



CITY OF KIRKLAND
 Planning and Community Development Department
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**ADVISORY REPORT
 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

To: Kirkland Hearing Examiner

From: *Ronald Hanson* Ronald Hanson, Project Planner (Consultant)
Dawn Nelson Dawn Nelson, AICP, Planning Supervisor
Eric R. Shields Eric R. Shields, AICP, Planning Director

Date: June 1, 2007

File: **DAWSON SHORT PLAT, WETLAND MODIFICATION AND WETLAND
 BUFFER MODIFICATION
 (SPL06-00001, ZON06-00034, ZON06-00035)**

Hearing Date and Place: June 21, 2007, 1:00 p.m.
 City Hall Council Chamber
 123 Fifth Avenue, Kirkland

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I. INTRODUCTION

A. APPLICATION

1. Applicant: Kit Klinker
2. Site Location: 10827 NE 108th Street (See Attachment 1).
3. Request: Subdivide a developed 58,678 square foot site (1.4 acres) in the single family RS 8.5 zone into two single family lots. Proposed Lot 1 is 28,841 square feet, and Lot 2 is 29,837 square feet. There is a Type 2 Wetland located on the southern portion of the site. The applicant is requesting approval of a Type 2 Wetland Modification pursuant to KZC Section 90.55, and a Type 2 Wetland Buffer Modification pursuant to KZC Section 90.60 (See Attachment 2, and Section II.F).
4. Review Process: Process IIA, Pursuant to KZC Section 90.55.2, the Hearing Examiner conducts public hearing and makes final decision on Type 2 Wetland Modifications and Type 2 Wetland Buffer Modifications. Pursuant to KZC Section 145.10, since the proposed short plat application, which would normally be reviewed through Process I, is part of a proposal that requires Process IIA review, the entire short plat proposal requires Process IIA review and approval.
5. Summary of Major Issues and Recommendations The major issues addressed in this report are compliance with the Development Regulations, removal of the existing house that straddles the common property line between proposed Lots 1 and 2, and compliance with the applicable Wetland Modification, and Wetland Buffer Modification requirements (See Attachment 3, Development Regulations, Section I B, Recommendations, and Sections II.F).

B. RECOMMENDATIONS

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:

1. 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.
2. Trees shall not be removed following short plat approval, except as approved by the Planning Department.
 - a. Tree removal requests shall be approved by the Planning Department in two stages: as part of the Land Surface Modification Permit and as part of the Building Permit. No trees shall be removed other than those approved as part of the permits (See Conclusions II.F.2.b).

- b. As part of the Land Surface Modification Permit, the applicant shall revise the Tree Plan III submitted with the short plat application to show removal of only those viable trees that must be removed for installation of the plat improvements (roads, utilities, sidewalks, trails and storm drainage improvements). The City may require alterations in the design of the short plat improvements in order to achieve maximum retention of viable trees (See Conclusions II.F.2.b).
 - c. As part of the Building Permit Application for each lot, the Tree Plan III submitted with the Land Surface Modification Permit shall be revised to show those viable trees that must be removed for the placement of buildings and other associated site improvements. 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 viable trees (See Conclusion II.F.2.b).
 - d. During construction activities associated with the LSM permit for the installation of the short plat improvements, and during the development of each individual lot, the applicant shall follow the arborist's recommendations contained in the approved Tree Plan III (See Conclusion II.F.2.b).
 - e. Pursuant to Kirkland Zoning Code Section 95.35.5, the applicant shall provide a minimum of 40 tree credits for the short plat site. If after selecting the trees to be retained at each phase in the development, the site falls below the minimum required tree density, replanting of trees will be required to meet the minimum density (See Conclusion II.F.2b).
- 3 Prior to recording the short plat with King County, the applicant shall provide the final enhancement plan, and maintenance and monitoring plan for review and approval by the Planning Department and The Watershed Company (See Conclusion II.F.3b). The specific revisions to the submitted enhancement and maintenance plan, as recommended by The Watershed Company and the Planning Department, shall include:
- a. Show the minimum number, type, and approximate location of woody debris or habitat structures.
 - b. Replace Sitka Mountain Ash with a more robust native shrub.
 - c. Delete or clarify Section 1.7 "Remaining site logging in mining area".
 - d. Specify that a qualified biologist familiar with wetland mitigation construction will be on-site to inspect rough grading, final grading, plant stock delivery, and plant layout.
 - e. Specify that a biologist prepared as-built plan will be submitted to the City upon project completion. The plan shall either certify that the project was installed as designed or document any departures from the plan.
 - f. Specify on the plan that the final grade soils be deconsolidated by tilling to a depth of at least 9 inches prior to planting.
 - g. Specify that the emergent wetland area soils contain at least 50 percent organic material.
 - h. Specify that all cuttings shall be installed so that no more than 1/3rd of their length will be exposed above ground.
 - i. Specify on the plan that at least three vegetation classes will be established by year 5, including palustrine emergent wetland, palustrine scrub/shrub,

