



## CITY OF KIRKLAND

Planning and Community Development Department  
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### ADVISORY REPORT FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

**To:** Eric R. Shields, AICP, Planning Director  
**From:** Stacy Clauson Stacy Clauson, Project Planner  
**Date:** October 23, 2006  
**File:** CASADY SHORT PLAT, FILE NO. SPL06-00014

#### I. INTRODUCTION

##### A. APPLICATION

1. Applicant: Ben Casady, Casady Enterprises, Inc.
2. Site Location: 9216 and 9222 112th Avenue NE (see Attachment 1)
3. Request: Subdivide a 32,023 square foot (.73 acre) property into three residential lots in the RS 8.5 zone (see Attachment 2). The lots would contain between 10,420 and 11,183 square feet. The site contains a Type 3 wetland on the southeast portion of the site. Access to the lots is proposed via an alley located along the south side of the property.
4. Review Process: Short plat, Planning Director decision.
5. Summary of Key Issues and Conclusions: The key issues associated with this short plat are:
  - Vehicular access (see Section II.D.2); and
  - Environmentally sensitive areas (see Section II.D.3).

##### B. RECOMMENDATIONS

1. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, I 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 (see Conclusion II.F.2).

EXHIBIT E

SPL06-00014 A SPL06-00015

3. 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.D.5.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.D.5.b).
  - c. As part of the Building Permit Application for Lot 3, 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.D.5.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.D.5.b).
  - e. Pursuant to Kirkland Zoning Code Section 95.35.5, the applicant shall provide a minimum of 22 tree credits for the short plat site. Replanting of 21 trees is required to meet the minimum density. In addition, under the conditions of the building permit approval for Lot 2, replanting of three additional trees in the wetland buffer is required. If Tree No. 9 is authorized for removal in future phases of development, replanting of an additional tree will be required (See Conclusion II.D.5.b).
  - f. Trees required to be planted to comply with the tree density requirements shall be placed within the wetland buffer area and composed of native species. The planting shall comply with the installation standards contained in KZC 95.45.12 (see Conclusion II.D.3.b and II.D.5.b).
4. Prior to recording the short plat, the applicant shall:
  - a. Install the required improvements as described in Attachment 3 and as follows:
    - (1) A 12-foot wide paved road within the proposed vehicular access easement (see Conclusion II.D.2.b).

Prior to installing these improvements, plans must be submitted for approval by the Department of Public Works.

In lieu of completing these improvements, the applicant may submit to the Department of Public Works a security device to cover the cost of installing the improvements and guaranteeing installation within one year of the date of plat approval (see Conclusion II.D.4.b).

- b. Obtain a building permit for and complete demolition of the garage straddling the common lot lines between Lots 1 and 3 and the concrete parking area shown to be removed (see Conclusion II.A.1.b). Prior to issuance of a building permit for demolition, the applicant shall submit a plan to restore the area within the wetland buffer that is presently impacted by these improvements with native species, including groundcover, shrubs, or trees. The plan should comply with the installation standards contained in KZC 95.45.12 (see Conclusion II.D.3.b).
  - c. Dedicate a natural greenbelt protection easement encompassing the wetland buffer on the site (see Attachment 11). The boundaries of the Natural Greenbelt Protection Easement should correspond with the wetland buffer and should be established by survey. All surveys shall be located on KCAS or plat bearing system and tied to known monuments.
5. Prior to issuance of a building permit on Lot 3, the applicant shall:
- a. Submit the results of a supplemental geotechnical report that addresses the retaining wall system along the north property line (see Conclusion II.A.1.b).
  - b. Include plans for installation of a sprinkler system (see Conclusion II.D.2.b).
  - c. Include on the site plan a minimum 20-foot long driveway and an on-site driveway turn-around (see Conclusion II.D.2.b).
6. Prior to any development, the applicant shall install a six-foot high construction phase fence along the upland boundary of the entire wetland buffer with silt screen fabric installed per City standard. The fence shall remain upright in the approved location for the duration of development activities. Upon project completion, the applicant shall install between the upland boundary of the wetland buffer and the developed portion of the site, either 1) a permanent 3 to 4 foot tall split rail fence, or 2) permanent planting of equal barrier value.

