



**CITY OF KIRKLAND**

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

**To:** Kirkland Hearing Examiner

**From:** Stacy Clauson Stacy Clauson, Project Planner

Eric R. Shields Eric R. Shields, AICP, Planning Director

**Date:** November 30, 2006

**File:** PARK AT FORBES CREEK STREAM BUFFER REDUCTION, FILE NO. ZON06-00024

**Hearing Date and Place:** December 7, 2006 at 7:00 p.m. (or as soon thereafter as possible)  
City Hall Council Chamber  
123 Fifth Avenue, Kirkland

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## **I. INTRODUCTION**

### **A. APPLICATION**

1. Applicant: Pal Ottesen, HSC Real Estate representing Park at Forbes Creek, LLC
2. Site Location: 11110 Forbes Creek Drive (see Attachment 1)
3. Request: Zoning Permit application to reduce the 75-foot stream buffer for Forbes Creek, a Class A stream, by one-third its standard width to allow a remodel and addition to the existing clubhouse at the Park at Forbes Creek apartment complex (see Attachment 2.a). Enhancement of stream buffer is proposed (see Attachment 2.b).
4. Review Process: Process IIA, Hearing Examiner conducts public hearing and makes final decision.
5. Summary of Key Issues and Conclusions: The key issue associated with this zoning permit is compliance with the standards for a stream buffer reduction (see Section II.E.1).

### **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 (see Conclusion II.H.2).
3. Prior to issuance of any permits for development activity on the property, the applicant shall submit:
  - a. Final site plan, buffer mitigation plan, and monitoring and maintenance plans in substantial compliance with the plans included in Attachment 2 (See Conclusion II.E.1.b) and revised to incorporate the following recommendations:
    - i. Revise landscape plan sheet 2 for consistency with the text and plan sheet 3. The area should be irrigated with 2 inches of water per week for the first 2 years after installation. Beginning and ending dates may be adjusted slightly depending on specific rain amounts in each year, but watering should start in early June and end in late September to mid-October.
    - ii. Revise landscape plan sheet 3 to omit "silt fence" and retain "coir logs."
    - iii. Revise text to reflect the number of coniferous tree species proposed.
    - iv. Use 2-gallon big leaf maple plants in installation and revise the plans to reflect this.

- v. The installation and maintenance of the mitigation plantings shall comply with the provisions of KZC 95.45.12. These specifications shall be provided on the construction drawings.
  - vi. Revise the site plan to eliminate the parking lot improvements proposed to occur within the modified 50-foot stream buffer.
- b. Construction plans which depict that staging and all construction equipment and tools used to construct the porte cochere will be used and kept outside of the buffer (see Conclusion II.E.2.b)
  - c. Erosion control plans, which depict the location of a six-foot high construction phase fence with silt screen fabric installed per City standard along the south side of the stream either along the upland boundary of the stream buffer or, if improvements are located within the buffer, encompassing all vegetated areas and corresponding with the edge of paved or otherwise developed areas. The fencing shall be installed prior to issuance of any permits. The fence shall remain upright in the approved location for the duration of development activities (see Conclusion II.F.3.b).
  - d. A financial security device to cover the cost of completing the buffer enhancement improvements. The security shall be consistent with the standards outlined in Zoning Code section 90.145 and revised as follows:
    - (1) Add tree stakes and inspections by the City to the bond quantity worksheet.
    - (2) Recalculate the contingency cost at 25 percent on the bond quantity worksheet. (see Conclusion II.F.1.b)
  - e. Signed and notarized covenants (see Attachments 14 and 16) that hold the City harmless against any future claims that may arise as a result of the development of the property (see Conclusion II.F.2.b. and II.F.4.b).
  - f. A signed and notarized covenant (see Attachment 15) acknowledging the presence of sensitive areas on the property and agreeing to protect those areas consistent with the provisions in the Kirkland Zoning Code (see Conclusion II.F.2.b)
  - g. A geotechnical report meeting the requirements of KZC 85.15 (see Conclusion II.F.4.b).
4. Prior to final inspection of any permits, the applicant shall:
- a. Complete installation of the buffer enhancement plan, subject to inspection by the City's Stream consultant at the applicant's expense (see Conclusion II.E.1.b).
  - b. Provide proof of a written contract with a qualified professional who will perform the monitoring program, together with a completed contract and fees to fund review of the monitoring and maintenance activities, (i.e. inspection of plant materials, annual monitoring reports or revegetation activities) by the City's Stream consultant. Alternatively, the applicant shall provide a copy of a completed contract and fees to fund completion of the monitoring program by the City's Stream consultant (see Conclusion II.E.1.b).
  - c. Provide proof of a written contract to cover maintenance activities outlined in the buffer report (see Conclusion II.E.1.b).