- sapling tree wetland, and upland scrub/shrub, and sapling tree buffer.
- j. Include a performance standard to achieve minimum percent cover of native woody plants in the wetland and buffer of 60% by year 3 and 80% by year 5. Native emergent wetland areas shall reach 80% cover by year 3 and 90% cover by year 5.
 - k. Include a performance standard that in excavated wetland areas non-native/invasive cover shall be less than 10% in any monitoring year.
 - l. Include a sampling methodology (how, when, and where) for verification of hydrology.
 - m. Include a monitoring schedule that includes at least 2 site visits per year with one annual report.
 - n. Include an itemized list detailing the bond quantity calculation.
 - o. Increase the amount of created wetland on the site by an additional 212 square feet.
4. Prior to recording the short plat with King County the applicant shall:
- a. Obtain a demolition permit and remove the existing house that straddles the common property line between proposed Lots 1 and 2 (See Conclusion II.A.1.b).
 - b. Submit a signed and notarized Hold Harmless Agreement pertaining to the on-site wetland, to the Planning Department (See Conclusion II.F.9.b).
 - c. Provide a survey map and legal description showing the outline and dimensions of the Natural Greenbelt Protective Easement (See Conclusion II.F.8.b). The map and legal description shall be prepared by a licensed surveyor. This information shall be provided on 8.5" x 11" paper and consist of the following:
 - 1) The survey shall be located on the KCAS or plat bearing system and tied to known monuments.
 - 2) A metes and bounds legal description of the wetland buffer located on the subject property showing all radii, internal angles, points of curvature, tangent bearings, and lengths of all arcs.
 - 3) Surveyor's certificate completed and seal applied.
 - 4) On a separate sheet, provide the legal description of the entire parcel.
 - d. Provide a financial security device to cover the cost of completing the wetland and wetland buffer enhancement improvements. The security shall be consistent with the standards outlined in Zoning Code Section 90.145 and recalculated using the King County Bond Quantity worksheet for Critical Areas Mitigation (See Conclusion II.F.7b). The worksheet is available online from King County.
5. Prior to issuance of a Land Surface Modification Permit or building permit, the applicant shall install a six-foot high construction phase chain link fence or equivalent fence, as approved by the Planning Official, along the upland boundary of

the entire stream buffer with silt screen fabric installed per City standards, in a manner approved by the Planning Official. The construction-phase fence shall remain upright in the approved location for the duration of development activities (See Conclusion II.F.6.b)

