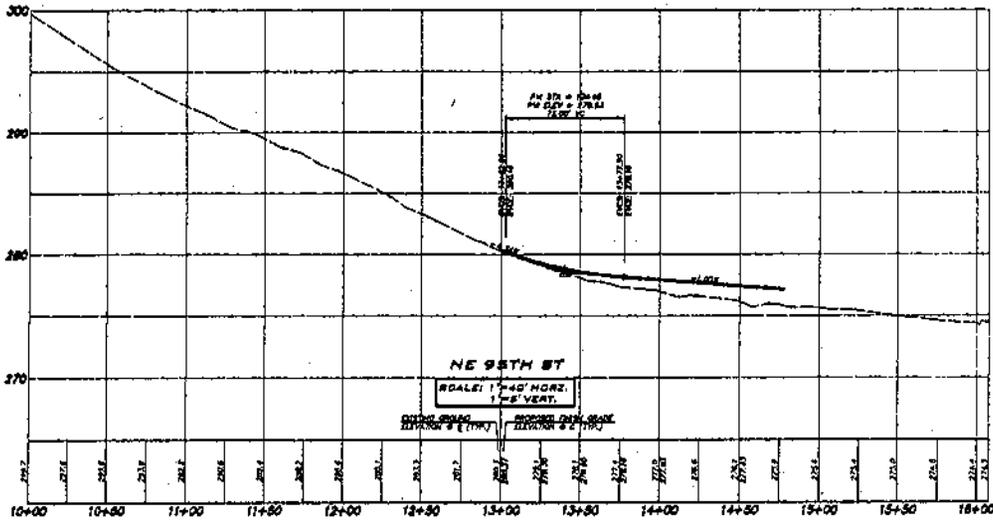
A written decision will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.

The Highlands Preliminary Plat



ATTACHMENT 1
P3604-00001

NOT TO SCALE



CONCRETE GROUP
ROAD PROFILE AND SECTIONS
HIGHLANDS 24
11644 NE 95TH ST

SCALE: HORIZ. 1"=40' VERT. 1"=2'
PREP. & CHECKED BY: [Signature]
PROJECT MANAGER: [Signature]
DESIGNED BY: [Signature]
DRAWN BY: [Signature]

REVISIONS	
DATE	
BY	
DATE	
BY	



04-034
SHEET 4 OF 4



DEVELOPMENT STANDARDS LIST

File: PSB04-00001, The Highlands Preliminary Plat

Subdivision Standards

22.28.030 Lot Size. Unless otherwise approved in the preliminary subdivision or short subdivision approval, all lots within a subdivision must meet the minimum size requirements established for the property in the Kirkland zoning code or other land use regulatory document.

22.28.050 Lot Dimensions. For lots smaller than 5,000 square feet, the lot width at the back of the required front yard shall not be less than 50 feet unless the garage is located at the rear of the lot or the lot is a flag lot.

22.28.130 Vehicular Access Easements. The applicant shall comply with the requirements found in the Zoning Code for vehicular access easements or tracts.

22.28.210 Significant Trees. The applicant shall retain at least twenty-five percent of the healthy significant trees, together with any associated groundcover or understory vegetation necessary to assure long-term health and prevent erosion. The tree retention plan is shown on Attachment 4. All trees designated to be saved under the tree retention plan must be retained, unless a modification to the tree retention plan is approved by the Department of Planning and Community Development.

22.32.010 Utility System Improvements. All utility system improvements must be designed and installed in accordance with all standards of the applicable serving utility.

22.32.030 Stormwater Control System. The applicant shall comply with the construction phase and permanent stormwater control requirements of the Municipal Code.

22.32.050 Transmission Line Undergrounding. The applicant shall comply with the utility lines and appurtenances requirements of the Zoning Code.

22.32.060 Utility Easements. Except in unusual circumstances, easements for utilities should be at least ten feet in width.

27.06.030 Park Impact Fees. New residential units are required to pay park impact fees prior to issuance of a building permit. The impact fee for new single-family dwelling units is \$612. The impact fee for new multifamily dwelling units is \$430. Exemptions and/or credits may apply pursuant to KMC 27.06.050 and KMC 27.06.060. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision in the amount of \$612 for a single family unit and \$430 for a multi-family unit.

Prior to Recording:

22.16.030 Final Plat - Lot Corners. The exterior plat boundary, and all interior lot corners shall be set by a registered land surveyor.

