



**CITY OF KIRKLAND**  
Planning and Community Development Department  
123 Fifth Avenue, Kirkland, WA 98033  
425.587-3225 - [www.kirklandwagov](http://www.kirklandwagov)

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**ADVISORY REPORT**  
**FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

**To:** Kirkland Hearing Examiner  
**From:**  Scott Guter, Project Planner  
**Date:** August 30, 2012

**Subject:** APPEAL OF CITY'S DECISION OF TREE REMOVAL PERMIT NO. TRE12-01694

**Hearing Date and Place:** Thursday, September 6, 2012, 9:00 a.m.  
City Hall Council Chamber  
123 Fifth Avenue, Kirkland

**I. INTRODUCTION**

- A. Appellant: Lori Cox, 10815 101<sup>st</sup> PL. NE
- B. Action Being Appealed: The Planning Official decision to deny the removal of two Black Cottonwood trees which the appellant requested to remove with permit number TRE12-01694 (see Exhibit A). Appeal of this action is allowed under Kirkland Zoning Code (KZC) Section 95.23.4.b.(see Exhibit B).
- C. Issues Raised in Appeal: The appellant disputes the City Urban Forester's finding that the cottonwoods are not a hazard (see Exhibit C).

**II. RULES FOR THE APPEAL HEARING AND DECISION**

Conduct the appeal hearing on September 6, 2012. Take oral comments from parties entitled to participate in the appeal as defined in Kirkland Zoning Code (KZC) Section 95.23.4.b. Decide to:

- A. Affirm the decision being appealed; or
- B. Reverse the decision being appealed; or
- C. Modify the decision being appealed.

The decision by the Hearing Examiner is the final decision of the City.

**III. HEARING SCOPE AND CONSIDERATIONS**

KZC 95.23.4.b states that the applicant has the burden of proving that the City made an incorrect decision (see Exhibit B).

**IV. BACKGROUND & SITE DESCRIPTION**

- A. Site Location: 10815 101<sup>st</sup> PL NE (see Exhibit D).

- B. Zoning and Land Use: The site is zoned RS 12.5, a low density residential zoning designation. The lot is 17,621 square feet. The property is Lot 6 of the Chateau Point Short Plat (SS-99-66) and contains both a Landscaped Greenbelt Easement over a Western Red Cedar located near the east property line and a Natural Greenbelt Protective Easement over the wetland buffer (see Exhibit E).
- C. Proposal: Permit TRE12-01694 approved the removal of a Leyland Cypress in the landscaped portion of the yard but denied the request to remove two Black Cottonwoods located within the wetland buffer.

**V. STAFF ANALYSIS OF ISSUES RAISED IN THE APPEAL**

Following is staff's analysis of the Zoning Code requirements related to tree removals and the issues raised in the appeal.

- A. Zoning Code Section 95.23 regulates tree removal not associated with development activity. Under this section private property owners must apply for a tree removal permit if they are requesting to remove trees required to be retained as a condition of previous development activity, KZC 95.23.5.a (2). A permit is also required if the trees are located within critical areas or critical areas buffers, KZC 95.23.5.d(2).

A Landscape Greenbelt Easement protects the Western Red Cedar, and the two Black Cottonwood tree are located within a wetland buffer (see Exhibit E). Prior to removal these trees require a tree removal permit approval.

- B. The City's Urban Forester reviewed the arborist report submitted with the tree removal permit application and conducted a field inspection. The forester reviewed the removal request based on removal allowances permitted by Kirkland Zoning Code sections listed above.. The forester provided a written response to this appeal with a summary of her findings (see Exhibit F).
- C. In order for the Urban Forester to consider the Black Cottonwood trees a hazard, the trees would need to meet the all of following criteria of a Hazard Tree, per KZC 95.10.7:
  - 1. A tree with a combination of structural defects and/or disease which makes it subject to a high probability of failure;
  - 2. Is in proximity to moderate to high frequency targets (persons or property that can be damaged by tree failure); and
  - 3. The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.

Since the cottonwoods are currently health containing no disease, the Urban Forester could not categorize the trees as hazards.

- D. The appellant's arborist states that the cottonwoods are currently nuisance trees. In order for the trees to be considered nuisance trees they must at least one of the following criteria of a Nuisance Tree, per KZC 95.10.10:
  - 1. Is causing obvious physical damage to private or public structures, including but not limited to: sidewalk, curb, road, driveway, parking lot, building foundation, or roof; or

2. Has sustained damage from past maintenance practices.

The problems associated with the tree must be such that they cannot be corrected by reasonable practices including but not limited to: pruning of the crown or roots of the tree, bracing, and/or cabling to reconstruct a healthy crown.

Since the cottonwood trees are not currently causing uncorrectable physical damage to private or public structures and have not sustained any damage from past maintenance practices, the Urban Forester could not categorize the trees as nuisances.

#### **VI. RECOMMENDATION**

Staff recommends that the Hearing Examiner uphold the Planning Official decision for Tree Permit TRE12-01694.

#### **VII. ATTACHMENTS**

- Exhibit A – TRE12-01694, Tree Removal Permit
- Exhibit B – Kirkland Zoning Code Section 95.23.4.b
- Exhibit C – Letter of Appeal from Lori Cox received July 10, 2012
- Exhibit D – Vicinity Map
- Exhibit E – SS-99-66 Chateau Point Short Plat
- Exhibit F - Urban Forester Response Letter to Appeal



**CITY OF KIRKLAND TREE REMOVAL PERMIT APPLICATION**

Permit No. TRER-01694

**Before filling out this form please review the TREE REMOVAL INFORMATION GUIDE or contact the Planning Department at 425.587.3225.**

Contact & Property Information (please write legibly)		
Property Owner: <u>SHAUN + LORI COX</u>	Phone: <u>425-241-2515</u>	Email: <u>Fadedeg@yahoo.com</u>
Site Address: <u>10815 101<sup>st</sup> PL AVE</u>		
Mailing Address (if different): <u>Same</u>		
Contact Name: <u>LORI COX</u>	Phone: <u>Same</u>	Email: <u>Same</u>
I certify (or declare) under penalty of perjury under the laws of the State of Washington that the information answered on this form is true and complete to the best of my knowledge. I understand that the City of Kirkland is relying on this information to make its decision. Trees removed illegally may result in the City pursuing monetary penalties and/or restoration under KZC 95.55.		
Owner Signature <u>[Signature]</u> (acknowledging and supporting request)		

**ARBORIST REPORT:** Attach an arborist report from an individual with relevant education and training in arboriculture or urban forestry, having **two** or more of the following credentials:

- International Society of Arboriculture (ISA) Certified Arborist
- Tree Risk Assessor Certification (TRACE) as established by the Pacific Northwest Chapter of ISA
- American Society of Consulting Arborists (ASCA) registered Consulting Arborist
- Society of American Foresters (SAF) Certified Forester for Forest Management Plans

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the information answered above is true and complete to the best of my knowledge. I understand that the City of Kirkland is relying on this information to make its decision. Trees removed illegally may result in the City pursuing monetary penalties and/or restoration under KZC 95.55.

Arborist Signature [Signature]      Arborist Credentials #1 PN-1583A ID & Exp Date 6/30/13      Arborist Credentials #2 TRACE #1719 ID & Exp Date 6/30/16

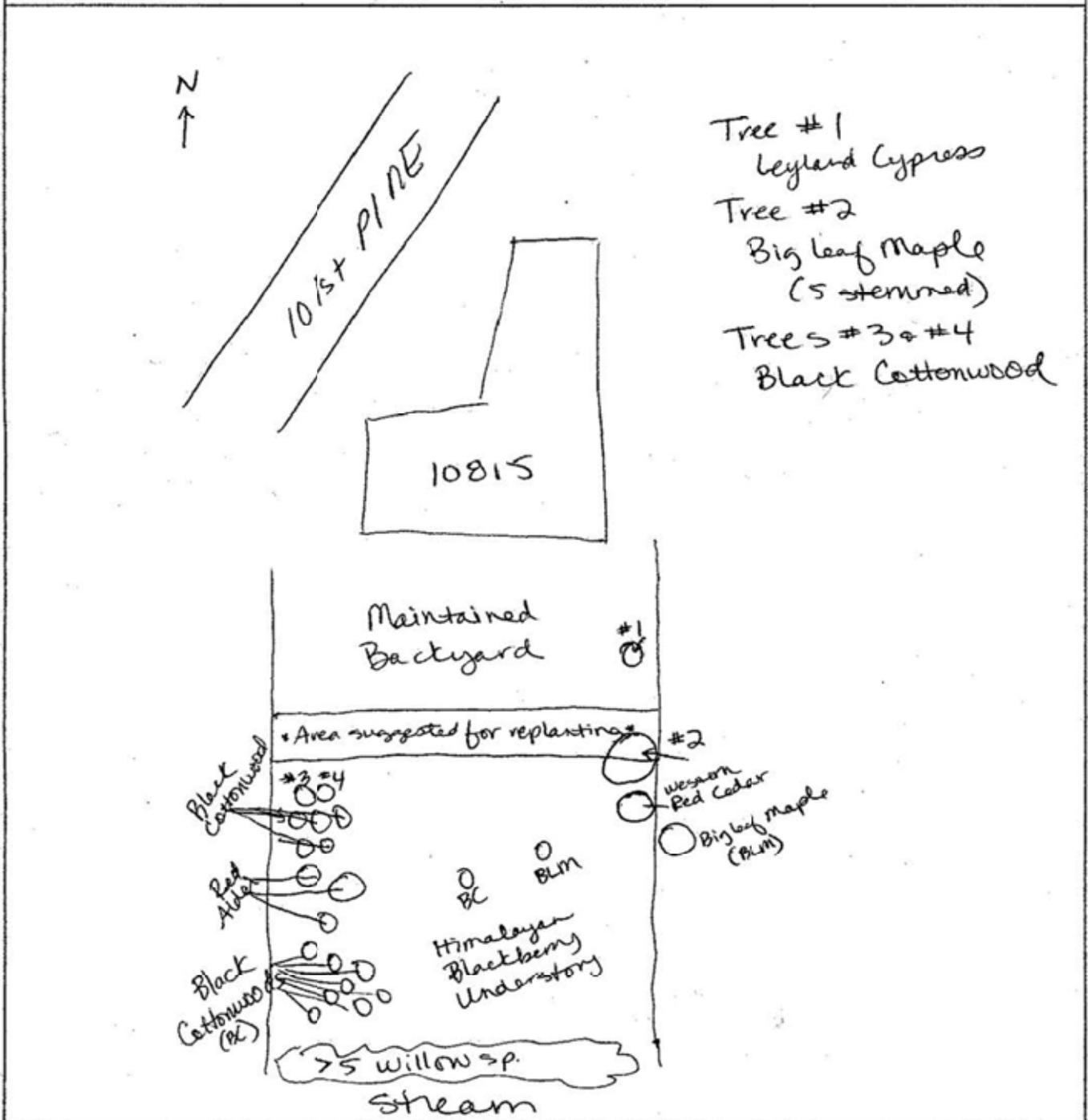
**FEE:** A check to the City of Kirkland for the required application fee