## II. **FINDINGS OF FACT AND CONCLUSIONS**

### A. **SITE DESCRIPTION**

1. Site Development and Zoning:
  - a. Facts:
    - (1) Size: 32,023 square feet (0.73 acres)
    - (2) Land Use: The western portion of the site is presently being developed with two new single family homes, located on Lots 1 and 2, respectively. In addition, there is an existing garage that straddles the common property line between Lots 1 and 3 (see Attachment 2). The garage and a concrete parking area in front of the garage are shown to be removed. The applicant has submitted a site plan for each of the two new residences on Lots 1 and 2 (see Attachments 4 and 5, respectively) which provides information on the setback, lot coverage, and floor area ratio for the residence based on the new lot boundaries.
    - (3) Zoning: RS 8.5, a low density residential zone with a minimum lot size of 8,500 square feet.

- (4) Terrain: The site slopes uphill from the west property line adjacent to 112th Avenue NE from an elevation of 228 feet to an elevation of 252 feet at the northeast property corner (see Attachment 2). The sensitive area maps identify the presence of a moderate landslide hazard area on the subject property. As a result, the applicant has submitted the results of a preliminary geotechnical engineering evaluation of the site (see Attachment 6) in which the Geotechnical Engineering Consultant concluded that the subject property should be compatible with the proposed development. The Geotechnical Engineering Consultant did identify a constraint related to the retaining wall systems for the grade transitions along the north property line, but did not, at the time of issuance of the report, have sufficient details of site grading to provide a specific evaluation of the issue.
- (5) Vegetation: At the time of preparation of the Tree Plan III, there were three significant trees identified on the subject property. Other vegetation on the site consists of lawn and residential landscaping (see Attachment 2 and Section II.D.5 below).
- (6) Wetlands: A Type 3 wetland has been identified on the subject property, which is located within a secondary basin (see Attachment 2 and Section II.D.3 below).

b. Conclusions:

- (1) The residences presently under construction would comply with the zoning code standards on the new lots, provided that the concrete parking area on Lot 1, which was not included in the lot coverage calculation of Lot 1 and is shown to be removed, is eliminated.
- (2) The garage straddling the common lot lines between Lots 1 and 3 would not comply with established setback requirements and should be removed.
- (3) Prior to issuance of a building permit on Lot 3, the applicant should submit the results of a supplemental geotechnical report that addresses the retaining wall system along the north property line.

2. Neighboring Development and Zoning:

a. Facts: The subject property is surrounded by the following zones and uses:

- (1) North: RS 8.5, containing single family residences.
- (2) South: RS 8.5, containing single family residences.
- (3) West: RS 8.5. The site is bordered by 112th Avenue NE. On the west side of the street, the area contains single family residences.
- (4) East: RS 8.5. The site is bordered by an alley that is partially opened, from 112th Avenue NE east to the existing garage. On the south side of the alley, the area contains single family residences.

b. Conclusion: The neighborhood development and zoning are not constraining factors in the consideration of this short plat.

## B. PUBLIC COMMENT

The public comment period for this short plat extended from August 24, 2006 until September 11, 2006. The Planning Department has received three public comments, all from residents who adjoin the property along either the west or north property lines (see Attachment 7, a-c). The comment letter from Cianciusi/Protzman addressed specific issues related to the residence under construction on proposed Lot 2 and staff has responded to these issues (see Attachment 8). The Lemmes and the Ellingers have indicated their objection to the proposed subdivision and have requested that the Planning Director reject the proposal to subdivide. In these written comments, the residents have raised the following concerns:

- a. Loss of backyard and neighborhood context. There is concern expressed that the creation of Lot 3 is not consistent with the existing neighborhood context, in which the homes gain access from an established right-of-way and each have a backyard which contributes to the creation of a collective greenbelt between the houses. This intrusion would have resulting impacts to the surrounding homes, including loss of privacy, aesthetic appeal, and favorable views, which will impact the value and livability of the existing residences. The Lemmes have expressed concern that this change in the privacy and sanctuary of the greenbelt will threaten the stability of home ownership in the area.

*Staff Response:* Construction of new homes in this short plat, particularly Lot 3, will impact adjacent properties. Staff can understand the concerns expressed about the type of change this will have on neighboring properties. However, the development of these lots at the proposed density is expected in the City's Comprehensive Plan (see Section II.E) and the Planning Department has limited authority to address the design of a proposed short plat. The proposed lots comply with the minimum lot size and, with compliance with the standards outlined in Attachment 3, there will be adequate provisions for access and utilities.