22.16.040 Final Plat - Title Report. The applicant shall submit a title company certification which is not more than 30 calendar days old verifying ownership of the subject property on the date that

ATTACHMENT 3

PSB04-00001

the property owner(s) (as indicated in the report) sign(s) the subdivision documents; containing a legal description of the entire parcel to be subdivided; describing any easements or restrictions affecting the property with a description, purpose and reference by auditor's file number and/or recording number; any encumbrances on the property; and any delinquent taxes or assessments on the property.

22.16.150 Final Plat - Improvements. The owner shall complete or bond all required right-of-way, easement, utility and other similar improvements.

22.28.050 Lot Dimensions. The owner of the property shall sign a covenant to ensure that the garage will be located at the rear of any lot which is smaller than 5,000 square feet, has a lot width at the back of the required front yard less than 50 feet, and is not a flag lot.

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

22.32.080 Performance Bonds. In lieu of installing all required improvements and components as part of a plat or short plat, the applicant may propose to post a bond, or submit evidence that an adequate security device has been submitted and accepted by the service provider (City of Kirkland and/or Northshore Utility District), for a period of one year to ensure completion of these requirements within one year of plat/short plat approval.

Prior to occupancy:

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

22.32.090 Maintenance Bonds. A two-year maintenance bond may be required for any of the improvements or landscaping installed or maintained under this title.

Zoning Code Standards

95.35 Plant Replacement. The applicant shall replace any plants required by this Code that are unhealthy or dead for a period of two years after initial planting.

105.10.2 Pavement Setbacks. The paved surface in an access easement or tract shall be set back at least 5 feet from any adjacent property which does not receive access from that easement or tract. An access easement or tract that has a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from it. Screening standards are outlined in this section.

110.60.2 Public Pedestrian Walkways. The height of solid (blocking visibility) fences along pedestrian pathways that are not directly adjacent a public or private street right-of-way shall be limited to 42 inches unless otherwise approved by the Planning or Public Works Directors. All new building structures shall be setback a minimum of five feet from any pedestrian access right-of-way, tract, or easement that is not directly adjacent a public or private street right-of-way.

110.60.8 Street Trees. All trees planted in the right-of-way must be approved as to species by the City. All trees must be two inches in diameter at the time of planting as measured using the standards of the American Association of Nurserymen with a canopy that starts at least six feet above finished grade and does not obstruct any adjoining sidewalks or driving lanes.

115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning official.

115.40 Fence Location. Fences over 6 feet in height may not be located in a required setback yard. A detached dwelling unit abutting a neighborhood access or collector street may not have a fence over 3.5 feet in height within the required front yard. No fence may be placed within a high waterline setback yard or within any portion of a north or south property line yard, which is coincident with the high waterline setback yard.

115.42 Floor Area Ratio (F.A.R.) limits. Floor area for detached dwelling units is limited to a maximum floor area ratio in low density residential zones. See Use Zone charts for the maximum percentages allowed. This regulation does not apply within the disapproval jurisdiction of the Houghton Community Council.

115.43 Garage Setback Requirements for Detached Dwelling Units in Low Density Zones. The garage must be set back five feet from the remaining portion of the front façade of a dwelling unit if: the garage door is located on the front façade of the dwelling unit; and the lot is at least 50 feet wide at the front setback line; and the garage width exceeds 50 percent of the combined dimensions of the front facades of the dwelling unit and the garage. This regulation does not apply within the disapproval jurisdiction of the Houghton Community Council.

115.75.2 Fill Material. All materials used as fill must be non-dissolving and non-decomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations including: wood decks; access easements or tracts serving more than one lot that does not abut a right-of-way; detached dwelling unit driveways that are outside the required front yard; grass grid pavers; outdoor swimming pools; and pedestrian walkways. See Section 115.90 for a more detailed explanation of these exceptions.

115.95 Noise Standards. The City of Kirkland adopts by reference the Maximum Environmental Noise Levels established pursuant to the Noise Control Act of 1974, RCW 70.107. See Chapter 173-60 WAC. Any noise, which injures, endangers the comfort, repose, health or safety of persons, or in any way renders persons insecure in life, or in the use of property is a violation of this Code.

115.115.3.g Rockerries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

115.115.3.n Covered Entry Porches. In low density residential zones, covered entry porches on detached dwelling units may be located within 13 feet of the front property line if certain criteria in

this section are met. This incentive is not effective within the disapproval jurisdiction of the Houghton Community Council.