**Attach Site Plan** (use Page 3 or attach a screen shot, survey, drawing, etc.)  
**NOTE:** The site plan must identify the approximate location of all significant trees on the property. Include location and species of trees to be removed, retained, and replaced. This form will not be processed without a completed site plan.

**RECEIVED**  
 JUN 25 2012  
 AM \_\_\_\_\_ PM \_\_\_\_\_  
 PLANNING DEPARTMENT  
 BY \_\_\_\_\_

Site Plan

Number of significant trees remaining on property after proposed removals: 27





Christian Geitz  
Assistant Planner  
123 5<sup>th</sup> Ave  
Kirkland, WA. 98033-6189  
425.587.3246  
cgeitz@kirklandwa.gov

June 20, 2012

Re: Lori Cox  
10815 101<sup>st</sup> PINE  
Kirkland, WA. 98033  
425.241.2515  
[loricox@windermere.com](mailto:loricox@windermere.com)

I, Justina Kraus, am a Pacific Northwest Certified Arborist (PN-1583A) and a Certified Tree Risk Assessor (#1719). I have been working in arboriculture since 1997. I have Bachelor and Master Degrees in Conservation Forestry, Urban Forest Ecology and Wildlife Science from the University of Washington.

I was asked by Lori Cox to help her with the City of Kirkland requirements for tree removal notification and tree removal permitting for her property at 10815 101<sup>st</sup> PINE, Kirkland, WA. 98033. The property is a single-family residence with a maintained front and backyard that is a combination of ornamentals and edibles. Part of the property, in the backyard, is left wild and unmaintained; it is a 100-ft stream buffer.

The Cox family loves to bird watch and wants to promote bird and wildlife habitat on their property. Mrs. Cox would like to remove one tree on her maintained property and would like to convert three trees in the buffer into wildlife snags. She is able to file a tree removal notification, and is within the tree removal allowance, to remove the one tree on her maintained property (a Leyland Cypress, × *Cupressocyparis leylandii*). More than two trees will remain on the maintained property after the Cypress is removed, and the Cox family intends to replant with a more suitable tree species. The information about the Leyland Cypress will be included at the end so that the bulk of this report can address the three trees to be modified within the stream buffer.

The stream buffer is 100% vegetated with an impenetrable understory consisting entirely of Himalayan Blackberry (*Rubus armeniacus*) though there is a very small patch of Bracken Fern (*Pteridium aquilinum*). The tree canopy is entirely native species; two Big Leaf Maples (*Acer macrophyllum*), one a mature clump of five stems and one a juvenile tree; three Red Alders (*Alnus rubra*) two single stemmed trees and one with five stems, all well established and semi-mature; 16 Black Cottonwoods (*Populus trichocarpa*) that are well established and semi-mature with several additional Black Cottonwoods that are suppressed juveniles; 1 Western Red Cedar (*Thuja plicata*) semi-mature, and at least five Willows (*Salix species*) visible from the house, semi-mature to mature that are farthest from the house, adjacent to the stream. The buffer is depauperate of large woody debris, wildlife snags, and native shrubs.

Mrs. Cox expressed concern over three trees in her buffer because they are the closest to the maintained, actively used backyard of herself and her neighbors'. Two of the trees are Black Cottonwoods and the other is one stem, of the five stemmed, mature

Big Leaf Maple. Mrs. Cox would like them to be converted into wildlife snags, with retained heights of 15-20ft.

The mature Big Leaf Maple is along the left property line, and located where the maintained actively used backyard becomes the unmaintained stream buffer. It is hazardous. The stem in question is 13 inches, and is one of five stems. It has a phototropic lean towards the backyard and house about 20-25 degrees from vertical in calm conditions. It is approximately 50-ft tall. About 15-ft up the stem is a necrotic dead stub where the bark is dead and will soon slough off. There is an epicormic branch below the dead spot pointing towards the neighbor's property. Above that section, approximately 10-ft is a snapped dead branch, and it is likely that the column of decay with the maple stem connects above and below the two dead areas. The maple will also be pruned to remove some long branches that extend over the neighbors property, and some on Mrs. Cox's side to limb up the low hanging branches so the Cox's can see into their stream buffer better. The pruning and snag creation is not expected to remove anything close to half of the live crown of the multi-stemmed Big Leaf Maple.

The two Black Cottonwoods are on the right property line, and located closest to the maintained backyard. Both have a phototropic lean of about 15 degrees from vertical due to the close proximity of other Black Cottonwoods. One is 10 inches and the other 13 inches in diameter at 4.5-ft. One leans in the direction of the neighbor's house and the other towards the Cox's house. Mrs. Cox expressed concern because the lean of the two trees increase significantly during even slight wind, but especially during storm events. Her area gets strong southerly and westerly winds, plus the Pacific Northwest annually experiences strong and gusty windstorms, and wet snowstorm events. Mrs. Cox would like to convert the two Black Cottonwoods into wildlife snags to eliminate their probability of failure onto her neighbor's house or into her own, during a storm event. The trees are nuisances right now, but have the potential to become hazardous because of the proximity to constantly inhabited targets and due to species characteristics in the future.

The stream buffer is entirely vegetated and the three trees in question are the closest to the maintained backyard and the farthest from the stream itself. Creation of three snags near the backyard/start of the buffer will not reduce the canopy cover adjacent to the stream, will not increase erosion but instead will significantly improve the ecological functions of the buffer by introducing large woody debris and wildlife habitats. The area currently does not have any snags or visible woody debris. All of the branches and wood from the creation of the snags will be left in the buffer. The three snags will be girdled at the base to avoid resprouting below or at the cut.

City Code (95.23.5.d.2) requires replanting another tree in close proximity to the removed tree but I hold a Master Degree in Urban Forest Ecology and Wildlife Science and I suggest that replacement with native shrubs would better improve this site. The City should consider that there already exists a significant native tree canopy adjacent to the proposed snag trees. The trees chosen to become snags are suffering from phototropic lean because of their proximity to other trees. Twenty-five, or more, trees will still remain in the buffer after the three snags are created. However, missing from the site are native shrubs and understory plants. There are not any native evergreen shrubs present; the buffer really just has an impenetrable understory of Himalayan Blackberry. I suggest that native shrubs should be installed instead of trees, but planted along the sloped area

between the lawn and the buffer rather than anything being replanted in the buffer itself. Shrubs between the lawn and buffer would soften the edge effect, and better increase overall species diversity on the property. In addition, native shrubs that produce flowers and/or berries would promote the Cox's goal of enhancing their backyard habitat, for example Snowberry (*Symphoricarpos*), Elderberry (*Sambucus*), Salal (*Gaultheria*) or Oregon Grape (*Mahonia*). The City would need to determine what ratio of replacement they would require. The site would benefit and sustain a ratio of 3 or 4 shrubs to each tree snagged, rather than just a 1:1 tree replacement.

The Leyland Cypress to be removed and replaced is about 25-ft tall, has a 9-inch diameter at 4.5ft and is only about 8 years old. It is planted about 1.5-ft from the property line and fence. It provides privacy. Branches have had to be pruned off that were encroaching and touching the neighbor's roof. Branches that failed last winter have been tied so they could be retained for the sake of privacy. The soil under the Leyland Cypress is compacted fill soil with remnants of landscape fabric, so the roots are at the surface and exposed. The location is not well suited for the mature size of a Leyland Cypress. Mrs. Cox wants to remove the Leyland Cypress, grind the stump, and replant with a more suitable sized, less aggressively growing species that will provide summer privacy and edible fruit.

Thank you for your consideration,

Justina K.H. Kraus, M.S., B.S.