6. Prior to final inspection of a building permit on the short plat site:
 - a. Install between the upland boundary of all wetland buffers and the developed portion of the site, a permanent 3' to 4' tall split rail fence. The fence shall be located along the modified wetland buffer line. Installation of the permanent fence must be done by hand where necessary to prevent machinery from entering the wetland and its buffer (see Conclusion II.F.6.b).
 - b. Have completed all improvements outlined in the wetland and wetland buffer enhancement plan consistent with all of The Watershed Company recommendations listed in recommended Condition Number 3 (See Conclusion II.F.3.b).
 - c. Provide the Planning Official a copy of an as-built planting plan to be used in the final inspection of the project (See Conclusion II.F.3.b).
 - d. Submit proof of a written contract with a qualified professional who will perform the 5 year monitoring and maintenance program (See Conclusion II.F.3.b). The applicant shall fund a review of the private consultant's annual report to be done by The Watershed Company, Inc. Otherwise, the applicant may use the City's consultant (The Watershed Company, Inc.) to perform the 5 year monitoring and maintenance program.
 - e. Submit to the Planning Department a financial security device to cover all monitoring and maintenance activities that will need to be done including wetland consultant site visits, reports to the Planning Department, and any vegetation that needs to be replaced. The security shall be consistent with the standards outlined in Zoning Code section 90.145 (See Conclusion II.F.7.b) and recalculated using the King County Bond Quantity worksheet for Critical Areas Mitigation. The worksheet is available online from King County.

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:
 - a. Facts:
 1. Size: 58,678 square feet (1.34 acres). The site has a north/south dimension of approximately 343.48 along the east property line and 367.56 along the west property line. The east/west dimension along the north property line is 166.79 feet, and along the south property line is 165.03 feet.
 2. Land Use: The site is currently developed with a single family house that straddles the common property line between proposed Lots 1 and 2, and a detached garage located entirely on proposed Lot 1. The applicant is proposing to remove the house and retain the garage (See Section II.F.4).

3. Zoning: Single-Family Residential RS 8.5 zone with a minimum lot size of 8,500 square feet. Proposed Lot 1 is 28,841 square feet and Lot 2 is 29,837 square feet.
 4. Terrain: The property slopes downward gently from the north property line adjacent to NE 108th Street, to the south property line at an average grade of less than 5 percent.
 5. Vegetation: There are 7 significant trees on the site. Other vegetation consists of lawn and other residential landscaping.
 6. Wetland: The southern portion of the site contains a Type 2 Wetland. The wetland is part of the Forbes 1 Wetland system which extends off-site to the south, east, and west. Type 2 Wetlands located within the Forbes Creek Drainage Basin (Primary Basin) require a 75 foot wide buffer with a 10 foot wide structure setback from the buffer edge. The applicant is proposing both a Wetland Modification and a Wetland Buffer Modification as part of the short plat proposal (See Sections II.F.3 and II.F.4).
- b. Conclusion: Size, zoning, terrain, and vegetation are not constraining factors in the consideration of this application. Land Use is not a constraining factor provided the existing house is removed. The wetlands on the site are not a constraining factor provided the applicant complies with the requirements and criteria for a Wetland Modification and a Wetland Buffer Modification as conditioned by this report.
2. Neighboring Development and Zoning:
- a. Facts: The subject site is bordered by the following uses:
 - North: To the north is NE 108th Street and an area zoned RS 8.5 developed with single family homes.
 - South: The area is zoned PLA9 and is developed with the Park at Forbes Creek Apartments.
 - East: The area is zoned RS 8.5 and is developed with single family homes.
 - West: The area is zoned RS 8.5 and developed with single family homes.
 - b. Conclusion: The neighboring development and zoning are not constraining factors in this short plat.

B. HISTORY

1. Facts: The site is currently developed with a single family home and detached garage. The applicant is proposing to remove the house and retain the existing garage on proposed Lot 1. The garage is currently located within the southern portion of the proposed modified wetland buffer (See Section II.F.4).

There is a Type 2 Wetland located on the southern portion of the site. During the review of the applicant's short plat application and wetland report the City's wetland consultant, The Watershed Company, discovered an area on the site of previous unauthorized wetland fill and buffer alteration. As a result, the applicant was required to revise their wetland report and the wetland boundaries on the site. The applicant also submitted wetland and wetland buffer modification applications (ZON06-00034

and ZON06-00035) to modify the wetland boundaries as well as reduce the wetland buffer from the normally required 75 feet to 50 feet (See Section II.F.3 and 4).