115.115.3.o Garage Setbacks. In low density residential zones, garages meeting certain criteria in this section can be placed closer to the rear property line than is normally allowed in those zones.

115.115.5.a Driveway Width and Setbacks. For a detached dwelling unit, a driveway and/or parking area shall not exceed 20 feet in width in any required front yard, and shall not be closer than 5 feet to any side property line unless certain standards are met. -

115.135 Sight Distance at Intersection. Areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction as described in this section.

150.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs.

Prior to issuance of a grading or building permit:

95.15.4 Tree Protection Techniques. In order to provide the best possible conditions for the retention of significant trees, the applicant shall construct a temporary but immovable 4 foot high chain-link fence generally corresponding to the drip line of each tree or group of trees shown on the tree retention plan to be retained (see Attachment 4). Additional tree protection measures may be required of the applicant. The protective fencing must remain in place throughout the demolition, clearing, grading, excavation, and construction processes, including the construction of homes. No grading, operation of heavy equipment, stockpiling, or excavation may occur inside the protective fences.

27.06.030 Park Impact Fees. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision in the amount of \$612 for a single family unit and \$430 for a multi-family unit.

CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

Date: 5/23/2005

DEVELOPMENT STANDARDS

CASE NO.: PSB04-00001

PCD FILE NO.: PSB04-00001

FIRE DEPARTMENT CONDITIONS

3 new fire hydrants are required as shown. Subject hydrants shall be installed and fully operational prior to any combustible construction. All new hydrants as well as the existing hydrant in front of 11644 shall be equipped with 5" Stortz fittings.

"NO PARKING - FIRE LANE" signs, curb stenciling, and painting required for the private access roads serving lots 9, 13, 21 and 22.

Due to inadequate fire flow in the area, all new homes shall be provided with fire sprinkler systems (13D type).

BUILDING DEPARTMENT COMMENTS

Building permits submitted on July 1, 2004 or after must comply with the 2003 International Building, Residential and Mechanical Codes and the 2003 Uniform Plumbing Code as adopted and amended by the State of Washington and the City of Kirkland.

Structure must comply with Washington State Energy Code; and the Washington State Ventilation and Indoor Air Quality Code.

Plumbing meter and service line shall be sized in accordance with the UPC

Due to size of project (multiple building lots), geotechnical report required to address development activity. Report must be prepared by a Washington State licensed Professional Engineer. Recommendations contained within the report shall be incorporated into the design of the Short Plat and subsequent structures.

PUBLIC WORKS CONDITIONS

General Conditions:

1. All public improvements associated with this project including street and utility improvements, must meet the City of Kirkland Public Works Pre-Approved Plans and Policies Manual. A Public Works Pre-Approved Plans and Policies manual can be purchased from the Public Works Department, or it may be retrieved from the Public Works Department's page at the City of Kirkland's web site at www.ci.kirkland.wa.us.
2. This project will be subject to Public Works Permit and Connection Fees. At the pre-application stage, the fees can only be estimated. It is the applicant's responsibility to contact the Public Works Department by phone or in person to determine the fees. The fees can also be review the City of Kirkland web site at www.ci.kirkland.wa.us. The applicant should anticipate the following fees:
 - o Water and Sewer connection Fees (paid with the issuance of a Building Permit)

- o Side Sewer Inspection Fee (paid with the issuance of a Building Permit)
- o Septic Tank Abandonment Inspection Fee
- o Water Meter Fee (paid with the issuance of a Building Permit)
- o Right-of-way Fee
- o Review and Inspection Fee (for utilities and street improvements).
- o Traffic Impact Fee (paid with the issuance of Building Permit). For additional information, see notes below.

3. Prior to submittal of a Building or Zoning Permit, the applicant must apply for a Concurrency Test Notice. Contact Thang Nguyen, Transportation Engineer, at 425-576-2901 for more information. A separate Concurrency Permit will be created.

4. Building Permits associated with this proposed project will be subject to the traffic impact fees per Chapter 27.04 of the Kirkland Municipal Code. The impact fees shall be paid prior to issuance of the Building Permit(s).

5. Any existing single family homes within this project which are demolished will receive a Traffic Impact Fee credit. This credit will be applied to the first Building Permit that is applied for within the subdivision (and subsequent Building Permits if multiple houses are demolished). The credit amount for each demolished single family home will be equal to the most currently adopted Traffic Impact Fee schedule.