PNW ISA Certified Arborist PN-1583A Expires 6/30/13

PNW ISA Certified Tree Risk Assessor #1719 Expires 6/30/16

425.238.3946

[jkraus.ecol@gmail.com](mailto:jkraus.ecol@gmail.com)

On Jul 2, 2012, at 3:36 PM, Scott Guter <[SGuter@kirklandwa.gov](mailto:SGuter@kirklandwa.gov)> wrote:

Shaun and/or Lori,

Attached is your permit. The City's Urban Forester approved the removal of tree #1. Under Kirkland Zoning Code you may remove two additional trees; I've noted this on your permit.

Please contact me if you have questions.

Sincerely,

**Scott Guter**, LEED AP BD+C

Assistant Planner, City of Kirkland

123 - 5th Avenue, Kirkland, WA 98033

phone 425.587.3247 / fax: 425.587.3232

[sguter@kirklandwa.gov](mailto:sguter@kirklandwa.gov)

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**From:** Lori Cox <[fadetg@yahoo.com](mailto:fadetg@yahoo.com)>  
**To:** Scott Guter <[SGuter@kirklandwa.gov](mailto:SGuter@kirklandwa.gov)>  
**Sent:** Monday, July 2, 2012 5:10 PM  
**Subject:** Re: TRE12-01694, Cox

Thank you Scott. I just left you a voicemail asking if we can walk through the permit so all expectations are clear.

I'm around all day tomorrow (Tuesday 7/3 + rest of the week minus holiday).

Thank you,

Lori D. Cox

425-241-2515

Sent from Lori's iPhone

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**From:** Lori Cox [<mailto:fadetg@yahoo.com>]  
**Sent:** Thursday, July 05, 2012 4:07 PM  
**To:** Scott Guter  
**Subject:** Re: TRE12-01694, Cox

Hello Scott,

Thanks again for talking with me on Tuesday 7/3/12. Per your suggestion, you were going to speak with the city's retained arborist Tina to get confirmation on the tree removal vs pruning language she placed in her response, and confirm indeed we aren't asking to remove all 4 trees, but instead prune 3 of them. The removal of 1 (leland cypress) she has already agreed with.

If I do not hear back from you by midday tomorrow (Friday 7/6/12) I'll begin the process for an appeal, which you also suggested. Being that code states it has to be received 14 days from this notice, I am not looking to delay the process.

In the meantime so I can properly address the topics and individuals involved in this request, can you please forward me Tina's last name, her employer (or indicate if she is self-employed), along with her license #(s) and expirations dates of those licenses, just as you request from arborists that submit application requests on behalf of Kirkland resident home owners.

Thank you,

Lori D. Cox

425-241-2515

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**From:** Scott Guter <[SGuter@kirklandwa.gov](mailto:SGuter@kirklandwa.gov)>  
**To:** 'Lori Cox' <[fadetg@yahoo.com](mailto:fadetg@yahoo.com)>  
**Sent:** Thursday, July 5, 2012 4:55 PM  
**Subject:** RE: TRE12-01694, Cox

Lori,

I was writing this email when I received yours:

Per our conversation I'm sending this email to clarify the City Urban Forester's (UF) decision and my notes on for the subject Tree Removal Permit.

Approval: Tree #1 Leyland Cypress – Tree required a permit for removal because of its location within a recorded Landscaped Greenbelt Easement (see plat images below and attached record). The applicant and City arborist are in agreement with the need to remove the tree and the methodology of the removal.

Denied/Conditional Approval: Trees #2,3, & 4 – Tree # 2 (Big Leaf Maple) exists within the wetland buffer and received a conditional approval of a pruning request. The UF approved

removal of the north stem only. Additional pruning described in the arborist report was denied. Note: the asterisk next to the tree description on the decision page refers to an administrative note that this was not a removal request (see mid-page of the permit decision page). Tree numbers 2 and 3 (Black Cottonwoods, also existing within the wetland buffer) were denied since they do not meet the hazardous criteria (see definition below). This appears to be in consistent with the arborist report that states that these trees, "...have the potential to become hazardous...". This would imply that they are not hazardous at this point. Note that while an arborist and the UF may agree on the condition of a tree the UF can only approve the removal based on City Code. The owner should continue to monitor these trees as they mature. If they become hazardous in the future then a permit should be sought for their removal.

Administrative Note: I added the administrative note that no except tree was requested to be removed at this point. Trees on the subject property outside the wetland buffer and the greenbelt easement may be removed under the tree removal allowance (two trees per twelve month period), per [KZC 95.23.5](#).

Appeal: KZC 95.23.4 - An applicant may appeal an adverse determination to the Hearing Examiner. A written notice of appeal shall be filed with the City within 14 calendar days following the date of distribution of a City's decision [July 16, 2012]. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least 17 calendar days prior to the hearing. The applicant shall have the burden of proving that the City made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, the Hearing Examiner may affirm, reverse or modify the decision being appealed.

I need to clarify with senior staff if an Appeals and Challenges fee is required upon submittal of a written notice (see bottom of page 2 of 3 of [Fee Schedule](#)). I should have an answer by Monday.

I hope this clarifies things for you even if are not receiving the desired response. I will contact you on Monday regarding the Appeal fee. In the meantime, please contact me if I can be of further assistance.

Sincerely,

**Scott Guter**, LEED AP BD+C

Assistant Planner, City of Kirkland

123 - 5th Avenue, Kirkland, WA 98033

phone 425.587.3247 / fax: 425.587.3232

[sguter@kirklandwa.gov](mailto:sguter@kirklandwa.gov)

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CHATEAU POINT SHORT PLAT SS-99-66

RECORDING NO. 20020708900017

KZC 95.10.7 Hazard Tree – A tree that meets all the following criteria:

- a. A tree with a combination of structural defects and/or disease which makes it subject to a high probability of failure;
  - b. Is in proximity to moderate to high frequency targets (persons or property that can be damaged by tree failure); and
  - c. The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.
-

**From:** Lori Cox [<mailto:fadetg@yahoo.com>]  
**Sent:** Friday, July 06, 2012 9:13 AM  
**To:** Scott Guter  
**Subject:** Re: TRE12-01694, Cox

Thank you Scott.

There are still 2 areas I do not understand clearly. During our conversation you stated Kirkland does not regulate pruning, supported by code 95.21 below. What I read in the code is relevant in this situation. We are not requesting removal of the maple, as stated in our arborist report. It has multiple trunks. If no pruning is regulated, how can there be conditional pruning? We need no permit to do so:

### **95.21 Tree Pruning**

2. Tree Pruning on Private Property. A permit is not required to prune trees on private property. Pruning which results in the removal of at least half of the live crown will be considered tree removal and subject to the provisions in KZC [95.23](#).

Tree topping is not allowed. If a tree required by this chapter is smaller than six (6) inches in diameter and is topped, it must be replaced pursuant to the standards in Chapter 1.12 KMC. If a tree six (6) inches or larger in diameter is topped, the owner must have a qualified professional develop and implement a 5-year restoration pruning program.

Additionally, for the black Cottonwoods, our arborist suggested a plan to snag the 2 Cottonwoods which display phototropic leaning which will not right itself 1) towards our neighbor's house, and 2) towards our home. They could hurt our homes (targets) by falling into them. The targets cannot be moved. She additionally offered a planting plan which would benefit the area, specified in section 2 as a priority action:

### **95.23 Tree Removal – Not Associated with Development Activity**

d. Removal of Hazard or Nuisance Trees. Any private property owner seeking to remove any number of significant trees which are a hazard or nuisance from developed or undeveloped property or the public right-of-way shall first obtain approval of a Tree Removal Permit and meet the requirements of this subsection.

1) Tree Risk Assessment. If the nuisance or hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a nuisance or hazard tree is required. Removal of nuisance or hazard trees does not count toward the tree removal limit if the nuisance or hazard is supported by a report prepared by a qualified professional and approved by the City.

2) Trees in Critical Areas or Critical Areas Buffers. For hazard or nuisance trees in (a) easements dedicated to ensure the protection of vegetation; (b) critical areas; or (c) critical area buffers, a planting plan is required to mitigate the removal of the hazard or nuisance tree. The priority action is to create a “snag” or wildlife tree with the subject tree. If creation of a snag is not feasible, then the felled tree shall be left in place unless the Planning Official permits its removal in writing.

I'm unsure as of this time where it states in the city's code that the full name, credentials, and place of employment of the city's UF cannot be passed on to the requesting applicant? Can you please identify where that is stated, as I would like to include that information in my appeal. I see no fee schedule in the code, as you state below(?):

#### 4. Tree Removal Permit Application Procedure and Appeals.

a. Applicants requesting to remove trees must submit a completed permit application on a form provided by the City. The City shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.

b. An applicant may appeal an adverse determination to the Hearing Examiner. A written notice of appeal shall be filed with the City within 14 calendar days following the date of distribution of a City's decision. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least 17 calendar days prior to the hearing. The applicant shall have the burden of proving that the City made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, the Hearing Examiner may affirm, reverse or modify the decision being appealed.

I've also asked the city attorney's office if they have an opinion on the city of Kirkland's liability where nuisance or hazard trees are denied removal for any reason, and the very situation that was asked to be mitigated, does indeed occur.