- d. Install either 1) a permanent 3 to 4 foot tall split rail fence, or 2) permanent planting of equal barrier value along the south side of the stream either at the upland boundary of the stream buffer or, if improvements are located within the buffer, encompassing all vegetated areas and corresponding with the edge of paved or otherwise developed areas. The fence shall be extended to the west to the edge of 111th Court NE to limit access and impacts to the stream buffer in this community area of the site, with allowances for an opening for the existing paved trail that crosses stream. (see Conclusion II.F.3.b).
- e. Submit to the Planning Department a financial security device to cover all monitoring and maintenance activities that will need to be done including Stream 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.1.b) and revised as follows:
  - (1) Add tree stakes, inspections by the City, and maintenance and monitoring costs to the bond quantity worksheet.
  - (2) Recalculate the contingency cost at 25 percent on the bond quantity worksheet.

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

### A. **SITE DESCRIPTION**

#### 1. Site Development and Zoning:

##### a. Facts:

- (1) Size: The Park at Forbes Creek apartment complex contains approximately 2,648,507 square feet (60.8 acres). The property owned by Park at Forbes Creek LLC is located on both sides of Forbes Creek Drive.
- (2) Land Use: The property is developed with 22 buildings containing 496 apartment units, 920 parking stalls, and a separate building which houses the recreational complex and management offices. The site contains open space areas along the perimeter of the property. Private roads provide access to buildings in the development. Access to the development is from Forbes Creek Drive.
- (3) Zoning: The site is located within PLA 9, a medium-density residential zone, and contains a Planned Unit Development (PUD) overlay.
- (4) Terrain: In the area near the recreational building, the property slopes downhill towards the stream.
- (5) Vegetation: In the area near the recreational building, the riparian area is dominated by Himalayan blackberry vines, which are interspersed with some red alder, willow species, big leaf maple, and western red cedar. The upland area of the stream buffer also contains many non-native red maples, rhododendrons, extensive lawn, and assorted ornamental plantings along the building and parking edges.