2. Conclusion: The subject short plat application is being processed under current Zoning and Subdivision regulations that apply to the property. The short plat will comply with all zoning, subdivision and municipal code requirements currently in effect in order to receive approval (See Section II.D). History is not a constraining factor in this application.

C. PUBLIC COMMENT

The public comment period for the proposed short plat extended from March 2, 2006 to March 27, 2006. The City of Kirkland Planning Department received two letters during the above comment period. The comments include:

1. *Support for the proposed 2 lot short plat and concern that additional lots could be approved on the site in the future (See Attachment 4-a).*

Staff Response: Due to the long narrow shape of the site, and the fact that a large portion of the site is located within a Type 2 Wetland and Wetland Buffer, a future subdivision of the site, beyond the 2 proposed lots, is unlikely. However, current regulations would allow up to 5 lots on the property (See Section II.F.1, below).

2. *There is a drainage problem along their common property line (west side of property) that could be caused by a blocked manhole. The problem should be addressed with the development of the new homes (See Attachment 4-b).*

Staff Response: Detailed drainage plans will be submitted by the applicant with the required Land Surface Modification Permit for the short plat infrastructure improvements. The Public Works Department will be made aware of the drainage issue so they can address the problem at the time of LSM Permit submittal.

D. STATE ENVIRONMENTAL POLICY ACT (SEPA) & CONCURRENCY

- a. Fact: A Determination of Non-significance (DNS) was issued on February 26, 2007. The Determination of Non-Significance, Environmental Checklist, SEPA Memo, Wetland Report by Altmann Oliver Associates, LLC dated August 22, 2006, Wetland Report by Altmann Oliver Associates, LLC dated November 9, 2006, Wetland/Buffer Mitigation Plan by Altmann Oliver Associated dated October 18, 2006, and Wetland Modification Review letter by The Watershed Company dated January 26, 2007 are included as Attachment 5.
- b. Conclusion: The applicant and the City have satisfied the requirements of SEPA.

E. APPROVAL CRITERIA

1. Fact: Zoning Code Section 150.65.3 states that a Process IIA application may be approved if:
 - a. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
 - b. It is consistent with the public health, safety, and welfare.
2. Conclusion: With the recommended conditions of approval, the proposal complies with the criteria in Section 150.65.3. It is consistent with all applicable development regulations (See Sections II.E and F) and the Comprehensive Plan (See Section II.G).

In addition, it is consistent with the public health, safety, and welfare because it provides for infill housing in a manner that satisfies the wetland and wetland buffer modification requirements.

F. DEVELOPMENT REGULATIONS

1. Maximum Development Potential

a. Facts:

1. Zoning Code Section 90.135 provides that the maximum potential number of dwelling units for a site which contains a wetland, stream, minor lake, or their buffers shall be the buildable area in square feet divided by the minimum lot area per unit as specified by KZC Chapters 15 through 60, plus the area of the required sensitive area buffer in square feet divided by the minimum lot area per unit as specified in KZC Chapters 15 through 60, multiplied by the development factor derived from Subsection 2 of KZC Section 90.135.

2) The gross site area of the subject site is 58,678 square feet. The net site area minus the 14,131 square foot on-site wetland, and the 10,811 square foot wetland buffer, is 33,736 square feet of buildable area. The maximum potential number of units allowed based on the buildable area only is 3.96 dwelling units. The site contains 10,811 square feet (18.4% of site) within the required sensitive area buffer. Based on KZC Section 90.135, Subsection 2, the allowable development factor is 90%. The maximum potential number of units allowed based on the sensitive area is 1.14 units. The total maximum potential number of units allowed is 5 units.

b. Conclusions: The proposal conforms to the maximum development potential requirements of KZC Section 90.135.