6. All civil engineering plans which are submitted in conjunction with a building, grading, or right-of-way permit must conform to the Public Works Policy titled ENGINEERING PLAN REQUIREMENTS. This policy is contained in the Public Works Pre-Approved Plans and Policies manual.

7. All street improvements and underground utility improvements (storm, sewer, and water) must be designed by a Washington State Licensed Engineer; all drawings shall bear the engineers stamp.

8. All plans submitted in conjunction with a building, grading or right-of-way permit must have elevations which are based on the King County datum only (NAVD 88).

9. A completeness check meeting is required prior to submittal of any Building Permit applications.

10. All subdivision recording mylar's shall include the following note:

Utility Maintenance: Each property owner shall be responsible for maintenance of the sanitary sewer or storm water stub from the point of use on their own property to the point of connection in the City sanitary sewer main or storm water main. Any portion of a sanitary sewer or surface water stub, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Public Right-of-way Sidewalk and Vegetation Maintenance: Each property owner shall be responsible for keeping the sidewalk abutting the subject property clean and litter free. The property owner shall also be responsible for the maintenance of the vegetation within the abutting landscape strip. The maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Sanitary Sewer Conditions:

1. The existing sanitary sewer main within the NE 95th St right-of-way and along the east side of lots 22-25, is adequate to serve all the lots within the proposed project.

2. Extend 8-inch sewer mains along the new public roads to provide sewer to all of the lots. The sewer main extensions depicted on sheet 3 of the submittal are adequate. Provide a plan and profile design for the sewer line extensions.

3. All new and existing sewer manholes must be accessible for maintenance purposes. The following access conditions will apply:

- " A 12 ft. wide paved access shall be extended to the new manhole at the northeast corner of lot 25.
- " A note shall be included on the Subdivision recording mylar stating that if a fence is constructed along the north property line of lot 25, a 3 ft. wide gate shall be provided at the northeast property corner for sewer manhole maintenance access.
- " The existing manhole at the southeast corner of lot 22 shall have a 12 ft. wide paved access from the end of the existing paved access, provided for the existing detention pond, to the south of lot 21. Prior to adding the new paving, additional structural fill will need to be added to the east end of the detention pond berm so the paving can be extended to within approximately 10 ft of the existing sewer manhole.

4. Provide a 6-inch minimum side sewer stub to each lot.

Water System Conditions:

1. The applicant shall extend the existing public water system to provide water service for each lot. The subdivision shall install the following water system improvements:

A. Loop an 8-inch water main from NE 95th St. south along Road B, south within a 15 ft. wide utility easement between lots 20- 21 & , 22-23 (under the pedestrian path), and connect to the existing 8-inch water main on the south side of lot 21.

B. Extend an 8-inch water main from NE 95th Street along Road A and terminate the extension with a blow-off or hydrant (Fire Dept. will determine where the hydrants should be located).

2. Provide a separate 1" minimum water service from the water main to the meter for each lot; City of Kirkland will set the water meter.

3. The existing water services may be used provided that they are in the right location, are not galvanized, and are sized adequately to serve the building (per the Uniform Plumbing Code).

4. The existing water flows are inadequate for minimum fire flow for this project; see the Fire Department Conditions for the fire sprinkler requirements.

Surface Water Conditions:

1. Provide temporary and permanent storm water control per the 1998 King County Surface Water Design Manual. The conceptual storm water detention system, as depicted on sheet 3, is approved by the Public Works Department.

2. The developer and the Public Works Department have discussed and agreed that some recreational play equipment and/or a sport court over the top of the detention system should be installed as an amenity for the proposed development. The Homeowners Association (HOA) will be responsible for maintenance of the landscaping and recreational equipment while the City will be responsible for maintenance of the detention system. Since the recreational area is within public right-of-way, it may be used by the public; it is anticipated that residents within this development as well as the surrounding neighborhood may use the area. Language shall be included on the Subdivision Recording Mylar stating the use and maintenance of the recreational area. In addition, the developer shall sign and record a Maintenance Agreement in conjunction with the establishment of the HOA.

3. Provide a level one off-site analysis (based on the King County Surface Water Design Manual, core requirement #2).

4. Any off-site storm water must by-pass the on-site storm water detention system or accounted for in the design of the detention system.