- b. Minimum lot size. There is concern expressed that the lot arrangement has been designed to create the appearance that the lots comply with the minimum lot size, while in reality the lots share common access and utility easements and the buildable area of Lot 3 is limited, with the non-buildable area to the east of Lot 1 favorably assigned to Lot 3 to meet the minimum lot size.

*Staff Response:* All lots exceed the minimum lot size requirement of 8,500 square feet. The area of the alley along the south property line has not been included in the lot area. Pursuant to KMC 22.28.080, the area of the access easement is permitted to be included in the lot area, since the vehicular easement serves only one lot which does not abut a public right-of-way. Whenever sensitive areas or their buffers are located on a property, the applicant must demonstrate that the proposal is consistent with maximum development potential, which reduces the lot area to account for the impact of sensitive areas and their buffers on the development potential of a piece of property. Under this provision, the subject property contains sufficient lot area for 3 lots (see Section II.C.2 below). Pursuant to KMC 22.28.050, lots must be of a shape so that reasonable use and development may be made of the lot. The available building footprint envelope for Lot 3, after applying required setbacks and wetland buffer and buffer setback requirements, would be over 2,300 square feet in size, with a potential building width of approximately 28 feet (at the narrowest point) and widening to approximately 60 feet, and a building depth of 60 feet. Given this available building envelope, Lot 3 is of a shape so that reasonable use and development may be made of the lot (see Section II.D.1 below).

- c. Setbacks. There is concern expressed about the setback provided along the western and northern borders of the short plat and a request that the setback be increased to minimize the proximity to the existing bordering homes.

*Staff Response:* Building permits on the proposed lots will be reviewed for compliance with the RS 8.5 zoning code standards in place at the time of building permit submittal. Given the configuration of Lot 3, both the north and west property lines are side property lines, which can have a minimum 5 foot side required yard under the RS 8.5 zoning regulations (see Attachment 17). The Planning Department has no authority to require a larger setback.

- d. Increase of on-street parking along 112th Avenue NE. The Lemmes have stated that they believe there will be an increase of on-street parking along 112th Avenue NE as a result of this subdivision, a primary access road in the Highlands Neighborhood.

*Staff Response:* A minimum of two on-site parking spaces are required to be provided for each residence to be constructed. The design of the new residences on Lots 1 and 2 included a two and three-car garage, respectively, as well as a parking pad in front of the garage (see Attachment 4 and 5). To ensure that vehicles accessing Lot 3 do not block the access easement serving this lot and Lot 2, the City is requiring that Lot 3 be designed to include a turnaround area and a parking pad (see Section II.D.2 below).

- e. Opening of 93rd Street. The Lemmes have stated that the vicinity map provided as part of the application is misleading since it shows an easement extending from 112th to 114th Avenue NE along the south side of the subject property that has not been developed and could not be developed.

*Staff Response:* The street shown is a 16-foot wide alley. This public right-of-way was originally platted as part of the Supplementary Plat to Kirkland filed in 1890 and is also depicted in the Burke & Farrar's Kirkland Addition, Division No. 10. Portions of this alley, as indicated in the comment letter, have not been opened, though the alley was opened from 112th Avenue NE east to the garage structure on the subject property. The access for the properties is proposed to occur from the opened section of the alley, to be improved as noted in Attachment 3.

- f. Consistency with Highlands Neighborhood Plan. The Lemmes have cited several goal or policy statements from the Highlands Neighborhood that they believe the project does not comply with. These are further addressed in Section II.E below.

- g. Building height and placement of fill. There is concern about the City's policy on survey data as it relates to building height. The neighbors have commented that the buildable part of Lot 3 has been elevated with past fill and have requested that the City consider testimonial evidence when determining the historic grades to use when calculating average building elevation.

*Staff Response:* All properties within the RS 8.5 zone must comply with the same height restrictions. The maximum height above average building elevation is 25 feet. The Planning Director has issued an interpretation (Interpretation No. 04-2) to provide guidance on how average building elevation is to be determined on a previously developed site that is proposed for redevelopment. This interpretation was issued to provide consistency and predictability to residents and developers about what grades would be used for calculating average building elevation, as the grade level of developed property can be significantly manipulated over time with either fill or excavation, and it can be difficult to correctly predict the original grade level without survey data.