- (6) Sensitive Areas: Forbes Creek, a Class A stream, runs through the property. The Sensitive Area Maps also indicate that a 100-year floodplain is located on the property (see Attachment 10, Enclosure 3). The sensitive area maps also identify the presence of a seismic hazard area in the area of proposed construction.
  - b. Conclusions: Size and land use are not constraining factors in the consideration of this application. The proposed construction does not encroach into the mapped floodplain, which is located on the north side of the stream. The seismic hazard area is a constraining factor and is further discussed in Section II.F.4. The site also contains a buffer associated with a Class A stream, which is a constraining factor. The applicant is requesting approval of a stream buffer reduction through enhancement for the Class A stream buffer. See Section II.E.1 for more discussion. The proposal also includes modification to a Planned Unit Development (PUD), which is further discussed in Section II.E.3 below.
2. Neighboring Development and Zoning:
    - a. Facts: The subject property is surrounded by the following zones and uses:
      - (1) North: Properties to the north of the Park at Forbes Creek apartment complex are developed with single family homes, located within the RS 8.5 zone.
      - (2) South: Properties to the south of the Park at Forbes Creek apartment complex and the Burlington Northern Railroad Right-of-Way (BNRR) are located on top of steep hillside and are with single family homes, located within the RS 8.5 zone. Some of these properties have been developed as part of a Planned Unit Development (PUD) review process. A portion of Crestwoods Park, the portion dedicated as part of the PUD for the Park at Forbes Creek, adjoins the property along a portion of its southern boundary. In addition, a vacant piece of land owned by King County is located between the Park at Forbes Creek and the BNRR.
      - (3) West: 108th Avenue NE adjoins the site along a portion of its western property line. Properties to the west of the Park at Forbes Creek apartment complex include Juanita Bay, zoned P, as well as single family residences located in the RS 8.5 zone.
      - (4) East: Properties to the east are developed with industrial and residential uses and are located within the TL 10D zone.
    - b. Conclusion: The surrounding zoning and development are not constraining factors in this application.

## **B. HISTORY**

1. Facts:
  - a. Prior to redevelopment of the site for the existing apartment complex, the property was used for a sand and gravel pit.
  - b. The site was the focus of three Superior Court litigations in 1977, challenging the validity of the formation of Local Improvement District No. 115, which provided for public improvements, including streets, water facilities for both fire and domestic use requirements, storm drainage facilities, sanitary sewer facilities, and improvements in stream bed protections to Forbes Creek. The cases also challenged the adoption of and validity of new Comprehensive Plan

and Zoning Code provisions affecting the properties (see Kirkland Sand and Gravel v. City of Kirkland, Case No. 828 778; Kirkland Sand and Gravel v. City of Kirkland, Case No, 828 976; and Wallace H. Litchfield et ux v. City of Kirkland, Case No. 830 556). These cases were consolidated into one litigation, and in 1977 the City entered into a Judgment and Decree, which allowed the properties to remain zoned Planned Area 9, subject to a number of conditions as stipulated in Resolution 2474 (see Attachment 4).

- c. A proposal for a PUD consisting of 644 condominiums units was submitted by NAN partners on October 26, 1979 (File No. P-PUD-79-116 (P)). On June 21, 1982, the Kirkland City Council adopted Resolution R-2925 approving the Preliminary Planned Unit Development, subject to conditions, including a decrease in the number of allowed dwelling units to 522 units. Subsequently, NAN Partners sued the City, because the approved project was smaller than the 644 units developers had sought and the property's zoning had allowed. In addition, Environmentally Concerned Homeowners (ECHO) filed suit against both the City of Kirkland and NAN Partners in the belief that the approved development was too large. Both suits were consolidated under NAN Partners v. City of Kirkland and ECHO v. NAN Partners and City of Kirkland in 1983. After the developers defaulted on Federal Housing and Urban Development loans in 1983, foreclosure proceedings began, and Seafirst Mortgage Corporation took over the property. On November 25, 1986 an out-of-court settlement was reached between Seafirst Mortgage Company (as substitute for NAN Partners), ECHO and the City of Kirkland as reflected in Resolution 3310 approved by the Kirkland City Council on September 2, 1986 (see Attachment 5).
  - d. On July 2, 1987 the City issued a Notice of Approval for a Process I permit authorizing the final Planned Unit Development of the Park at Forbes Creek, a 496-unit apartment complex (File No. I-87-20) (see Attachment 6. Note: The attachment also contains selected drawings showing the approved site plan). The approved PUD included stream restoration activities, including stream rechannelization, construction of an overflow channel, and plant installation.
  - e. In May, 1988 the City issued a clarifying memorandum addressing the recreational building on the site (see Attachment 7).
  - f. In January, 1991, the City issued approval for the inclusion of a beverage bar and grocery convenience center to the recreation center (see Attachment 8). The modification authorized the enclosure of the open-air courtyard space under review as part of the buffer modification. It appears that the project was never completed.
2. Conclusion: The proposal includes a modification to a Planned Unit Development (PUD), which is further discussed in Section II.E.3 below. The Park at Forbes Creek was developed under zoning regulations that were in effect prior to 1982, when the City enacted a new Zoning Code that first established a buffer requirement for streams. The existing recreational building encroaches within the stream buffer required as part of the existing zoning regulations and, as a result, a reduction to the buffer is being sought (see Section II.E.1 for more information).