2. Natural Features - Significant Vegetation

a. Facts:

1) The tree preservation requirements are contained in Section 22.28.210 of the Kirkland Municipal Code and Chapter 95 of the Kirkland Zoning Code (Tree Management and Required Landscaping).

2) Kirkland Municipal Code Section 22.28.210 states that the applicant shall design the plat so as to comply with the tree management requirements set forth in Chapter 95 of the Zoning Code, maximize the chances of survival of trees and associated vegetation designated for retention, and minimize potential hazards to life or property.

3) Kirkland Zoning Code Section 95.05 establishes the purpose of the tree regulations. The purposes include minimizing adverse impacts of land disturbing activities, improving air quality, reducing effects of noise pollution, providing protection from severe weather conditions, providing visual relief and screening, providing recreational benefits, providing habitat cover, food supply and corridors for a diversity of fish and wildlife, and providing economic benefit by enhancing property values and the region's natural beauty, aesthetic character, and livability of the community.

4) Kirkland Zoning Code Section 95.35.1 states that it is the City's objective to

retain as many viable trees as possible while still allowing the development proposal to move forward in a timely manner. Zoning Code provisions have been established to allow development standards to be modified in order to retain viable significant trees.

- 5) Kirkland Zoning Code Section 95.35.2.b.3), requires that a Tree Plan III be submitted with new residential short plats, subdivisions, and related land surface modification applications. See Attachment 6 for an overview of the tree requirements associated with a Tree Plan III. Section 95.35.2.b.1).c).iv requires that for lots from a short subdivision with an approved Tree Plan III, the tree information shall be transferred over from the short plat to the individual building permit for each lot, and the applicant must comply with the applicable Tree Plan III requirements.
- 6) Kirkland Zoning Code Section 95.35.4 establishes the site design review standards for tree retention. Tree retention shall not reduce the applicant's development potential (lot coverage, floor area ratio, and density) allowed by the Kirkland Zoning Code. In order to retain trees, the applicant should pursue provisions in Kirkland's codes that allow development standards to be modified. In addition, the Planning Official is authorized to require site plan alterations to retain Type 1 trees. Such alterations include minor adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustment to the location of walkways easements or utilities.
- 7) Kirkland Zoning Code Section 95.35.5 establishes the minimum tree density requirements. For a short plat or subdivision, with an approved Tree Plan III, the tree density shall be calculated based on the entire site area excluding existing City right-of-way, or areas to be dedicated as City right-of-way. The minimum tree density is 30 tree credits per acre. The gross site area is 58,678 square feet or 1.34 acres. Based on the requirement of 30 tree credits per acre, the proposed short plat site must provide a minimum of 40 tree credits. The site contains a total of 64 tree credits.
- 8) The applicant submitted a Tree Plan III with the subject short plat application (See Attachments 7 and 8). The Tree Plan has been reviewed by the City's Arborist. There are a total of 7 significant trees on the site, all of which are viable Type 1 and 2 trees. The applicant is proposing to retain all of the viable trees with the approval of the short plat. Additional trees may be required to be removed in conjunction with other required short plat improvements, and with the building permits on each of the new single family lots.
- 9) Zoning Code Section 115.75.3.a states that a land surface modification is permitted only if it has been approved as part of a valid development permit, subdivision, or substantial development permit.

b. Conclusions:

- 1) The applicant has provided a Tree Plan III with the short plat application that has been reviewed by the City's Arborist. There are 7 viable Type 1 and 2 trees on the site. A total of 64 tree credits are shown on the tree plan. The minimum of 40 tree credits is met for the short plat.

- 2) The applicant should retain all of the viable trees on the site at the short plat approval stage. In addition, all viable trees should be retained with the required Land Surface Modification Permit, except for those trees needed to be removed for installation of the new public road, and other plat infrastructure improvements.
- 3) The applicant should retain all of the viable trees on the site during the development of each single family lot except those trees required to be removed for the construction of the house and other associated site improvements.
- 4) The Planning Official is authorized to require site plan alterations to retain Type 1 trees, including modifications to development standards and minor adjustments to the location of buildings, driveways, access ways, walkways, easements and utilities.
- 5) The applicant should follow the arborist's recommendations contained in the Tree Plan III submitted with the short plat application during installation of the required short plat improvements, and during development of each single family lot.
- 6) If after selecting the trees to be retained at each phase in the development, the site falls below the minimum required tree density, replanting of trees will be required to meet the minimum density.