Under this direction, a survey stamped and signed by a professional land surveyor showing the historic or predevelopment grades on the property may be used to calculate average building elevation on a site that has been previously developed. If a survey is not available, then the existing developed grade of the property shall be used. A review of City records of past development on the site has not yielded a survey stamped and signed by a professional land surveyor showing the historic grades. As a result, unless an historic survey can be discovered, the topographic survey of the property submitted as part of the short plat application will be used as the basis for determining average building elevation at the time of building permit submittal.

**C. APPROVAL CRITERIA**

1. SHORT PLATS

a. Facts: Municipal Code section 22.20.140 states that the Planning Director may approve a short subdivision 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 Planning Director shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

Zoning Code section 145.45 states that the Planning Director may approve a short subdivision 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 22.20.140 and Zoning Code section 145.45. It is consistent with the Comprehensive Plan (see Section II.E). With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations (see Sections II.D) 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 it will provide for infill housing development to meet the City's growth needs in a way that is compatible with the City development standards and the Comprehensive Plan.

2. DENSITY

a. Facts: KZC Section 90.135 establishes the maximum potential number of dwelling units for a site which contains sensitive areas (wetlands or streams) or their associated buffers. Based on the size of the property, the buildable area, and the minimum lot area, the calculation would indicate that the maximum potential number of dwelling units would be 3.51 units. The applicant is proposing to create three lots.

<b>Total Property Size</b>	32,023.02 sq. ft.
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<b>Sensitive Area(s) Only (Wetland/Stream)</b>	1616.63sq. ft.
<b>Unmodified Sensitive Area Buffer</b>	6063.62 sq. ft.
<b>Buildable Area</b>	24342.77 sq. ft.
<b>Percentage of Site in Sensitive Area Buffer</b>	19%
<b>Minimum Lot Size Requirement</b>	8500 sq. ft.
<b>Development Factor</b>	0.9
<b>Maximum Development Potential</b>	3.51 units

- b. Conclusion: The applicant's proposal for three lots is consistent with the maximum development potential for the site as established under KZC 90.135.

#### **D. DEVELOPMENT REGULATIONS**

1. General Lot Layout and Site Development Standards

a. Facts:

- (1) Municipal Code section 22.28.050 states that lots must be of a shape so that reasonable use and development may be made of the lot.
- (2) Lots 1 and 2 have a depth of 162 feet and a width of 64 feet. The lots contain an access easement and are partially encumbered on the eastern extent by a wetland buffer. Permits for construction of two new single family residences have been issued for Lots 1 and 2.
- (3) Lot 3 has a depth of 87 feet and a width of 128 feet. The southern portion of Lot 3 is encumbered by a regulated wetland and wetland buffer. The available building footprint envelope for Lot 3, after applying required setbacks and wetland buffer and buffer setback requirements, would be over 2,300 square feet in size, with a potential building width of approximately 28 feet (at the narrowest point) and widening to approximately 60 feet, and a building depth of 60 feet.

- b. Conclusion: All lots proposed within the short plat are of a shape so that reasonable use and development may be made of the lot.

2. Vehicular Access Easements or Tracts

- a. Facts: Municipal Code sections 22.28.110 and 22.28.130 establish that if vehicular access within the plat is provided by means other than rights-of-way, the plat must establish easements or tracts, compliant with Zoning Code Section 105.10, which will provide the legal right of access to each of the lots served.

- (1) Zoning Code section 105.10 establishes dimensional standards for vehicular access easements or tracts. Easements or tracts which serve 1-4 lots must be 21 feet wide and contain a paved surface 16 feet in width.
- (2) The applicant is proposing to install a 12-foot wide access easement that would contain a 12-foot wide paved surface. The applicant is requesting a modification to the dimensional standards of KZC 105.10

to permit a portion of the access easement and paved surface to be less than 21 feet and 16 feet in width, respectively.