Thank you very much for your help,

Lori D. Cox

425-241-2515

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**From:** Scott Guter  
**Sent:** Tuesday, July 10, 2012 11:18 AM  
**To:** 'Lori Cox'  
**Subject:** RE: TRE12-01694, Cox

Lori,

I confirmed with other Planning Staff that the requested pruning of the Big Leaf Maple described in Ms. Kraus's arborist report would be allowed per the provisions of KZC 95.21.

Per our phone conversation today regarding the appeal process, here is a link to the webpage where you can access the City's Fee Schedule:  
<http://www.kirklandwa.gov/depart/Planning/Fees.htm>. The fee is \$207.00 due upon submittal of your appeal. Title your appeal: "Notice of Appeal – TRE12-01694 Decision", and address it to Planning Official.

Please contact me if you have questions.

**Scott Guter, LEED AP BD + C**

phone 425.587.3247 / fax: 425.587.3232

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### 95.23 Tree Removal – Not Associated with Development Activity

1. Introduction. Tree and vegetation removal in urban areas has resulted in the loss of beneficial functions provided by trees to the public. The majority of tree canopy within the City of Kirkland is on private property. The purpose of this section is to establish a process and standards to slow the loss of tree canopy on private property, contributing towards the City's canopy goals and a more sustainable urban forest.
2. Permit Required for Removal of Trees on Private Property or City Right-of-Way. It is unlawful for any person (other than City crews) to remove, prune, trim, modify, alter or damage a tree in a public park or on any other City property.

No person, directly or indirectly, shall remove any significant tree on any property within the City, or any tree in the public right-of-way, without first obtaining a tree removal permit as provided in this chapter, unless the activity is exempted in KZC [95.20](#) and subsection (5) of this section.

3. Tree Removal Permit Application Form. The Department of Planning and Community Development and Public Works Department shall establish and maintain a tree removal permit application form to allow property owners to request City review of tree removal for compliance with applicable City regulations. The tree removal application form shall include at a minimum the following:
  - a. A site plan showing the approximate location of significant trees, their size (DBH) and their species, along with the location of structures, driveways, access ways and easements.
  - b. For required replacement trees, a planting plan showing location, size and species of the new trees in accordance to standards set forth in KZC [95.33](#)(3).
4. Tree Removal Permit Application Procedure and Appeals.
  - a. Applicants requesting to remove trees must submit a completed permit application on a form provided by the City. The City shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.
  - b. An applicant may appeal an adverse determination to the Hearing Examiner. A written notice of appeal shall be filed with the City within 14 calendar days following the date of distribution of a City's decision. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least 17 calendar days prior to the hearing. The applicant shall have the burden of proving that the City made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, the Hearing Examiner may affirm, reverse or modify the decision being appealed.
5. Tree Removal Allowances.

- a. Any private property owner of developed property may remove up to two (2) significant trees from their property within a 12-month period without having to apply for a tree removal permit; provided, that:
  - 1) There is no active application for development activity for the site;
  - 2) The trees were not required to be retained or planted as a condition of previous development activity; and
  - 3) All of the additional standards for tree removal and Tree Removal Permits as described in subsections (5)(b) through (e) of this section are met.

The Department of Planning and Community Development shall establish and maintain a tree removal request form. The form may be used by property owners to request Department review of tree removal for compliance with applicable City regulations.

- b. Tree Retention and Replacement Requirements.
  - 1) Tree Retention. For single-family homes, cottages, carriage units, two/three-unit homes, two (2) trees shall be required to remain on the subject property.
  - 2) Tree Replacement.
    - a) For every significant tree that is removed and is not required to remain based on subsection (5)(b)(1) of this section, the City encourages the planting of a tree that is appropriate to the site.
    - b) If a tree removal request is for one (1) or both of the trees required to remain, a Tree Removal Permit and one-for-one replacement is required. The replacement tree shall be six (6) feet tall for a conifer and 2-inch caliper for deciduous or broad-leaf evergreen tree.
    - c) For all other uses not listed in subsection (5)(b)(1) of this section, a Tree Removal Permit is required and the required tree replacement will be based on the required landscaping standards in KZC [95.40](#) through [95.45](#).
- c. Shoreline Jurisdiction. Properties located within the City's shoreline jurisdiction are subject to additional tree removal and replacement standards if the tree(s) to be removed are located within the required shoreline setback. See Chapter [83](#) KZC for additional standards.
- d. Removal of Hazard or Nuisance Trees. Any private property owner seeking to remove any number of significant trees which are a hazard or nuisance from developed or undeveloped property or the public right-of-way shall first obtain approval of a Tree Removal Permit and meet the requirements of this subsection.
  - 1) Tree Risk Assessment. If the nuisance or hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a nuisance or hazard tree is required. Removal of nuisance or hazard trees does not count

toward the tree removal limit if the nuisance or hazard is supported by a report prepared by a qualified professional and approved by the City.

- 2) Trees in Critical Areas or Critical Areas Buffers. For hazard or nuisance trees in (a) easements dedicated to ensure the protection of vegetation; (b) critical areas; or (c) critical area buffers, a planting plan is required to mitigate the removal of the hazard or nuisance tree. The priority action is to create a "snag" or wildlife tree with the subject tree. If creation of a snag is not feasible, then the felled tree shall be left in place unless the Planning Official permits its removal in writing.

The intent of preserving vegetation in and near streams and wetlands and in geologically hazardous areas is to support the functions of healthy sensitive areas and sensitive area buffers (see Chapter [90 KZC](#)) and/or avoid disturbance of geologically hazardous areas (see Chapter [85 KZC](#)).

The removal of any tree in a critical area or Native Growth Protective Easement will require the planting of a native tree of a minimum of six (6) feet in height in close proximity to where the removed tree was located. Selection of native species and timing of installation shall be coordinated with the Planning Official.

- 3) Street Trees. Street trees may only be removed if determined to be a hazard or nuisance. If the removal request is for street trees, the Public Works Official may consider whether the tree(s) are now, or may be in the future, part of the City's plans for the right-of-way. The City shall require a one-for-one tree replacement in a suitable location.

e. Forest Management Plan.

- 1) A Forest Management Plan must be submitted for developed, significantly wooded sites (over 40 percent canopy coverage) of at least 35,000 square feet in size in which tree removal is requested and is not exempt under KZC [95.20](#). A Forest Management Plan must be developed by a qualified professional and shall include the following:
  - a) A site plan depicting the location of all significant trees (a survey identifying tree locations is not required) with a numbering system of the trees (with corresponding tags on trees in the field). The site plan shall include size (DBH), species, and condition of each tree;
  - b) Identification of trees to be removed, including reasons for their removal and a description of low impact removal techniques pursuant to subsection (5)(e)(2) of this section;
  - c) A reforestation plan that includes location, size, species, and timing of installation;
- 2) The following Forest Management Plan standards shall apply:
  - a) Trees to remain should be dominant or co-dominant in the stand, healthy and windfirm.

- b) No removal of trees from critical areas and their buffers, unless otherwise permitted by this chapter.
  - c) No removal of specimen trees, unless otherwise permitted by this chapter.
  - d) No removal of healthy trees that would cause trees on adjacent properties to become hazardous.
  - e) The reforestation plan ensures perpetuity of the wooded areas. The size of planted trees for reforestation shall be a minimum of three (3) feet tall.
  - f) Logging operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time. To control erosion, native shrubs, ground cover and stumps shall be retained where feasible. Where not feasible, appropriate erosion control measures to be approved by the City shall be implemented.
  - g) Removal of tree debris shall be done pursuant to Kirkland Fire Department standards.
  - h) Recommended maintenance prescription for retained trees with a specific timeline for such management.
-

RECEIVED

JUL 10 2012

Date: July 10, 2012

To: City of Kirkland Planning Official, City of Kirkland Hearing Examiner

AM PM  
PLANNING DEPARTMENT  
BY \_\_\_\_\_

From: Lori D. Cox – Realtor, CFS, CFA, EAB , Green. Kirkland resident and home owner.

RE: City of Kirkland Tree Permit #TRE12-01694 = *Notice of Appeal for permit decision*

Greetings to all concerned,

In regard to the above mentioned tree permit, I am following the guidelines set forth by the City of Kirkland to appeal a portion of the decision by the UF (urban forester) retained by the City of Kirkland (Tina Cohen). Context bullet below was provided by Scott Guter, Assistant Planner – City of Kirkland

- KZC 95.23.4 - An applicant may appeal an adverse determination to the Hearing Examiner. A written notice of appeal shall be filed with the City within 14 calendar days following the date of distribution of a City's decision [July 16, 2012]. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least 17 calendar days prior to the hearing. The applicant shall have the burden of proving that the City made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, the Hearing Examiner may affirm, reverse or modify the decision being appealed.

The portion in which I wish to appeal has to do with 2 black cottonwood trees. In Ms. Cohen's report (added in this document) she stated "#3 and #4 are, young, healthy trees. They form a grove with others to the south. Not hazardous. lean is phototropic. They're far from houses. Important for wetland." We as residents are proud to be able to live on land that includes a wetland buffer. We see it as a gift that we can live close to wildlife, and enjoy the pleasure it brings to our family. As a professional, I know that properties located near urban forest or natural areas only tend to increase overall property value. I also encourage, and am educated on ways we can be less impactful to the overall environment with our own properties whether in urban, or rural settings. Our wish is to respect the city's code where considerations for natural areas exist.

Her quote above, however, states the very problem in question. The reason we had arborist Justina Kraus out to perform the tree assessment per City of Kirkland application process, is to provide a report translating our worries about the 2 black cottonwoods in question. The other 2 trees in the report, along with additional clarifications with Scott Guter on July 9, 2012, have been approved to be dealt with via our arborists' report suggestions.