3. Wetland Modification

a. Facts:

1. The southern portion of the site contains a Type 2 Wetland. The wetland is part of the Forbes 1 Wetland system which extends off-site to the south, east, and west. The site is located in the Forbes Creek Basin, a primary basin.
2. Kirkland Zoning Code Section 90.55.2 provides that in primary basins, a wetland modification shall not affect more than 10 percent of the wetland on the subject property.
3. The subject site is 58,678 square feet in size and has a total of 14,131 square feet of wetland. The applicant is proposing to fill 635 square feet of wetland and create 635 square feet of new wetland. This is 4.5 percent of the total wetland on the site.
4. KZC Section 90.55 establishes that a Type 2 Wetland modification may only be granted by the Hearing Examiner when the proposed development is consistent with all of the following criteria:
 - a. Criterion 1: It will not adversely affect water quality.
 - b. Criterion 2: It will not adversely affect fish, wildlife, or their habitat.
 - c. Criterion 3: It will not have an adverse effect on drainage and/or storm water detention capabilities.
 - d. Criterion 4: It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions.

- e. Criterion 5: It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole.
 - f. Criterion 6: It will result in land surface modification of no more than ten percent of the wetland on the subject property.
 - g. Criterion 7: Compensatory mitigation is provided in accordance with the table in subsection (4) of this section as conditioned by this report. An additional 212 square feet of wetland should be created (See Attachment 6).
 - h. Criterion 8: Fill material does not contain organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat.
 - i. Criterion 9: All exposed areas are stabilized with vegetation normally associated with native wetland and/or buffers, as appropriate.
 - j. Criterion 10: There is no practicable or feasible alternative development proposal that results in less impact to the Type 2 Wetland and its buffer.
- b. Conclusion: Pursuant to the attachments included with this report, including the proposed site plan (Attachment 2), Wetland Reports by Altmann Oliver Associates dated August 22, 2006 and November 9, 2006, the Wetland/Wetland Buffer Mitigation Plan by Altmann Oliver Associates dated October 18, 2006, and the Wetland Modification Review letter by The Watershed Company dated January 26, 2007 (Attachment 5, Enclosures 1-7), the letter from Altmann Oliver Associates, LLC dated May 7, 2007 (Attachment 9), the letter from The Watershed Company dated April 25, 2007 (Attachment 10), and the letter from the Klinker Corp. dated May 31, 2007 (Attachment 11), the proposed development is consistent with the above criteria for a wetland modification.

The applicant should follow the enhancement plan as identified in Attachment 5, Enclosure 6, and except for the removal of the existing garage, the recommended changes outlined by The Watershed Company in Attachment 5, Enclosure 7. Also, the applicant should increase the amount of created wetland on the site by an additional 212 square feet.

The applicant should submit proof of a written contract with a qualified professional who will perform the monitoring and maintenance program outlined.

The completion of the wetland enhancement plan, the maintenance and monitoring work should be reviewed by the City's wetland consultant, the cost of which should be borne by the applicant. Therefore, the applicant should submit proof of a written contract with the City's wetland consultant to cover the review of the annual report prepared by the applicant's consultant for 5 years.

The enhancement plan should be completed and an as-built planting plan should be submitted.