### **C. PUBLIC COMMENT**

The public comment period for this short plat extended from September 21, 2006 until October 9, 2006. The Planning Department has received five public comments (see Attachment 9, a-e). The comment letter from Mr. Werle expressed support for the proposal. The comment letters

from Mr. Duffin, Mr. Carlson, and Mr. Smith have indicated their objection to the reduction in the stream buffer. Mr. Davis of Fanaco Fasteners voiced concerns over the proposal. In general, these letters raised the following concerns:

1. Contamination and/or spread of mosquitoes, insects, etc. There is concern expressed by Fanaco Fasteners about the potential for spread of insects into their work area.

*Staff Response:* The area of work is located over 1,400 feet away from the Fanaco Fastener property and is on the opposite side of Forbes Creek Drive from the site. No work is proposed in the stream segment that is located closest to the Fanaco Fastener property. Further, no work is proposed that would modify the flow characteristics of the existing stream channel or create new areas of ponding that would serve as a breeding ground for mosquitoes. As a result, the proposal is not anticipated to result in the spreading of insects to the Fanaco Fastener property.

2. Loss of natural habitat surrounding Forbes Creek. Request is not consistent with longterm efforts to restore Forbes Creek and establish buffer restrictions.

*Staff Response:* The stream buffer area near the recreational building is currently in a modified state, containing a large portion of the recreational building, its associated paved parking area, walkways and a paved trail, and lawn and other ornamental plantings, including English Ivy. The riparian area directly adjoining the stream is impacted by Himalayan blackberries. The proposed additions that encroach into the buffer area would consist of infill of an open air courtyard that is surrounded by the recreational building on all sides, and the addition of a new porte cochere, which would be constructed over an existing paved parking area and sidewalk. In exchange, the proposed enhancement would include removal of noxious and non-native species and contain over 9,000 square feet of new native planting. The City's regulations contain provisions that allow for the reduction of stream buffers, in exchange for either a larger buffer in other areas or buffer enhancement. The City's stream consultant has evaluated the proposal and has determined that the proposal is consistent with the provisions established in the Zoning Code for buffer reductions, which includes an analysis of the impact to fish, wildlife and their habitat. See Section II.E.1 and Attachments 2 and 12 for more information.

#### **D. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

1. Facts: A Determination of Nonsignificance (DNS) was issued on October 24, 2006. The Environmental Checklist, Determination, and additional environmental information are included as Attachments 10.
2. Conclusion: The applicant and the City have satisfied the requirements of SEPA.

#### **E. APPROVAL CRITERIA**

1. BUFFER MODIFICATIONS FOR CLASS A, B, OR C STREAMS
  - a. Fact: Zoning Code section 90.100.2 establishes that a Stream Buffer Modification may only be granted when the proposed development is consistent with all of the following
    - (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);
    - (2) It will not adversely affect water quality;