The phototropic lean away from the rest of grove to the south for 1 of the 2 black cottonwoods is to the north, which has become a danger to our home, and is now in a direct line to our 3 year old son's bedroom. The 2<sup>nd</sup> of the 2 black cottonwoods displays a phototropic lean to the west, which is in direct impact projection of our neighbor's house. To alleviate a perilous issue by having either or both of the trees fall, the report suggests they be snagged, in accordance with arboricultural best practices and City

of Kirkland zoning/planning suggestions for the wetland buffer. This was denied based upon Ms. Cohen's shorthand account of their nearness to the houses, and importance to the wetland. We are in fear of either or both of these trees crashing into our or our neighbor's house. You can see the phototropic leanings clearly on a calm day, as Ms. Cohen did. On a windy day, especially winds from the south which are extremely common, the lean is extremely exaggerated and shows what the tendency is, and will be for further growth. These 2 black cottonwoods display a hazard to our homes.

I am requesting that the Hearing Examiner, and the City of Kirkland discuss and research to reconsider the UF findings, based upon the fear we have of the trees, concerns over loss of property, insurance claims, or possible loss of life should they stay intact at their present, and future heights. There is no argument on any side they will only get taller, adding additional weight of the already present phototropic lean.

For reference, I've added information below cited at the following URL to further the information provided in this appeal. This pertains to average rapid growth of a black cottonwood tree, maturation rates, and how it responds to thinning:

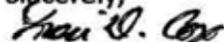
[http://www.na.fs.fed.us/spfo/pubs/silvics\\_manual/volume\\_2/populus/trichocarpa.htm](http://www.na.fs.fed.us/spfo/pubs/silvics_manual/volume_2/populus/trichocarpa.htm)

- In the lower Fraser River Valley of British Columbia, planted black cottonwoods averaged...16.8 m (55 ft) in height at 10 years, and some individual trees were more than 21.3 m (70 ft) in height (29).
- **Reaction to Competition-** Black cottonwood is classed as very intolerant of shade. It grows best in full sunlight. On moist lowland sites, it makes rapid initial growth and thereby survives competition from slower growing associated species.
  - Data from British Columbia indicate that black cottonwood trees can take advantage of wide initial spacing (1); diameters of trees and sets established at a 9.14-m (30-ft) spacing averaged 30 to 75 percent greater than those of plants established at a 1.82-m (6-ft) spacing (28,29). Results from a spacing trial in Washington, however, indicate better height and diameter growth at 3.7- by 3.7-m (12- by 12-ft) spacing than at 3.0- by 9.1-m (10- by 30-ft) and 6.1- by 9.1-m (20- by 30-ft) spacings (10). Black cottonwood responds well to thinning (29).

This data bodes well if indeed these 2 specific black cottonwoods were removed and snagged, in order to improve the rest of the grove where phototropic leaning towards targets (houses) is non-existent.

Please see the following permit application and response from the City of Kirkland's UF and Assistant Planner for more reference information. Additional emails between myself and Assistant Planner Scott Guter are also considerations as I requested more clarity for the UF results, and City of Kirkland codes.

Sincerely,



Lori D. Cox - 10815 101<sup>st</sup> PLACE NE Kirkland, WA 98033

[fadetg@yahoo.com](mailto:fadetg@yahoo.com)

**CITY OF KIRKLAND TREE REMOVAL PERMIT APPLICATION**

Permit No. TRER-01694

Before filling out this form please review the TREE REMOVAL INFORMATION GUIDE or contact the Planning Department at 425.587.3225.

Contact & Property Information (please write legibly)		
Property Owner: <u>SHAWN + LORI COX</u>	Phone: <u>425-241-2515</u>	Email: <u>fadety@yahoo.com</u>
Site Address: <u>10815 101<sup>st</sup> PL AVE</u>		
Mailing Address (if different) <u>same</u>		
Contact Name: <u>LORI COX</u>	Phone: <u>same</u>	Email: <u>same</u>
I certify (or declare) under penalty of perjury under the laws of the State of Washington that the information answered on this form is true and complete to the best of my knowledge. I understand that the City of Kirkland is relying on this information to make its decision. Trees removed illegally may result in the City pursuing monetary penalties and/or restoration under KZC 95.55.		
Owner Signature <u>Lori Cox</u> (acknowledging and supporting request)		

**ARBORIST REPORT:** Attach an arborist report from an individual with relevant education and training in arboriculture or urban forestry, having two or more of the following credentials:

- International Society of Arboriculture (ISA) Certified Arborist
- Tree Risk Assessor Certification (TRACE) as established by the Pacific Northwest Chapter of ISA
- American Society of Consulting Arborists (ASCA) registered Consulting Arborist
- Society of American Foresters (SAF) Certified Forester for Forest Management Plans

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the information answered above is true and complete to the best of my knowledge. I understand that the City of Kirkland is relying on this information to make its decision. Trees removed illegally may result in the City pursuing monetary penalties and/or restoration under KZC 95.55.

Arborist Signature <u>Justin Williams</u>	Arborist Credentials #1 <u>PN-1583A</u> ID & Exp Date <u>6/30/13</u>	Arborist Credentials #2 <u>TRACE #1719</u> ID & Exp Date <u>6/30/16</u>
---	--	---

**FEE:** A check to the City of Kirkland for the required application fee

**Attach Site Plan** (use Page 3 or attach a screen shot, survey, drawing, etc.)  
**NOTE:** The site plan must identify the approximate location of all significant trees on the property. Include location and species of trees to be removed, retained, and replaced. This form will not be processed without a completed site plan.

1

**RECEIVED**  
 JUN 25 2012  
 AM \_\_\_\_\_ PM  
 PLANNING DEPARTMENT  
 BY \_\_\_\_\_

Christian Geitz  
Assistant Planner  
123 5<sup>th</sup> Ave  
Kirkland, WA. 98033-6189  
425.587.3246  
cgeitz@kirklandwa.gov

June 20, 2012

Re: Lori Cox  
10815 101<sup>st</sup> PI NE  
Kirkland, WA. 98033  
425.241.2515  
[loricox@windermere.com](mailto:loricox@windermere.com)

I, Justina Kraus, am a Pacific Northwest Certified Arborist (PN-1583A) and a Certified Tree Risk Assessor (#1719). I have been working in arboriculture since 1997. I have Bachelor and Master Degrees in Conservation Forestry, Urban Forest Ecology and Wildlife Science from the University of Washington.

I was asked by Lori Cox to help her with the City of Kirkland requirements for tree removal notification and tree removal permitting for her property at 10815 101<sup>st</sup> PI NE, Kirkland, WA. 98033. The property is a single-family residence with a maintained front and backyard that is a combination of ornamentals and edibles. Part of the property, in the backyard, is left wild and unmaintained; it is a 100-ft stream buffer.

The Cox family loves to bird watch and wants to promote bird and wildlife habitat on their property. Mrs. Cox would like to remove one tree on her maintained property and would like to convert three trees in the buffer into wildlife snags. She is able to file a tree removal notification, and is within the tree removal allowance, to remove the one tree on her maintained property (a Leyland Cypress, × *Cupressocyparis leylandii*). More than two trees will remain on the maintained property after the Cypress is removed, and the Cox family intends to replant with a more suitable tree species. The information about the Leyland Cypress will be included at the end so that the bulk of this report can address the three trees to be modified within the stream buffer.

The stream buffer is 100% vegetated with an impenetrable understory consisting entirely of Himalayan Blackberry (*Rubus armeniacus*) though there is a very small patch of Bracken Fern (*Pteridium aquilinum*). The tree canopy is entirely native species; two Big Leaf Maples (*Acer macrophyllum*), one a mature clump of five stems and one a juvenile tree; three Red Alders (*Alnus rubra*) two single stemmed trees and one with five stems, all well established and semi-mature; 16 Black Cottonwoods (*Populus trichocarpa*) that are well established and semi-mature with several additional Black Cottonwoods that are suppressed juveniles; 1 Western Red Cedar (*Thuja plicata*) semi-mature, and at least five Willows (*Salix species*) visible from the house, semi-mature to mature that are farthest from the house, adjacent to the stream. The buffer is depauperate of large woody debris, wildlife snags, and native shrubs.

Mrs. Cox expressed concern over three trees in her buffer because they are the closest to the maintained, actively used backyard of herself and her neighbors'. Two of the trees are Black Cottonwoods and the other is one stem, of the five stemmed, mature

Big Leaf Maple. Mrs. Cox would like them to be converted into wildlife snags, with retained heights of 15-20ft.

The mature Big Leaf Maple is along the left property line, and located where the maintained actively used backyard becomes the unmaintained stream buffer. It is hazardous. The stem in question is 13 inches, and is one of five stems. It has a phototropic lean towards the backyard and house about 20-25 degrees from vertical in calm conditions. It is approximately 50-ft tall. About 15-ft up the stem is a necrotic dead stub where the bark is dead and will soon slough off. There is an epicormic branch below the dead spot pointing towards the neighbor's property. Above that section, approximately 10-ft is a snapped dead branch, and it is likely that the column of decay with the maple stem connects above and below the two dead areas. The maple will also be pruned to remove some long branches that extend over the neighbors property, and some on Mrs. Cox's side to limb up the low hanging branches so the Cox's can see into their stream buffer better. The pruning and snag creation is not expected to remove anything close to half of the live crown of the multi-stemmed Big Leaf Maple.