4. Wetland Buffer Modification

a. Facts:

1. The southern portion of the site contains a Type 2 Wetland. The wetland is part of the Forbes 1 Wetland system which extends off-site to the south, east, and west. Type 2 Wetlands located within the Forbes Creek Drainage Basin (Primary Basin) require a 75 foot wide buffer with a 10 foot wide structure setback from the buffer edge.
2. Kirkland Zoning Code Section 90.60 allows wetland buffers to be reduced through one of two means, either by buffer averaging or buffer reduction with enhancement. Wetland buffers cannot be reduced at any point by more than one-third of the normally required buffer.
3. The applicant is requesting approval of a one third reduction of the normally required 75 foot wide Type 2 Wetland Buffer in a primary basin down to 50 feet as allowed in KZC Section 90.60. However, due to the location of the existing garage within the reduced 50 foot wetland buffer, the applicant is requesting approval to reduce the buffer width to 10 feet with an additional 10 foot buffer setback along the south side of the garage.

The City issued a building permit for the existing garage, and it was constructed at its current location in 1993 (BLD93-00115). It is a legally nonconforming structure and no modifications to the structure are proposed. The existing wetland and wetland buffer located south of the garage is currently planted in lawn, and therefore, its current function is highly degraded. The wetland and wetland buffer modifications proposed with this application will greatly increase the wetland and buffer functions. In addition, access to the garage is from the north side of the building, outside of the wetland buffer. This will limit the amount of human activity on the south side of the garage in the vicinity of the wetland buffer.

For above reasons, the Planning Department is not requiring that the garage be removed or relocated as recommended by the City's Wetland Consultant, The Watershed Company.

4. KZC Section 90.60 establishes that a Type 2 Wetland Buffer may only be granted by the Hearing Examiner when the proposed development is consistent with all of the following criteria:
 - a. Criterion 1: It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc. 1998).
 - b. Criterion 2: It will not adversely affect water quality.
 - c. Criterion 3: It will not adversely affect fish, wildlife, or their habitat.
 - d. Criterion 4: It will not have an adverse effect on drainage and/or storm water detention capabilities.

- e. Criterion 5: It will not lead to unstable earth conditions or create erosion hazards.
 - f. Criterion 6: It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole.
 - g. Criterion 7: Fill material does not contain organic or inorganic material that would be detrimental to water quality or to fish, wildlife, or their habitat.
 - h. Criterion 8: All exposed areas are stabilized with vegetation normally associated with native wetland buffers, as appropriate.
 - i. Criterion 9: There is no practicable or feasible alternative development proposal that results in less impact to the buffer.
- b. Conclusion: Pursuant to the attachments included with this report, including the proposed site plan (Attachment 2), Wetland Reports by Altmann Oliver Associates dated August 22, 2006 and November 9, 2006, the Wetland/Wetland Buffer Mitigation Plan by Altmann Oliver Associates dated October 18, 2006, and the Wetland Modification Review letter by The Watershed Company dated January 26, 2007 (Attachment 5, Enclosures 1-7), the letter from Altmann Oliver Associates, LLC dated May 7, 2007 (Attachment 9), the letter from The Watershed Company dated April 25, 2007 (Attachment 10), and the letter from the Klinker Corp. dated May 31, 2007 (Attachment 11), the proposed development is consistent with the above criteria for a wetland buffer modification.

The applicant should follow the enhancement plan as identified in Attachment 5, Enclosure 6, and except for the removal of the existing garage, the recommended changes outlined by The Watershed Company in Attachment 5, Enclosure 8.

The applicant should submit proof of a written contract with a qualified professional who will perform the monitoring and maintenance program outlined.

The completion of the wetland enhancement plan, the maintenance and monitoring work should be reviewed by the City's wetland consultant, the cost of which should be borne by the applicant. Therefore, the applicant should submit proof of a written contract with the City's wetland consultant to cover the review of the annual report prepared by the applicant's consultant for 5 years.

The enhancement plan should be completed and an as-built planting plan should be submitted.