- (3) It will not adversely affect fish, wildlife, or their habitat;
  - (4) It will not have an adverse effect on drainage and/or storm water detention capabilities;
  - (5) It will not lead to unstable earth conditions or create an erosion hazard or contribute to scouring actions;
  - (6) It will not be materially detrimental to any other property or the City as a whole;
  - (7) Fill material does not contain organic or inorganic material that would be detrimental to water quality or to fish, wildlife, or their habitat;
  - (8) All exposed areas are stabilized with vegetation normally associated with native stream buffers, as appropriate; and
  - (9) There is no practicable or feasible alternative development proposal that results in less impact to the buffer.
- b. Fact: The proposal also depicts modifications to a portion of the parking lot that currently extends within the modified 50-foot buffer from the stream, including installation of a new ramp.
- c. Fact: Zoning Code Section 95.45.12 establishes standards for plant source, installation, and fertilizer applications for mitigation and restoration plantings in critical areas and critical area buffers (see Attachment 11).
- d. Conclusions:
- (1) Pursuant to the attachments included with this report, including the proposed site plan, buffer mitigation plan, and monitoring and maintenance plans (see Attachment 2.a through c), the applicant's response to the above buffer modification criteria (see Attachment 2.d) and the report from The Watershed Company's dated August 21, 2006 and follow-up dated November 13, 2006 (see Attachment 12.a and b), the proposed development is consistent with the above criteria, subject to the following conditions:
    - (a) The applicant should follow the site plan, buffer mitigation plan, and monitoring and maintenance plans as identified in Attachment 2.a through c and revised as per the recommendations in the letter from The Watershed Company dated November 13, 2006, as follows:
      - i. Revise landscape plan sheet 2 for consistency with the text and plan sheet 3. The area should be irrigated with 2 inches of water per week for the first 2 years after installation. Beginning and ending dates may be adjusted slightly depending on specific rain amounts in each year, but watering should start in early June and end in late September to mid-October.

- ii. Revise landscape plan sheet 3 to omit "silt fence" and retain "coir logs."
  - iii. Revise text to reflect the number of coniferous tree species proposed.
  - iv. Use 2-gallon big leaf maple plants in installation and revise the plans to reflect this.
- (b) The installation and maintenance of the mitigation plantings should comply with the provisions of KZC 95.45.12. These specifications should be provided on the construction drawings.
  - (c) The applicant should submit proof of a written contract with a qualified professional who will perform the monitoring program outlined in Attachment 2.c.
  - (d) The applicant should submit proof of a written contract with a qualified professional who will perform the maintenance program outlined in Attachment 2.c.
  - (e) The completion of the buffer mitigation plan and maintenance and monitoring work should be reviewed by the City's wetland consultant, and the cost of which should be borne by the applicant.
  - (f) The enhancement plan should be completed prior to the final inspection of any permits.
  - (g) The improvements to the parking lot shown within the 50-foot buffer would not be consistent with the requirements for buffer protection and should not be permitted.

## 2. BUFFER SETBACK

### a. Facts:

- (1) Zoning Code Section 90.90.2 establishes that structures shall be set back at least 10 feet from the designated or modified stream 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 stream.
- (2) The applicant has proposed that the roof form of the porte cochere addition be allowed to encroach into the 10-foot buffer setback established from the modified 50-foot buffer.
- (3) The roof form would extend over an existing concrete sidewalk. The columns for the porte cochere are not within the 60 foot buffer setback line. The roof form would continue to maintain a setback from the edge of the buffer of approximately 2 feet, at the closest point. The applicant has indicated that the roof area can be maintained from below using the existing sidewalk.

- b. Conclusion: The improvement would not impact any existing or proposed vegetation and would not result in any increase in imperious area. To ensure that the construction of the porte cochere will not impact the stream buffer, the applicant should demonstrate that staging and all construction equipment and tools will be used and kept outside of the buffer. With this condition of approval, the proposal is consistent with the provisions for minor modifications to be located within a buffer setback.

### 3. MODIFICATION TO PLANNED UNIT DEVELOPMENT

a. Facts:

- (1) The conditions of approval for the Final Planned Unit Development (see Attachment 6) authorized the Department of Planning and Community Development 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 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.
- (2) The proposal includes the following modifications to the final Planned Unit Development (PUD):
  - (a) Addition of the porte cochere;
  - (b) Addition of a new covered porch on the west side of the building (outside of the required stream buffer); and
  - (c) Adjustment to the existing parking, with removal of approximately three parking stalls associated with the construction of the new porte cochere.
- (3) Under the standard parking requirements, a 496 unit complex would be required to provide 844 stalls, with additional stalls required for guest parking. With the removal of three parking stalls, the site will contain 917 stalls.