- b. Zoning Code Section 105.103.3.a establishes that the Planning Official may require or grant a modification to KZC 105.10 if the following criteria are met:
  - (1) The modification will not affect the ability to provide any property with police, fire, emergency medical, or other essential services; and
  - (2) One of the following requirements is met:
    - (a) The modification is necessary because of a preexisting physical condition; or
    - (b) The modification will produce a site design superior to that which would result from adherence to the adopted standard.
- c. The easement does not adjoin any property that is not owned and being developed by the applicant and, as a result, a 5-foot setback of the pavement from the edge of the easement is not necessary.
- d. The applicant has designed the access easement to provide shared access for two lots of the subdivision (Lot 2 and 3) across Lot 1. As a result, the applicant has reduced the number of separate access points along 112th Avenue NE, which results in superior site design. The reduction in the access width also minimizes potential impacts to the wetland buffer and decreases the amount of pollution generating impervious surfaces on the subject property.
- e. Both the Public Works and Fire Departments have evaluated the proposal for compliance with access standards and have recommended approval of the project.
- f. The following conditions are recommended to ensure that the modification will not affect the ability to provide any property with police, fire, emergency medical, or other essential services:
  - (1) The Fire Department has recommended that a sprinkler system be installed for any house on Lot 3 (see Attachment 3).
  - (2) The proposal should an on-site driveway turn-around so that vehicles do not have to back down the access easement across lot 2.
  - (3) The driveway for each lot shall be long enough so that parked cars do not extend into and block the access easement (20 ft. min.).
- g. Conclusion: With compliance with the conditions noted above, the application meets the criteria for a modification to the dimensional standards for access easements or tracts. The requirement to install sprinkler systems on Lot 3 should be included as a note on the recorded short plat. Pursuant to section 105.103.3.a, a modification is justified, because it does not impact the ability serve the site with essential services and produces a superior site design.

### 3. Environmentally Sensitive Areas - Wetlands

#### a. Facts:

- (1) Municipal Code section 22.28.200 establishes that the City may require that any area adjacent to a wetland be kept in its natural or pre-existing state if reasonably necessary to prevent hazards to persons or property, or to protect unique and valuable environments.
- (2) Municipal Code section 22.28.180 states that the applicant has the responsibility in proposing a plat to be sensitive with respect to the natural features, including topography, streams, lakes, wetlands, habitat, geologic features and vegetation, of the property. The plat must be designed to preserve and enhance as many of these valuable features as possible.
- (3) The site contains a Type 3 wetland on the southeast portion of the site (see Attachment 2 and 9). A Type 3 wetland in a secondary basin requires a buffer of 25-feet, where no land surface modification and no improvement should occur unless specifically authorized by the Planning Department under the provisions of Kirkland Zoning Code Chapter 90. In addition, structures are required to be setback at least 10 feet from the designated wetland buffer. No modification to the wetland or its associated buffer has been proposed by the applicant.
- (4) Zoning Code section 90.150 requires the applicant to grant a greenbelt protection easement to the City to protect sensitive areas and their buffers. Land survey information shall be provided by the applicant for this purpose.
- (5) Zoning Code sections 90.50 and 90.95 require that prior to the start of development activities, the applicant 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 wetland or stream buffer with silt screen fabric installed per City standard.
- (6) Zoning Code sections 90.50 and 90.95 require the applicant to install either (1) a permanent three- to four-foot-tall split rail fence; or (2) permanent planting of equal barrier value; or (3) equivalent barrier, as approved by the Planning Official between the upland boundary of all wetland or stream buffers and the developed portion of the site.
- (7) As part of the development of the site, the City will evaluate stormwater and erosion control impacts to the wetland system for compliance with the 1998 King County Water Design Manual (see Attachment 3).
- (8) Zoning Code section 90.65 allows the city to require restoration of a wetland and/or its buffer.
- (9) As described in the wetland report (see Attachment 9) the wetland and the upland buffer area on the site is dominated by weedy or non-native vegetation. The wetland also abuts the foundation of an existing garage which is located within the wetland buffer. The garage and an associated parking area, which also partially encroaches into the buffer, are shown to be removed (see Attachment 2).

- (10) The applicant is required to plant trees on the site to comply with the tree density standards (see Section II.D.5 below). A tree planting plan has been provided as part of the Tree Plan III (see Attachment 10).

b. Conclusion: With adherence to the following conditions of approval, the proposal will be consistent with the City's policies and regulations addressing preservation and enhancement of wetland and buffer areas:

- (1) Prior to development, the applicant should install a six-foot high construction phase fence along the upland boundary of the entire wetland buffer with silt screen fabric installed per City standard. The fence should remain upright in the approved location for the duration of development activities. Upon project completion, the applicant should install between the upland boundary of the wetland buffer and the developed portion of the site, either 1) a permanent 3 to 4 foot tall split rail fence, or 2) permanent planting of equal barrier value.
- (2) Prior to recording the short plat, the applicant should dedicate a natural greenbelt protection easement encompassing the wetland and wetland buffer on the site (see Attachment 11). The boundaries of the Natural Greenbelt Protection Easement should correspond with the wetland buffer and should be established by survey. All surveys shall be located on KCAS or plat bearing system and tied to known monuments.
- (3) In order to ensure appropriate storm water and erosion control, the development should provide temporary and permanent storm control per the 1998 King County Water Design Manual (see Attachment 3).
- (4) The requirement to plant trees on the site in order to meet tree density requirements and to remove the existing garage and parking area in order to comply with zoning standards for setbacks and lot coverage both present opportunities for restoration and enhancement activities that could improve the habitat value within the wetland buffer, consistent with the provisions of KMC 22.28.180 and KZC 90.65.

When the existing garage and associated parking area are demolished, the applicant should restore the area within the wetland that is presently impacted by these improvements with native species, including groundcover, shrubs, or trees. Trees required to be planted to comply with the tree density requirements should be placed within the wetland buffer area and composed of native species. Prior to completion, the restoration and enhancement plan should be reviewed by Planning staff. The plan should comply with the installation standards contained in KZC 95.45.12 (see Attachment 12).

#### 4. 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 or short 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 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.

5. Natural Features - Significant Vegetation

a. Facts:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) Kirkland Zoning Code Section 95.35.2.b.1), requires that a Tree Plan I be submitted with a development permit or land surface modification resulting in site disturbance for one or two attached, detached, or stacked dwelling units. See Attachment 13 for an overview of the tree requirements associated with a Tree Plan I.
- (5) The building permits for the new detached dwelling units on Lots 1 and 2 (BLD06-00263 and BLD06-00480 respectively) were submitted for

review prior to the submittal date of this short plat application. The applicant submitted a Tree Plan I with these building permits. There are a total of 3 significant trees on the site (Tree No. 1, 8 and 9). The Tree Plans were reviewed by the City's Arborist who determined that the significant trees on the site were viable, with the exception of Tree No. 8. Tree No. 1 and 8 on Lot 2 were authorized to be removed under the Tree Plan I filed in conjunction with the building permit issued for Lot 2. In exchange for removal of Tree No. 1, the applicant was required to install three additional 6 foot tall native trees within the wetland buffer. In addition, the trees to be planted to meet the minimum tree density were required to be installed within the wetland buffer. This alternative compliance was authorized under the provisions of Kirkland Zoning Code Section 95.25 (see Attachment 14) in order to improve the habitat value of the wetland buffer.

- (6) 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 15 for an overview of the tree requirements associated with a Tree Plan III.
- (7) The applicant submitted a Tree Plan III with the subject short plat application (See Attachment 10). Based upon past decisions made related to issuance of building permits on the site (see Section II.D.5.a(5) above), there is one significant tree on the site (Tree No. 9), which has been classified as a Type 2 tree. The Tree Plan III shows the installation of 17 new trees.
- (8) 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.
- (9) 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 32,023 square feet or .73 acres. Based on the requirement of 30 tree credits per acre, the proposed short plat site must provide a minimum of 22 tree credits.
- (10) 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 is one viable tree on the site (Tree No. 9). Seventeen (17) trees have been shown to be planted. The minimum of 22 tree credits has not been met for the short plat. Since the site has fallen below the below the minimum required tree density, replanting of 21 trees will be required to meet the

minimum density. If Tree No. 9 is authorized for removal in future phases of development, replanting of an additional tree will be required.

- (2) In addition, under the conditions of approval for the building permit on Lot 2, replanting of three additional trees in the wetland buffer is required. All supplemental trees to be planted on Lot 2 shall be installed within the wetland buffer.
- (3) The applicant should retain Tree No. 9 at the short plat approval stage. In addition, Tree No. 9 should be retained with the required Land Surface Modification Permit, unless it is needed to be removed for installation of the new public road, and other plat infrastructure improvements. The Planning Official will determine whether the Tree No. 9 is permitted to be removed with the LSM activity during the review of the grading permit.
- (4) The applicant should retain Tree No. 9 on the site during the development of the new residence on Lot 3 unless this tree is required to be removed for the construction of the house and other associated site improvements. The Planning Official will determine whether Tree No. 9 is permitted to be removed with the development of the new residence on Lot 3 as part of the building permit review.
- (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.