5. Buffer Setback

a. Facts:

- 1) Zoning Code Section 90.45.2 establishes that structures shall be set back at least 10 feet from the designated or modified wetland buffer. The Planning Official may allow within this setback minor improvements which would have no potential adverse effect during their construction, installation, use, or maintenance to fish, wildlife, or their habitat, or to any vegetation in the buffer or adjacent wetland.
- 2) No improvements are proposed within 10' of the modified wetland buffer setback, except the existing garage previously described.

consultant site visits, reports to the Planning Department, and any vegetation that needs to be replaced. The security shall be consistent with the standards outlined in Zoning Code Section 90.145.

- 3) The security amounts should be recalculated using the King County Bond Quantity worksheet for Critical Areas Mitigation.

8. Natural Greenbelt Protective Easement

- a. Fact: Zoning Code Section 90.150 requires the applicant to grant an easement or agreement to the City to protect sensitive areas and their buffers.
- b. Conclusion: The applicant should sign and notarize a Natural Greenbelt Protective Easement (NGPE) acknowledging the presence of sensitive areas on the property and agreeing to protect those areas consistent with the provisions in the Kirkland Zoning Code. This document should contain a survey map and a metes and bounds legal description (based on City of Kirkland standards) of the sensitive area's buffer located on the subject property.

9. Hold Harmless - Wetlands

- a. Fact: Kirkland Zoning Code Section 90.155 establishes that prior to issuance of a land surface modification permit or a building permit, whichever is issued first, the applicant shall enter into an agreement with the City that runs with the property, in a form acceptable to the City Attorney, indemnifying the City from any claims, actions, liability and damages to sensitive areas arising out of development activity on the subject property. The applicant shall record this agreement with the King County Department of Elections and Records.
- b. Conclusion: The applicant should sign and notarize a covenant that holds the City harmless against any future claims that may arise as a result of the development of the property.

G. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the South Juanita Neighborhood. Figure J-2b on page XV.1-6 designates the subject property for low-density residential with a maximum allowable density of 5 dwelling units per acre (See Attachment 12). The proposed density is 1.5 dwelling unit per acre.
2. Conclusion: The proposal is consistent with the Comprehensive Plan.

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. SUBSEQUENT MODIFICATIONS

Modifications to approved permit may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

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 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., _____, 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 short plat application 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 22.20.370 of the Subdivision Ordinance, the short plat must be recorded with King County within four (4) years following the date of approval, or the decision becomes void; provided, however, that in the event judicial review is initiated, 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 short plat.

VI. APPENDICES

Attachments 1 through 10 are attached.

1. Vicinity Map
2. Boundary and Topographic Survey
3. Development Standards
4. Public Comments
 - a. Letter from Per-Ola Selander
 - b. Letter from Steve and Pam Carbonetti
5. SEPA Documents
 - 5a. Determination of Non-Significance
 - 5b. Environmental Determination
 - Enclosure 1 – Vicinity Map
 - Enclosure 2 – Plat Map
 - Enclosure 3 – Environmental Checklist
 - Enclosure 4- Wetland Report by Altmann Oliver Associates, LLC dated August 22, 2006
 - Enclosure 5 - Wetland Report by Altmann Oliver Associates, LLC dated November 9, 2006
 - Enclosure 6 Wetland/Buffer Mitigation Plan by Altmann Oliver, LLC dated October 18, 2006
 - Enclosure 7- Wetland Review letter by The Watershed Company dated January 26, 2007
 - Enclosure 8– Public Comments
6. Public Handout-New Tree Regulations

7. Arborist Report by Giles Consulting dated January 18, 2006
8. Arborist Report by Giles Consulting dated August 16, 2006
9. Letter from Altmann Oliver Associates, LLC dated May 7, 2007
10. Letter from The Watershed Company dated April 25, 2007
11. Letter from the Klinker Corp dated May 31, 2007
12. South Juanita Neighborhood Land Use Map

VII. PARTIES OF RECORD

Kit Klinker, P.O.Box 2668, Kirkland, Wa. 98083
Per-Ola Selander, 10830 101st Avenue NE, Kirkland, Wa. 98033
Steve and Pam Carbonetti, 10728 108th Avenue 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.