5. Provide an erosion control plan with Building or Land Surface Modification Permit application. The plan shall be in accordance with the 1998 King County Surface Water Design Manual.
6. The National Pollutant Discharge Elimination System (NPDES) Phase II Final Rule requires operators of small construction sites (disturbing between 1 and 5 acres of land) to obtain a Construction Storm water General Permit through the Washington State Department of Ecology. Information about the permit can be obtained at:
Washington State Department of Ecology <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>
U.S. EPA Office of Wastewater Management <http://cfpub.epa.gov/npdes/stormwater/const.cfm>
Specific question can be directed to:
Jeff Killelea
PO Box 47600
Olympia, WA 98504-7600
(360) 407-6127
jkil461@ecy.wa.gov
7. Construction drainage control shall be maintained by the developer and will be subject to periodic inspections. During the period from April 1 to October 31, all denuded soils must be covered within 15 days; between November 1 and March 31, all denuded soils must be covered within 12 hours. If an erosion problem already exists on the site, other cover protection and erosion control will be required.
8. Provide a separate storm drainage connection for each lot. The drainage system on each lot shall contain a 10 ft. minimum length drywell as part of the conveyance system to the storm system in the street. These drywells will be installed with each new single-family home.
9. Provide a plan and profile design for the storm sewer system.
10. A 10' minimum paved maintenance access shall be provided to the detention facility. The Public Works Surface Water Maintenance Division shall review and approve the final design of the detention facility.

Street Improvement Conditions:

1. The subject property abuts NE 95th Street and the two new access streets (roads A & B). These streets are Neighborhood Access type streets. Zoning Code sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property. Section 110.30-110.50 establishes that these streets must be improved with the following:

NE 95th Street

- A. Widen the street to 12 ft. from centerline to face of curb.
- B. Install storm drainage, curb and gutter, a 4.5 ft. planter strip with street trees 30 ft. on-center, and a 5 ft. wide sidewalk. The sidewalk and planter strip shall be installed along both property frontages; the sidewalk along the south side can terminate at the driveway apron for tract B.
- C. Underground all existing overhead utility lines along the property frontage on NE 95th St.

Road A

- A. Dedicate 30 ft in width of public right-of-way. (dedication for the cul-de-sac discussed below).
- B. Improve the street with 20 ft of paving (face of curb to face of curb), vertical curb and gutter, and a 4.5 ft wide landscape strip with street trees 30 ft. on-center.
- C. The cul-de-sac shall be encompassed in an 80 ft. diameter right-of-way with vertical curb and gutter set at 70 ft. in diameter, and 4.5 ft. wide landscape strip behind the curb with street trees 30 ft. on-center.

Road B

- A. Dedicate 35 ft in width of public right-of-way (30 ft in width around the turn-around).
- B. Improve the street with 20 ft of paving (face of curb to face of curb), vertical curb and gutter, a 4.5 ft wide landscape strip with street trees 30 ft. on-center, and a 5-ft wide sidewalk along one side of the street.

- C. The turn-around shall be improved with paving and vertical curb and gutter per Public Works Standard R.16. Street trees shall be planted around the perimeter at 30 ft. on-center where feasible.
- D. The 20 ft. wide access easement shall be improved with a 10 ft wide asphalt driveway, a 2 ft wide rolled curb and a 4 ft wide (6-inch thick) concrete sidewalk; the overall width of the improvements from the east (back) of the sidewalk to the west edge of the asphalt shall be 16 ft in width and will count as providing the 16 ft. of access width required for the Fire Department access.
- E. From the south end of the access road to the southwest property corner of lot 21, grant a 10 ft. wide pedestrian easement and install a 5 ft. wide concrete sidewalk; the sidewalk shall connect to the existing sidewalk in the subdivision to the west.

Note: The City is encouraging the use of Low Impact Design methods to lessen the impacts of surface water run-off. One of option that is being encouraged by the City is the use of Street Edge Alternative (SEA) design concepts being used in the City of Seattle. As the engineering design plans are developed for this project, the developer may proposed to use some or all of the SEA street design standards. If these standards are accepted by the Public Works Department, some slight modifications to the road standards, such as the type of curb and the design of the landscape strips, will be necessary. However, no elements such as street trees, sidewalks, or the width of the street, will be eliminated or modified.