The two Black Cottonwoods are on the right property line, and located closest to the maintained backyard. Both have a phototropic lean of about 15 degrees from vertical due to the close proximity of other Black Cottonwoods. One is 10 inches and the other 13 inches in diameter at 4.5-ft. One leans in the direction of the neighbor's house and the other towards the Cox's house. Mrs. Cox expressed concern because the lean of the two trees increase significantly during even slight wind, but especially during storm events. Her area gets strong southerly and westerly winds, plus the Pacific Northwest annually experiences strong and gusty windstorms, and wet snowstorm events. Mrs. Cox would like to convert the two Black Cottonwoods into wildlife snags to eliminate their probability of failure onto her neighbor's house or into her own, during a storm event. The trees are nuisances right now, but have the potential to become hazardous because of the proximity to constantly inhabited targets and due to species characteristics in the future.

The stream buffer is entirely vegetated and the three trees in question are the closest to the maintained backyard and the farthest from the stream itself. Creation of three snags near the backyard/start of the buffer will not reduce the canopy cover adjacent to the stream, will not increase erosion but instead will significantly improve the ecological functions of the buffer by introducing large woody debris and wildlife habitats. The area currently does not have any snags or visible woody debris. All of the branches and wood from the creation of the snags will be left in the buffer. The three snags will be girdled at the base to avoid resprouting below or at the cut.

City Code (95.23.5.d.2) requires replanting another tree in close proximity to the removed tree but I hold a Master Degree in Urban Forest Ecology and Wildlife Science and I suggest that replacement with native shrubs would better improve this site. The City should consider that there already exists a significant native tree canopy adjacent to the proposed snag trees. The trees chosen to become snags are suffering from phototropic lean because of their proximity to other trees. Twenty-five, or more, trees will still remain in the buffer after the three snags are created. However, missing from the site are native shrubs and understory plants. There are not any native evergreen shrubs present; the buffer really just has an impenetrable understory of Himalayan Blackberry. I suggest that native shrubs should be installed instead of trees, but planted along the sloped area

between the lawn and the buffer rather than anything being replanted in the buffer itself. Shrubs between the lawn and buffer would soften the edge effect, and better increase overall species diversity on the property. In addition, native shrubs that produce flowers and/or berries would promote the Cox's goal of enhancing their backyard habitat, for example Snowberry (*Symphoricarpos*), Elderberry (*Sambucus*), Salal (*Gaultheria*) or Oregon Grape (*Mahonia*). The City would need to determine what ratio of replacement they would require. The site would benefit and sustain a ratio of 3 or 4 shrubs to each tree snagged, rather than just a 1:1 tree replacement.

The Leyland Cypress to be removed and replaced is about 25-ft tall, has a 9-inch diameter at 4.5ft and is only about 8 years old. It is planted about 1.5-ft from the property line and fence. It provides privacy. Branches have had to be pruned off that were encroaching and touching the neighbor's roof. Branches that failed last winter have been tied so they could be retained for the sake of privacy. The soil under the Leyland Cypress is compacted fill soil with remnants of landscape fabric, so the roots are at the surface and exposed. The location is not well suited for the mature size of a Leyland Cypress. Mrs. Cox wants to remove the Leyland Cypress, grind the stump, and replant with a more suitable sized, less aggressively growing species that will provide summer privacy and edible fruit.

Thank you for your consideration,

Justina K.H. Kraus, M.S., B.S.

PNW ISA Certified Arborist PN-1583A Expires 6/30/13

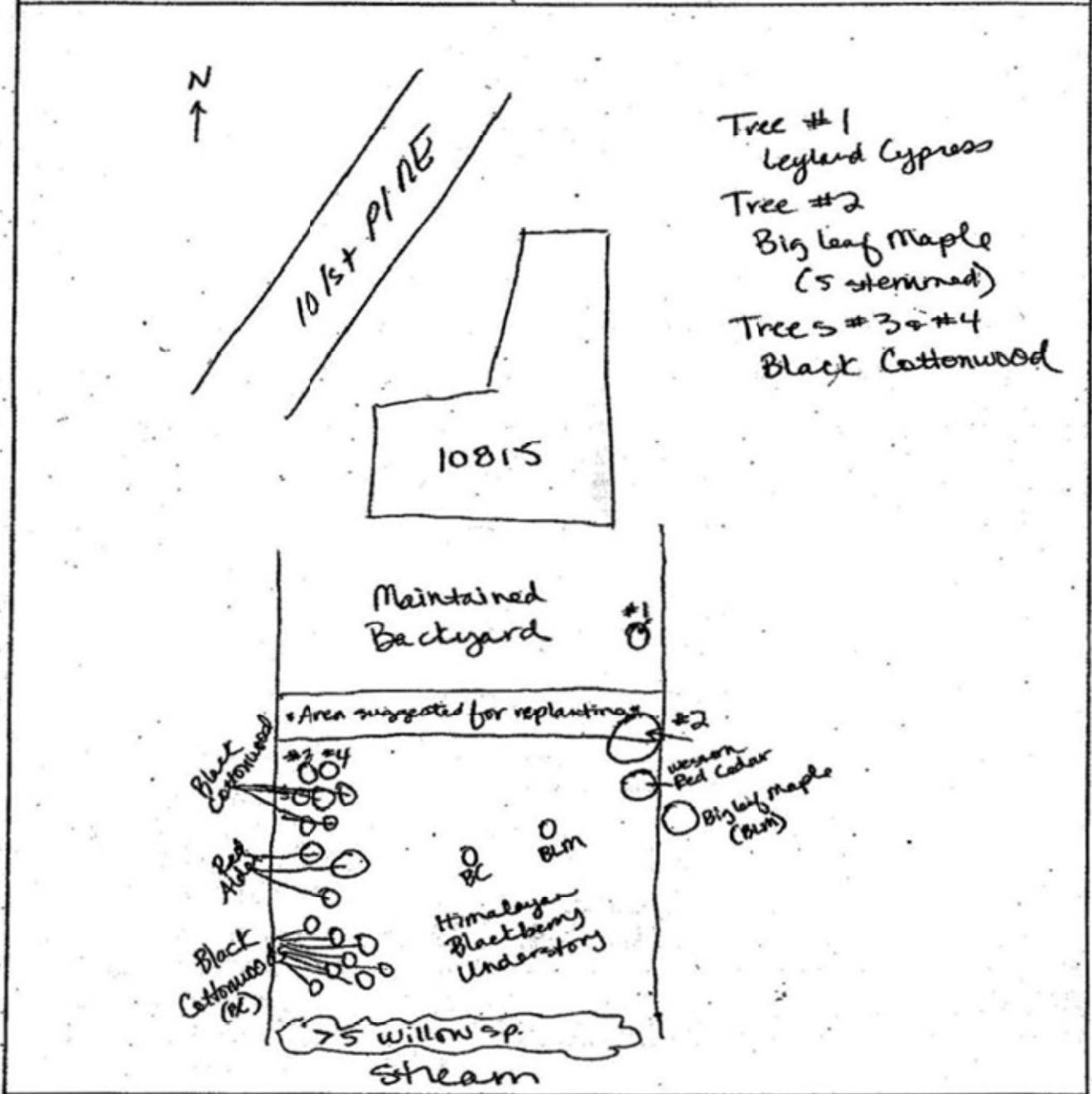
PNW ISA Certified Tree Risk Assessor #1719 Expires 6/30/16

425.238.3946

[jkraus.ecol@gmail.com](mailto:jkraus.ecol@gmail.com)

Site Plan

Number of significant trees remaining on property after proposed removals: 27







# VICINITY MAP

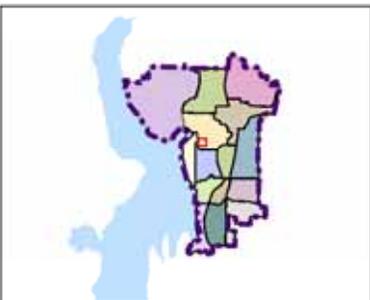


0.0 0 0.01 0.02 Miles

NAD\_1983\_StatePlane\_Washington\_North\_FIPS\_4601\_Feet  
Produced by the City of Kirkland. © 2011 City of Kirkland, Washington, all rights reserved.

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

THIS MAP IS NOT TO BE USED FOR NAVIGATION





20020708900017

V. 153 P. 227

### CHATEAU POINT

A PORTION OF THE SW 1/4, NW 1/4, SECTION 32, TWP. 26 N, RGE. 5 E, W.M.  
CITY OF KIRKLAND, KING COUNTY, WASHINGTON

Short Plat  
City of Kirkland

FILE NO. 20-28-02

CITY OF KIRKLAND  
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

EXAMINED, REVIEWED, AND APPROVED BY THE CITY OF KIRKLAND PURSUANT TO THE SHORT SUBDIVISION PROVISIONS OF TITLE 52 (LAND SURVEYS) KIRKLAND MUNICIPAL CODE, THIS 02<sup>ND</sup> DAY OF JULY 2002.

*Sean Steinhilber*  
DIRECTOR, DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

DEPARTMENT OF ASSESSMENT  
EXAMINED AND APPROVED THIS 5<sup>TH</sup> DAY OF JULY 2002.