## **E. COMPREHENSIVE PLAN**

### 1. Facts:

- a. The subject property is located within the Highlands neighborhood. Figure H-4 on page XV.M-12 designates the subject property for low density residential development, with a density of five dwelling units per acre (see Attachment 16).

*Staff Analysis: The proposal has a residential density of approximately 4 units per acre.*

- b. The Natural Environment Section of the Highlands Neighborhood Plan includes a policy statement to "undertake measures to protect stream buffers and the ecological functions of streams, lakes, wetlands, and wildlife corridors and promote fish passage" (Policy H-2.1).

*Staff Analysis: The subject property contains a wetland system, which has been classified as a Type 3 wetland. The proposal shows a 25-foot wetland buffer and 10-foot buffer setback, consistent with the provisions established in the Zoning Code for wetland protection.*

- c. The Natural Environment Section of the Highlands Neighborhood Plan discusses protection of wildlife habitat throughout the neighborhood (Goal H-5) and includes a policy to encourage creation of backyard sanctuaries for wildlife habitat in upland areas (Policy H-5.1).

*Staff Analysis: The subject property contains a wetland system that is protected under the provisions of Zoning Code Chapter 90 and, as a result, will continue to provide area for wildlife habitat. Staff is recommending measures be taken to improve the habitat functions of the wetland buffer (see Section II.D.3 and II.D.5 above).*

- d. The Transportation Section of the Highlands Neighborhood Plan contains a goal to avoid development of unimproved rights-of-way impacted by sensitive areas.

*Staff Analysis: The portion of the alley that is located within the wetland area or its associated buffer is not proposed to be improved.*

2. Conclusions:

- a. The short plat proposal is consistent with the land use and density established in the Comprehensive Plan.
- b. The short plat proposal is consistent with the goals and policies related to the Natural Environment as contained in the Highlands Neighborhood Plan.

**F. DEVELOPMENT STANDARDS**

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 3.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

**III. SUBSEQUENT MODIFICATIONS**

Modifications to the approval 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**

Appeal to the Hearing Examiner:

Section 145.60 of the Zoning Code allows the Planning Director's decision to be appealed by the applicant or any person who submitted written comments or information to the Planning Director. 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., ~~11/13/06~~, fourteen (14) calendar days following the postmarked date of distribution of the Director's decision.

**B. JUDICIAL REVIEW**

Section 145.110 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 22.20.370 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 are attached.

1. Vicinity Map
2. Short Plat Drawings
3. Development Standards
4. Site Plan for Lot 1
5. Site Plan for Lot 2
6. Geotechnical Engineering Evaluations completed by J. Keith Cross, PE
7. Public Comments
  - a. E-mail correspondence from Lorenzo Ciancusi and Colleen Protzman
  - b. Letter from Julie and Peter Lemme
  - c. Letter from Pat and Mary Ellinger
8. Staff Response to Lorenzo Ciancusi and Colleen Protzman
9. Wetland Report
10. Tree Plan III
11. NGPE
12. KZC 95.45.12
13. Kirkland Zoning Code Section 95.35.2.b.1)
14. Kirkland Zoning Code Section 95.25
15. Kirkland Zoning Code Section 95.35.2.b.3)
16. Comprehensive Plan, Figure H-4 on page XV.M-12
17. RS 8.5 Use Zone Chart
18. Maintenance Agreement – Landscape Strip and Sidewalk
19. Hold Harmless Agreement - Wetland

**VII. PARTIES OF RECORD**

Applicant, BEN CASADY, CASADY ENTERPRISES INC, PO BOX 3475, KIRKLAND WA 98083  
JULIE and PETER LEMME, 11233 NE 94TH STREET, KIRKLAND, WA 98033  
PAT and MARY ELLINGER, 11229 NE 94TH STREET, KIRKLAND, WA 98033  
LORENZO CIANCIUSI and COLLEEN PROTZMAN, 11205 NE 94TH STREET, KIRKLAND, WA 98033  
Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services

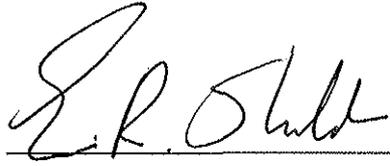
Review by Planning Director:

I concur  I do not concur

Comments: \_\_\_\_\_

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10/24/06

Eric R. Shields Date