- 2. A 2-inch asphalt street overlay will be required where more than three utility trench crossings occur with 150 lineal ft. of street length or where utility trenches parallel the street centerline. Grinding of the existing asphalt to blend in the overlay will be required along all match lines.
- 3. The driveway for each lot shall be long enough so that parked cars do not extend into the access easement or right-of-way (20 ft. min.)
- 4. Prior to the final of the building or grading permit, pay for the installation of stop and street signs at the new intersections.
- 5. Install "NO PARKING ANYTIME" signs along one side of Road A and B
- 6. Install new monuments at the intersection of NE 95th St. with Road A and Road B, at the terminus of Road A and Road B, and at the centerline radius points of tangency along Road A and B.
- 7. It shall be the responsibility of the applicant to relocate any above-ground or below-ground utilities which conflict with the project associated street or utility improvements.
- 8. Underground all new and existing on-site utility lines and overhead transmission lines.
- 9. New street lights are required per Puget Power design and Public Works approval. Design must be submitted prior to issuance of a grading or building permit.



CITY OF KIRKLAND

Planning and Community Development Department

123 Fifth Avenue, Kirkland, WA 98033 425.587-3225

www.ci.kirkland.wa.us

MEMORANDUM

To: Eric R. Shields, AICP, Planning Director

From: Tony Leavitt, Planner *TL*

Date: May 9, 2005

Subject: ENVIRONMENTAL DETERMINATION FOR THE HIGHLANDS PRELIMINARY PLAT, PSB04-00001 (SEP05-00015)

The proposal, submitted by Craig Sears of Highlands 24 LLC, is to subdivide 8 existing lots (6.68 total acres) into 25 lots for single-family residences within a RS 8500 zone (see Enclosure 1). The proposed lots will range in size from 8,467 square feet to 11,427 square feet, with an average lot size of 8,697 square feet (see Enclosure 2). Primary access to the subdivision would be from NE 95th Street. Two new public right-of-ways would be dedicated within the subdivision for access to the new lots. The existing structures that were on the subject properties were demolished earlier this year. The project will also involve a large amount of grading for public improvement installation.

I have had an opportunity to visit the site and review the following documents:

1. Environmental Checklist (Enclosure 3)
2. Traffic Impact Analysis (Enclosure 4)
3. Public Works Memo from Thang Nguyen dated February 11, 2005 (Enclosure 5)
4. Tree Evaluation prepared by Gilles Consulting revised April 13, 2005 (Enclosure 6)

Based on a review by staff, the key environmental issues associated with this project are potential traffic impacts and significant tree retention. Additionally during the initial public comment period for the zoning permit application, the City received a total of 8 emails (see Enclosures 7 thru 14). These communications raised concerns about additional potential environmental impacts of the proposed project. These concerns include parking, neighborhood traffic impacts, roadway intersection impacts, pedestrian impacts, and frontage improvements. An analysis of each of these key environmental issues follows. Thang Nguyen, City of Kirkland Transportation Engineer, has addressed some these concerns in his memo dated April 28, 2005 (Enclosure 15). The applicant's Transportation Engineer also submitted a letter addressing some of these concerns (Enclosure 16).

Traffic Impacts

Neighbors raise concerns about the impacts of additional traffic on existing streets (including NE 95th Street), cut-through traffic on 117th Place NE, existing traffic on 116th Avenue NE, and site distance at the 116th Avenue and 95th Street intersection. The City's Transportation Engineer, Thang Nguyen, addresses these concerns his memo. He concludes the following:

ATTACHMENT 5

Rev. 1.0001

- The existing street pavement is able to support the additional trips generated by the proposed development.
- The proposed project will generate less net traffic on NE 95th Street than the existing traffic from 117th Place NE.
- Staff does not believe that the proposed project will create cut-through traffic on 117th Place NE. 117th Place NE does not provide a convenient connection to any traffic generators such as shopping centers, employment centers that would encourage cut through traffic from the proposed development.
- Staff is aware of the speeding situation on 116th Avenue NE. Noel Schoneman, the Neighborhood Traffic Control Coordinator, is working with residence to install two new speed cushions; one north of NE 94th Street, the second south of NE 91st Street. The speed hump just south of NE 95th Street will be replaced by a speed cushion. These traffic calming devices should reduce speed.
- The City will check the sight distance at the intersection of NE 95th Street/116th Avenue NE and take appropriate measures.

Staff also concludes that based on the City traffic mitigation guidelines, the proposed development traffic impacts do not warrant off-site mitigation.