- b. Conclusions: There is no change in use proposed at the site. The modifications to the PUD being requested are minor in nature and would not result in any substantial changes in impacts on the neighborhood or the City.

### 4. GENERAL ZONING CODE CRITERIA

a. Fact: Zoning Code section 150.65.3 states that a Process IIA application may be approved if:

- (1) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- (2) It is consistent with the public health, safety, and welfare.

- b. Conclusion: The proposal complies with the criteria in section 150.65.3. It is consistent with all applicable development regulations (see Sections II.F) and the Comprehensive Plan (see Section II.G). In addition, it is consistent with the public health, safety, and welfare because it allows for the modification to a building that provides recreational opportunities to the residents of the Park at Forbes Creek in a manner that does not result in a loss of function or value to a stream buffer system.

## **F. DEVELOPMENT REGULATIONS**

### **1. BONDS AND SECURITIES**

a. Facts.

- (1) Zoning Code section 90.145 establishes the requirement for the applicant to submit a performance or maintenance bond to ensure compliance with any aspect of the Drainage Basin regulations contained in Chapter 90 of the Kirkland Zoning Code or any decision or determination made pursuant to the chapter.
- (2) The applicant has submitted a preliminary estimate for the security costs (see Attachment 13) which has been reviewed by the City's stream consultant, The Watershed Company (see Attachment 12.b). The Watershed Company identified the following revisions that should be made to the security value worksheet:
  - (a) Add tree stakes, inspections by the City, and maintenance and monitoring costs to the bond quantity worksheet.
  - (b) Recalculate the contingency cost at 25 percent on the bond quantity worksheet.

b. Conclusions:

- (1) In order to ensure that the stream enhancement work is completed in compliance with the approved plans, prior to issuance of any permits for development activity on the site, the applicant should submit a financial security device to the Planning Department to cover the cost of completing the improvements. The security shall be consistent with the standards outlined in Zoning Code section 90.145.
- (2) In order to ensure continued compliance with the stream buffer enhancement plan, prior to final inspection of any permits, the applicant should submit to the Planning Department a financial security device to cover all monitoring and maintenance activities that will need to be done including 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 revised consistent with the recommendations of the Watershed Company's November 13, 2006 letter.

### **2. SENSITIVE AREAS COVENANTS**

a. Facts.

- (1) KZC 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.
- (2) 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. Conclusions.

- (1) The applicant should sign and notarize a covenant (see Attachment 14) that holds the City harmless against any future claims that may arise as a result of the development of the property.
- (2) The applicant should sign and notarize a Sensitive Area Covenant acknowledging the presence of sensitive areas on the property and agreeing to protect those areas consistent with the provisions in the Kirkland Zoning Code (see Attachment 15).

3. STREAM BUFFER FENCE OR BARRIER

a. Facts:

- (1) Zoning Code sections 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 Stream or stream buffer with silt screen fabric installed per City standard.
- (2) Zoning Code sections 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 Stream buffers and the developed portion of the site.
- (3) In the area of the recreational building, the site contains a number of existing encroachments into the wetland buffer, including the recreational building, its associated parking, and paved sidewalks and trails. There is presently no barrier to limit access to the stream.

b. Conclusions:

- (1) Prior to development, the applicant should install a six-foot high construction phase fence with silt screen fabric installed per City standard along the south side of the stream either along the upland boundary of the stream buffer or, if improvements are located within the buffer, encompassing all vegetated areas and corresponding with the edge of paved or otherwise developed areas. The fence shall remain upright in the approved location for the duration of development activities.
- (2) Upon project completion, the applicant should install either 1) a permanent 3 to 4 foot tall split rail fence, or 2) permanent planting of equal barrier value along

the south side of the stream either at the upland boundary of the stream buffer or, if improvements are located within the buffer, encompassing all vegetated areas and corresponding with the edge of paved or otherwise developed areas. The fence should be extended to the west to the edge of 111th Court NE to limit access and impacts to the stream buffer in this community area of the site, with allowances for an opening for the existing paved trail that crosses stream.