*Scott Hulse* & *Allen Johnson*  
KING COUNTY ASSESSOR

#### RECORDING CERTIFICATE

Filed for record this 02<sup>ND</sup> day of July 2002 at 3:29 P.M. 153 S.W. 227<sup>TH</sup> at the request of:

*Christopher Shane Barnes*

*Rob Keegan* *Walt Washington*  
Trustees

ACKNOWLEDGMENTS, DECLARATION, DEDICATION, AND RESTRICTIONS  
(R.C.M. 58.17.160)

#### SHORT SUBDIVISION DEDICATION

KNOW ALL PEOPLE BY THESE PRESENTS that we, the undersigned being all of the owners of the land hereby short subdivided, hereby declare this short plat to be the proper representation of the short subdivision made herein, and of terms applicable to the use of the public forever of streets and easements but shown as private herein and dedicate the use thereof for all public purposes not inconsistent with the use thereof for such highway purposes, and give the right to make all necessary changes for such and fill upon the lots shown herein in the original resolution granting of said streets and easements, and further dedicate to the use of the public all of the easements and improvements on this short plat for all public purposes as indicated herein, including but not limited to, parks, open space, utilities and drainage unless such easements or rights are specifically identified on this short plat as being dedicated or conveyed to a person or entity other than the public.

Further, the undersigned owners of the land hereby short subdivided agree for themselves, their heirs and assigns and any persons or entity deriving title from the undersigned, any and all income for themselves and the City of Kirkland, its successors and assigns which may be generated by the establishment, construction, or maintenance of roads and/or drainage systems within this short subdivision, other than those resulting from inadequate maintenance by the City of Kirkland.

Further, the undersigned owners of the land hereby short subdivided agree for themselves, their heirs and assigns to indemnify and hold the City of Kirkland, its successors and assigns, harmless from any damage, including any costs of defense, claimed by persons within or without this short subdivision to have been caused by obstructions of the ground surface, vegetation, drainage, or surface or subsurface water flows within this short subdivision or by establishment, construction or maintenance of the roads within this short subdivision.

Provided, this cover and indemnification shall not be construed as releasing the City of Kirkland, its successors or assigns, from liability for damages, including the cost of defense, resulting to them or in part from the negligence of the City of Kirkland, its successors, or assigns.

This deed-of-cession, dedication, conveyance and agreement to hold harmless is made with the free consent and in accordance with the desires of said owners.

IN WITNESS WHEREOF we set our hands and seals.

*Norman P. Culbert*  
NORMAN P. CULBERT, TRUSTEE

#### LEGAL DESCRIPTION

THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON.

CREATED BY NORTH 30 FEET AND THE SOUTH 30 FEET FOR ROAD.

DEEDS NUMBER AS TRACTS 12222 & JANITA FIVE TRACTS, ACCORDING TO THE UNRECORDED PLAT IN THESE.

#### NOTES

- SUBJECT TO A GEOLOGICALLY HAZARDOUS AREA CONVEYANCE AND THE TERMS AND CONDITIONS THEREOF, RECORDED UNDER RECORDING NO. 2001020200000, RECORDS OF KING COUNTY.
- SUBJECT TO A BASE AGREEMENT AGREEMENT - W/REPLACED THE TERMS AND CONDITIONS THEREOF, RECORDED UNDER RECORDS NO. 2001020200000, RECORDS OF KING COUNTY.
- SUBJECT TO A NATURAL EROSION PROTECTION AGREEMENT - THE TERMS AND CONDITIONS THEREOF, RECORDED UNDER RECORDS NO. 2001020200000, RECORDS OF KING COUNTY.
- SUBJECT TO A LICENSE TO ENTER PROPERTY AND THE TERMS AND CONDITIONS THEREOF, RECORDED UNDER RECORDING NO. 2001020200000, RECORDS OF KING COUNTY.
- PRIOR TO THE ISSUANCE OF A BUILDING PERMIT ON LOTS WITHIN THIS SUBJECT PROPERTY, THE OWNER OF THE LOT MUST SIGN A CONFORMANCE AGREEMENT FOR FUTURE UTILITY USE UNDERLYING ALONG THE SHORT PLAT FRONTAGE ON TIE-IN A/E N/C.
- ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL, NUMBER 80011 "ASSIGNMENT OF STREET NUMBERS AND ROAD SIGNAGE".
- ENCUMBRANCES INDICATED IN NOTES 1 THRU 4 ARE FOR THE ALTA CONFORMANCE ORDER NO. 48868, BY PHOTO-NORTHWEST TITLE COMPANY OF WASHINGTON, INC., DATED MARCH 8, 2002.
- EQUIPMENT & PROCEDURES OF ELECTRONIC TOTAL STATION WAS USED FOR THE FIELD TRANSIT SURVEY. ACCURACY METERS PER EXCESS W.A.S. 1:10 TO 1:50 AND 1" PER 100' ACCURACY.

#### UTILITY EASEMENT PROVISIONS

AN EASEMENT IS HEREBY GRANTED TO ANY UTILITY COMPANY, TO THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND TO THE CITY OF KIRKLAND AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, UNDER AND UPON THE EXTENSION 10 FEET PARALLEL WITH AND INCLUDING THE STREET FRONTAGE OF ALL LOTS AND TRACTS IN WHICH THIS INSTRUMENT IS FILED, CROSSING UNDER AND OVER ANY CONCRETE, CEMENT, ASPHALT, AND WOOD WITH ANY NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVICE TO THE SUBDIVISION AND OTHER PROPERTIES WITH ELECTRIC, TELEPHONE, GAS, CABLE TV, SEWERAGE, STORM DRAINAGE, SEWER AND WATER, TOGETHER WITH THE RIGHT TO ENTER UPON SAID EASEMENTS AT ALL TIMES FOR THE MAINTENANCE, REPAIR, REPLACEMENT AND IMPROVEMENT THEREOF. THIS EASEMENT SHALL BE RESTORED AS NEARLY AS POSSIBLE TO THEIR ORIGINAL CONDITION BY THE SURVEY. PLACEMENT OF SAID UTILITIES SHALL BE SUBJECT TO CITY OF KIRKLAND REQUIREMENTS AND FURTHER SUBJECT TO AGREEMENTS AND PROVISIONS BINDING UPON THE OWNERS OF SAID LOTS AND CITY IN RESPECT OF THE TIME OF PLACEMENT.

#### LANDSCAPED GREENBELT EASEMENT PROVISIONS

ACCORDING WITH THE AREA OF THE EASEMENT SHALL BE RESTORED AND MAINTAINED IN ACCORDANCE WITH THE LANDSCAPED GREENBELT EASEMENT PROVISIONS AND REQUIREMENTS SET FORTH IN THE CITY OF KIRKLAND'S ORDINANCE AND REGULATIONS.

THE CITY OF KIRKLAND HAS REVIEWED THE LANDSCAPED GREENBELT EASEMENT PROVISIONS AND REQUIREMENTS SET FORTH IN THE CITY OF KIRKLAND'S ORDINANCE AND REGULATIONS AND HAS DETERMINED THAT THE LANDSCAPED GREENBELT EASEMENT PROVISIONS AND REQUIREMENTS SET FORTH IN THE CITY OF KIRKLAND'S ORDINANCE AND REGULATIONS ARE IN ACCORDANCE WITH THE CITY OF KIRKLAND'S ORDINANCE AND REGULATIONS.

#### ACKNOWLEDGEMENTS

STATE OF WASHINGTON  
COUNTY OF King  
I CERTIFY THAT I KNOW OF NO OTHER INTERESTS IN THIS INSTRUMENT.  
I, *Nancy E. Opp* and *Nancy E. Opp*, SIGNED THIS INSTRUMENT, ON SUCH DATE THAT WE WERE CAPABLE TO EXECUTE THE INSTRUMENT AND UNDERSTOOD IT AS THE \_\_\_\_\_  
TO BE THE FREE AND VOLUNTARY ACT OF SAID PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.  
DATE: 6-25-02  
SIGNATURE OF NOTARY PUBLIC: *Nancy E. Opp*  
PRINTED NAME: *Nancy E. Opp*  
TITLE: *Nancy E. Opp*  
EXPIRES: 6-30-03



<p><b>SURVEYOR'S CERTIFICATE</b></p> <p>THIS MAP CORRECTLY REPRESENTS A SURVEY, MADE BY ME OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF <i>CHRISTOPHER SHANE BARNES</i> ON _____ 2002.</p> <p><i>Christopher Shane Barnes</i></p> <p>CERTIFICATE NO. 2049</p>			<p><i>Mead Gilman &amp; Assoc.</i> PROFESSIONAL LAND SURVEYORS P.O. BOX 288, BODENHILL, WA 98073 (425) 486-1000</p>	<p>FOR SW 1/4 NW 1/4 SEC 32, TWP 26N, RGE 5E, W.M.</p> <table border="1"> <tr> <td>DRAWN BY</td> <td>DATE</td> <td>CHKD. BY</td> <td>SCALE</td> <td>SHEET NO.</td> <td>SHEET</td> </tr> <tr> <td>PSB</td> <td>8 APR 2002</td> <td>CUB</td> <td>1"=60'</td> <td>9900</td> <td>OF 2</td> </tr> </table>	DRAWN BY	DATE	CHKD. BY	SCALE	SHEET NO.	SHEET	PSB	8 APR 2002	CUB	1"=60'	9900	OF 2
DRAWN BY	DATE	CHKD. BY	SCALE	SHEET NO.	SHEET											
PSB	8 APR 2002	CUB	1"=60'	9900	OF 2											