Significant Tree Retention

The subject property contains a total 104 trees that are defined as significant trees (see Enclosure 6). The applicant is proposing to retain a total of 51 significant trees at this time. Neighbors raise concerns that the removal of trees near Interstate 405 will result in the loss of a natural noise barrier. The applicant is proposing to retain a significant amount of these existing trees on proposed lots 15 and 16. The City will evaluate as part of the subdivision review the final tree retention plan and if it's appropriate to require that these trees be protected by a Natural Greenbelt Protective Easement (NGPE).

Parking

Neighbors raise concerns about potential parking impacts including inadequate on-street parking. The City of Kirkland Zoning Code only requires that the applicant provide 2 onsite parking stalls per new residence. The proposed development will be required to comply with this code requirement as part of each building permit application.

Intersection Impacts

Neighbors express concerns about traffic related impacts to the NE 95th Street, 116th Avenue NE, and 117th Avenue NE right-of-ways and intersections. Thang addresses these concerns by stating the following in his memo:

- The proposed project generates insignificant amount of traffic (6 AM peak hour trips and 15 PM peak hour trips) and would not warrant a traffic signal or 4-way Stop control at 116th Ave NE/NE 95th Street intersection or widening of 116th Avenue NE.
- The future traffic volume at the intersection of 117th Place NE/NE 95th Street does not warrant a STOP sign.
- There is a plan to improve the intersection of NE 85th Street/114th Avenue NE to help ease congestion that backs up onto 116th Avenue NE during the morning peak hour.

Pedestrian Impacts

As part of the development, the applicant will be required to install sidewalks along the portion of NE 95th Street abutting the subject property and sidewalks along the two new public right-of-ways. In their comments to staff, the neighbors suggest that the City look at requiring the applicant to install crosswalks across 117th Place NE and 116th Avenue NE and install sidewalks along NE 116th Avenue NE. Staff concludes the following regarding these requests:

- The Kirkland Zoning Code limits the requirement to install public improvements to only the right-of-ways abutting the subject property.
- In general, crosswalks are installed to connect with pedestrian facilities such as school walk route, sidewalks and trail to provide safe connectivity when there is high usage and high traffic volume. The low volume on 117th Place NE does not warrant a crosswalk.
- As indicated in the City's Comprehensive Plan, there are plans to install curb, gutter, sidewalk, and street trees along the east side of 116th Avenue NE from the existing sidewalk north of NE 100th Street to NE 94th Street. This project is scheduled to be completed in 2009. Once sidewalks are installed along 116th Avenue NE, Public Works will evaluate the need for a crosswalk across 116th Avenue NE at NE 95th Street

Utility Impacts

Neighbors raise concerns about the impacts on existing utility services that the development will have. The City will require as a condition of the plat that the applicant comply with sanitary sewer, water system, and surface water requirements. Additionally the applicant will be required to underground all offsite utilities in the portion of NE 95th Street fronting the property and all onsite utilities. The Public Works Department is also encouraging the use of Low Impact Design methods to lesson the impacts of surface water run-off. One option that is being encouraged by the City is the use of Street Edge Alternative (SEA) design concepts being used in the City of Seattle. As the engineering design plans are developed for this project, the developer may propose to use some or all of the SEA street design standards. If these standards are accepted by the Public Works Department, some slight modifications to the road standards, such as the type of curb and the design of the landscape strips, will be necessary. However, no elements such as street trees, sidewalks, or the width of the street, will be eliminated or modified.

Summary

It will be necessary to further analyze certain aspects of the applicant's proposal to determine if the project complies with all the applicable City codes and policies. That analysis is most appropriately addressed within the staff advisory report, which will be presented at the public hearing. In contrast, State law specifies that this environmental review under the State Environmental Policy Act (SEPA) is to focus only on potential significant impacts to the environment that could not be adequately mitigated through the Kirkland regulations and Comprehensive Plan.1

Based on my review of all available information and adopted policies of the City, I have not identified any significant adverse environmental impacts that cannot be addressed through City codes. Therefore, I recommend that a Determination of Non-Significance be issued for this proposed action.