4. Geologically Hazardous Areas

a. Facts:

- (1) The Kirkland Sensitive Area Maps identify the presence of a seismic hazard area on the property.
- (2) Zoning Code section 85.15 states that the City may require the applicant to submit a geotechnical report, prepared by a geotechnical engineer or engineering geologist, together with geotechnical recommendations, prepared by a qualified geotechnical engineer, for mitigation techniques appropriate to the hazard area.
- (3) Zoning Code Section states that prior to issuance of any development permit, the applicant shall enter into an agreement with the City, which runs with the property, in a form acceptable to the City Attorney, indemnifying the City of any special damage resulting from development activity on the property which is related to the physical condition of the property.

- b. Conclusion: Prior to issuance of a building permit, the applicant should submit a geotechnical report meeting the requirements of KZC 85.15. The applicant should also sign and notarize a covenant (see Attachment 16) 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.I-6 designates the subject property for medium density residential, with a density of four to nine dwelling units per acre (see Attachment 17). The property is identified as being located within Planned Area 9.
2. Conclusion: The proposal does not include an increase in the density. The property has been developed since the language in the Comprehensive Plan addressing Planned Area 9 was drafted and the proposal represents a minor change from this approved development.

**H. 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**

##### 1. 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., \_\_\_\_\_, twenty-one (21) 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 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.

### **VI. APPENDICES**

Attachments I through are attached.

1. Vicinity Map
2. Project Drawings
  - a. Site Plan, Floor Plan and Elevation Drawing
  - b. Stream Buffer Reduction Plan - Planting Plan
  - c. Monitoring and Maintenance Plan
  - d. Written Analysis for compliance with criteria
3. Development Standards
4. Resolution 2474
5. Resolution 3310
6. Notice of Approval for I-87-20. Note: The attachment also contains selected drawings showing the approved site plan.

7. May, 1988 Memorandum
8. Minor Modification to final Planned Unit Development issued January, 1991
9. Public Comment Letters
  - a. October 8, 2006 e-mail from Peter Werle
  - b. October 2, 2006 letter from Fanaco Fasteners
  - c. September 19, 2006 e-mail from Thomas Duffin
  - d. September 25, 2006 e-mail from James Carlson
  - e. November 29, 2006 e-mail from Andy Smith
10. SEPA Threshold Determination and Enclosures
11. Zoning Code Section 95.45.12
12. Watershed Company review of Buffer Reduction Proposal
  - a. Letter dated August 21, 2006
  - b. Letter dated November 13, 2006
13. Security Value Worksheet
14. Save Harmless Agreement – Stream
15. Sensitive Areas Covenant
16. Geologically Hazardous Areas Covenant
17. Comprehensive Plan, Figure J-2b on page XV.I-6

## **VII. PARTIES OF RECORD**

Applicant , Pal Ottesen, HSC Real Estate, 3101 Western Avenue, Suite 400, Seattle, WA 98121  
THOMAS A DUFFIN, 11025 111TH AVENUE NE, KIRKLAND, WA 98033  
JAMES E CARLSON, 11008 111TH AVENUE NE, KIRKLAND, WA 98033-5002  
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JACOB DAVIS, FANACO FASTENERS, 10822 117TH PLACE NE, KIRKLAND, WA 98033  
ANDY SMITH, 22110 LOCUST WAY, LYNNWOOD, WA 98036  
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.