2002-0708900017

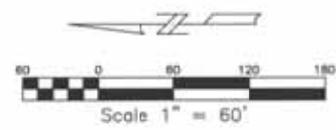
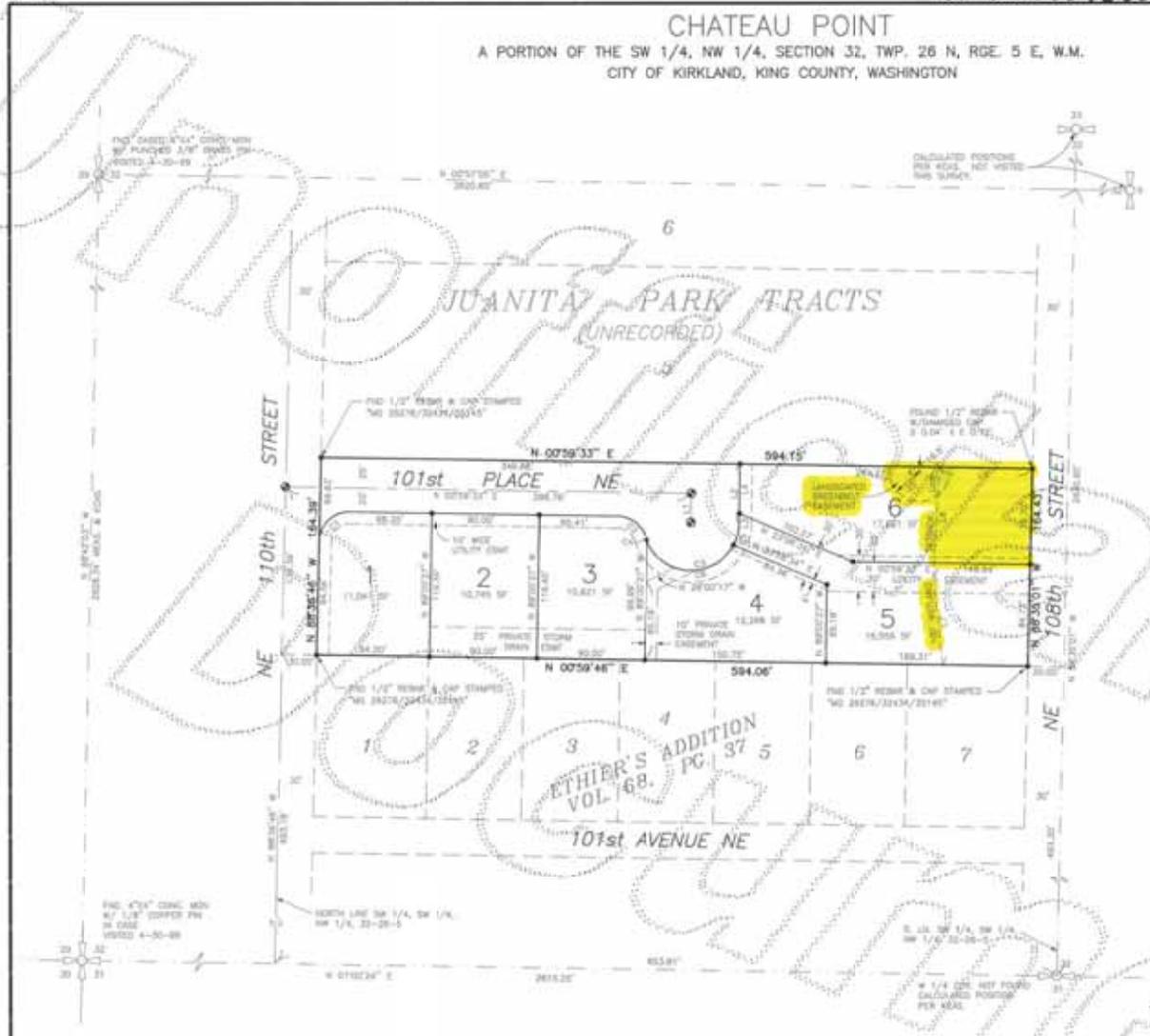
V. 153 P 227A

### CHATEAU POINT

A PORTION OF THE SW 1/4, NW 1/4, SECTION 32, TWP. 26 N, RGE. 5 E, W.M.  
CITY OF KIRKLAND, KING COUNTY, WASHINGTON

Short Plat  
City of Kirkland

PLAT NO. 22-89-88



MERIDIAN: 1043 BASIS OF BEARING NORTH LINE  
ON 1/4, 22-26-5

#### LEGEND

- SET CONCRETE MONUMENT WITH 1-1/2" BRASS CAP STAMPED "20140"
- SET 1/2" BRASS WITH CAP "NO 20278 20434 20811 20147" UNLESS OTHERWISE NOTED.

#### CURVE TABLE

STATION	DELTA ANGLE	CHORD LENGTH	CHORD BEING
1	89°34'12"	21.00	21.00
2	77°11'44"	23.00	23.00
3	107°14'24"	43.00	117.68
4	174°20'36"	43.00	7.07
5	77°11'44"	43.00	43.00
6	107°14'24"	43.00	19.88
7	89°34'12"	43.00	43.00

#### LINE TABLE

STATION	BEARING	LENGTH
1	N 89°34'12" E	21.00
2	N 77°11'44" E	23.00
3	N 107°14'24" E	43.00
4	N 174°20'36" E	43.00
5	N 77°11'44" E	43.00
6	N 107°14'24" E	43.00
7	N 89°34'12" E	43.00

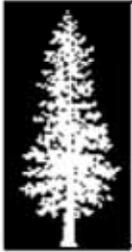
1. ALL TOLERANCES ARE AS SHOWN  
2. ALL TYPED DIMENSIONS TO THE  
BOUNDARIES ARE TO BE  
CONSIDERED AS FINAL



SHORT PLAT PREPARED FOR  
**FRONTIER BANK**  
12507 116TH AV NE KIRKLAND, WA 98038  
TEL: 425-814-7464 FAX: 425-814-7479

**Mead Gilman & Assoc.**  
PROFESSIONAL LAND SURVEYORS  
P.O. Box 288, Woodhull WA 98072 (206) 486-1254  
FOR SW 1/4 NW 1/4 SEC 32, TWP 26N, RGE 5E, W.M.

DATE BY	DATE	SCALE BY	SCALE	CUR. NO.	SHEET NO.
PSB	8 APR 2002	CSB	1"=60'	99080	2 of 2



**Tina Cohen, Certified Arborist**

Northwest Arborvitae  
<http://tinacohen.com/>

phone 206-789-3283  
 email tina@tinacohen.com

August 28, 2012

Re: TRE12-01694 Appeal

I am under contract with the City of Kirkland to perform site visits and other tasks for Urban Forestry. My task in this situation was to provide a peer review of the applicant's arborist report and conclusions.

Ms. Cox is appealing the decision to deny removing two young cottonwoods that are growing in a protected wetland southwest of her home. I did a site visit and reviewed her arborist's findings, and I followed Kirkland code to determine that the two cottonwoods are not hazardous per code, and not a nuisance.

Hazard Tree – A tree that meets all the following criteria:

- a. A tree with a combination of structural defects and/or disease which makes it subject to a high probability of failure;
- b. Is in proximity to moderate to high frequency targets (persons or property that can be damaged by tree failure); and
- c. The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.

Kirkland code doesn't allow removals from wetlands unless the trees are currently a hazard. The arborist report by Justina Kraus on page 2 confirms the trunk lean is phototropic and influenced by the adjacent cottonwoods to the south. She states "the trees are nuisances right now, but **have the potential** to become hazardous because of the proximity of the constantly inhabited targets and due to species characteristics **in the future**." Thus she is saying the trees are NOT hazardous now. These are young trees. In my field notes I wondered if they'll reach the houses or just brush them if there's the catastrophe that the owner envisions. They are also NOT nuisances per code. That status is used to describe trees impacting foundations, paving, sewer lines, etc. These trees do not fit the definition.

The most common mode of failure for mature Black cottonwood is branch failure. Whole tree failure is less typical unless there's root disturbance (such as a grade change), wounding, or disease. Please note a root crown evaluation was not performed, thus the base of the tree was not inspected.

I will approve removals (and have done so) of cottonwoods in protected areas when all the code criteria are met.



## Limits

Unless expressed otherwise (1) information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection, and (2) the inspection is limited to visual examination of accessible items without further dissection, excavation, probing, or coring.

Loss or alteration of any part of a report invalidates the entire report.

Notwithstanding the recommendations and conclusions, it must be realized that trees are living organisms and their health and vigor constantly change over time. They are not immune to changes in site conditions or seasonal variations in the weather.

There is no warranty or guarantee expressed or implied, that problems or deficiencies of the trees in question may not arise in the future. The conclusions expressed herein represent the opinion of Tina Cohen d/b/a Northwest Arborvitae. Our fee is no way contingent upon any specified value, a result or occurrence of a subsequent event, or upon any finding to be reported.

Respectfully submitted,

*Tina Cohen*

Tina Cohen, ISA Certified Arborist #PN0245A  
 American Society of Consulting Arborists, Registered Consulting Arborist #473  
 PNW ISA Certified Tree Risk Assessor #194  
[tina@tinacohen.com](mailto:tina@tinacohen.com)