SEPA ENCLOSURES

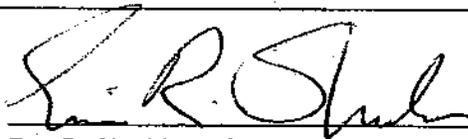
1. Vicinity Map
2. Development Plans
3. Environmental Checklist
4. Traffic Impact Analysis
5. Concurrency Memo from Thang Nguyen dated February 11, 2005
6. Tree Evaluation prepared by Gilles Consulting revised April 13, 2005
7. Email from Cyndi Johnson
8. Email from Andrea Gerth
9. Email from Mark and Kris Jacobs
10. Email from Stacy Kovats
11. Email from Highlands Neighborhood Association
12. Email from Zita Gustin
13. Email from Gail Baerny
14. Email from Gary and Vicki Ebat-Selke
15. Public Comments Memo from Thang Nguyen dated April 28, 2005
16. Public Comments Memo from Applicant's Engineer

Review by Responsible Official:

I concur

I do not concur

Comments:



Eric R. Shields, AICP
Planning Director

5/10/05

Date

Please note that, in order to reduce the size of this packet, the following Hearing Examiner Decision Exhibits have not been included with this packet:

- Exhibit A, Attachment 5, Enclosures 1 thru 16 (SEPA Enclosures)
- Exhibit A, Attachment 6
- Exhibit A, Attachment 7
- Exhibit B
- Exhibit C
- Exhibit D
- Exhibit E

These items can be obtained by contacting Tony Leavitt in the Planning Department at 425.587.3253 or tleavitt@ci.kirkland.wa.us.

RESOLUTION R-4583

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE SUBDIVISION AND FINAL PLAT OF HIGHLANDS 25 BEING DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. FSB06-00001 AND SETTING FORTH CONDITIONS TO WHICH SUCH SUBDIVISION AND FINAL PLAT SHALL BE SUBJECT.

WHEREAS, a subdivision and preliminary plat of Highlands 25 was approved by the Hearing Examiner on June 10, 2005; and

WHEREAS, thereafter the Department of Planning and Community Development received an application for approval of subdivision and final plat, said application having been made by Craig Sears of Highlands 24 LLC, the owner of the real property described in said application, which property is within a Residential Single Family RS 8.5 zone; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, a concurrency application has been submitted to the City of Kirkland, reviewed by the responsible Public Works official, the concurrency test has been passed, and a concurrency test notice issued; and

WHEREAS, pursuant to the State Environmental Policy Act, RCW 43.21C and the Administrative Guideline and local ordinance adopted to implement it, an environmental checklist has been submitted to the City of Kirkland, reviewed by the responsible official of the City of Kirkland, and a negative determination reached; and

WHEREAS, said environmental checklist and determination have been made available and accompanied the application throughout the entire review process; and

WHEREAS, the Director of the Department of Planning and Community Development did make certain Findings, Conclusions and Recommendations and did recommend approval of the subdivision and the final plat, subject to specific conditions set forth in said recommendation.

WHEREAS, the City Council, in regular meeting, did consider the environmental documents received from the responsible official, together with the recommendation of the Planning Commission, and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

Section 1. The Findings, Conclusions and Recommendations of the Director of the Department of Planning and Community Development, filed in Department of Planning and Community Development File No. FSB06-00001, are hereby adopted by the Kirkland City Council as though fully set forth herein.

Section 2. Approval of the subdivision and the final plat of Highlands 25 is subject to the applicant's compliance with the conditions set forth in the

recommendations hereinabove adopted by the City Council and further conditioned upon the following:

- (a) A Plat Bond or other approved security performance undertaking in an amount determined by the Director of Public Works in accordance with the requirements therefor in Ordinance No. 2178 shall be deposited with the City of Kirkland and be conditioned upon the completion and acceptance by the City of all conditions of approval, including public improvements, within one year from the date of passage of this Resolution. No City official, including the Chairperson of the Planning Commission, the Mayor, or the City Engineer, shall affix his signature to the final plat drawing until such time as the plat bond or other approved performance security undertaking herein required has been deposited with the City and approved by the Director of Public Works as to amount and form.

Section 3. Nothing in this resolution shall be construed as excusing the applicant from compliance with all federal, state or local statutes, ordinances or regulations applicable to this subdivision, other than as expressly set forth herein.

Section 4. A copy of this resolution, along with the Findings, Conclusions and Recommendations hereinabove adopted shall be delivered to the applicant.

Section 5. A completed copy of this resolution, including Findings, Conclusions and Recommendations adopted by reference, shall be certified by the City Clerk who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006..

SIGNED IN AUTHENTICATION thereof this _____ day of _____, 2006.

Mayor

Attest:

City Clerk