



CITY OF KIRKLAND

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
123 FIFTH AVENUE, KIRKLAND, WA 98033
425.587.3225 - www.kirklandwa.gov

To: Hearing Examiner

From: Craig Salzman, CCEO
Code Enforcement Officer

Date: June 7, 2012

Subject: HEARING FOR ANTHONY SABEGH, NOTICE OF CIVIL VIOLATION FOR VIOLATION OF THE LAND SURFACE MODIFICATION REGULATIONS, KZC 90.80, LOCATED AT 10830 NE 68TH ST, KIRKLAND, WA; PLANNING DEPARTMENT FILE NO. COM12-00119

I. INTRODUCTION

City of Kirkland staff ("staff") offer this staff report with regard to the above-referenced Code Enforcement matter. The person(s) responsible for the violation is Anthony Sabegh, current owner of the subject property.

II. ISSUES PRESENTED

- A. Was a prohibited Land Surface Modification conducted on the subject property in a Class B stream and buffer?
- B. Is the owner of this property, Anthony Sabegh, responsible for this violation?
- C. Is Mr. Sabegh responsible for civil fines of \$200.00 per day until the violation has been corrected?

III. STATEMENT OF FACTS

- A. The site is vacant and zoned RM 3.6.
- B. A Class B stream as defined by the Kirkland Zoning Code flows across the property from east to west and flows into a culvert on the adjacent property.
- C. The City of Kirkland was notified that there was work performed in or near the stream on the subject parcel on April 13, 2012.
- D. A site visit on April 19, 2012 confirmed the violation, photographs were taken and a Cease and Desist notice was posted at the site, and mailed to the owner, Mr. Sabegh.
- E. A site visit on May 24, 2012 confirmed no new work on the site, and an infestation of Japanese Knot Weed.

IV. LEGAL ANALYSIS

- A. Kirkland Zoning Code, (KZC) 90.80: No land surface modification or tree removal may occur and no improvements may be located in a stream or its buffer except as provided in this chapter.
- B. On March 25, 2006 Mr. Sabegh conducted a similar modification to the stream and buffer, COM06-00122.
- C. Subsequently, Mr. Sabegh applied for a Zoning permit to reduce the size of the stream buffer and to restore the stream and the buffer, ZON06-00025, including a plan for restoration of the stream and buffer. This work was never undertaken. The subject parcel was owned by Mariam Sabegh, she quit claimed the parcel to Anthony Sabegh on January 26, 2011.
- D. In the Kirkland Municipal Code, 1.12.040, the City is authorized to assess fines for each day of a violation, the fines escalate based upon the number of violations, in this case there have been two violations of this nature at this location, with Mr. Sabegh being responsible in both cases.

V. CONCLUSION

- A. Mr. Sabegh should be required to apply for a LSM (land surface modification) permit to perform the required work for restoring the stream bed and the stream buffer within two weeks of the Hearing Examiner's decision. The plan for restoration prepared under ZON06-00025 may be used in the application to the extent it is applicable.
- B. The work shall be performed according to the LSM and complying with all applicable standards from all regulatory agencies. Work shall be started immediately upon permit issuance if allowed by the regulatory agencies and completed within one month from the start date.
- C. Failure to complete the permit application and/or the required work shall result in fines of \$200.00 per day until each step has been completed.

Exhibit:

- A. Staff Report

Attachments:

- 1. Notice of Civil Violation
- 2. Affidavit of Service
- 3. Cease and Desist and letter 04/19/12
- 4. Parcel Quit Claim deed 01/26/11
- 5-9. Documents from previous COM and ZON cases
- 10. Email to Sabegh re: HPA, 05/29/07
- 11. Email from Anspach 06/29/07
- 12-14. Photos of site



**CITY OF KIRKLAND
PLANNING AND COMMUNITY DEVELOPMENT**

123 Fifth Avenue, Kirkland, WA 98033
Phone: 425.587-3225 – fax: 425.587.3232 ~ www.kirklandwa.gov

**CITY OF KIRKLAND
AFFIDAVIT OF SERVICE – NOTICE OF CIVIL VIOLATION**

STATE OF WASHINGTON)
)§
COUNTY OF KING)

Craig Salzman, being first duly sworn on oath, deposes and says: that I am a citizen of the United States of America, over the age of 21 years, that I am competent to be a witness herein; that I did serve one (1) Notice of Civil Violation to:

Anthony Sabegh
6413 Lake Washington Blvd
Kirkland, WA 98033

by means of:

- HAND DELIVERED
- REGULAR MAIL
- POSTED AT SITE (OF VIOLATION)
10830 NE 68th St, Kirkland WA

on the 24th day of May, 2012 and at 1:45 P.M.

Affiant _____
Department of Planning and Community Development

Signed and sworn to before me this 24th day of May, 2012.



Signature of Notary Public in and for the State of Washington

Printed name of Notary Public

Residing at: _____

My commission expires: _____

cc: File COM12-00119



CITY OF KIRKLAND
 Planning and Community Development
 Code Enforcement
 123 5th Avenue, Kirkland, WA 98033
 (425)587-3225 – Fax: (425)587-3232
www.kirklandwa.gov

NOTICE OF CIVIL VIOLATION
 (Kirkland Municipal Code 1.12.040)

Date: May 24, 2012 Property Owner Information Name: Anthony Sabegh Address: 6413 Lake Washington Blvd City, State, Zip: Kirkland, WA 98033	Case Number: COM12-00119 Violation Information Site Address: 10830 NE 68 th St City, State, Zip: Kirkland, WA 98033 Parcel #: 082505-9081
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Code Provision(s) Violated:	KZC 90.80
Description of Violation:	Conducting land surface modification activities in the area of the class B stream the stream buffer on the parcel 082505-9081
Inspection Dates:	April 19, and May 24, 2012
Date(s) of Violation:	April 13, 2012 and continuing until corrected
Person(s) Responsible For:	Anthony Sabegh
Request for Voluntary Compliance:	@
Corrective Action and Compliance Date:	Apply by June 5, 2012 for a Land Surface Modification permit to restore the Class B Stream and disturbed buffer areas on the subject property as required by the Kirkland Zoning Code.
Hearing Date:	June 7, 2012

HEARING NOTICE: On June 7, 2012 at 9:00 A.M. the Kirkland Hearing Examiner shall hold a hearing in City Council Chambers, 123 5th Avenue, Kirkland, WA, 98033, 2nd floor, Kirkland City Hall relating to the above issued Notice of Civil Violation. If the required corrective action is completed AND written approval is obtained from the issuing party at least 48 hours prior to the hearing, the hearing shall be cancelled and no monetary penalty assessed. If you choose NOT to complete the required corrective action by that time, the hearing shall continue as scheduled.

HEARING EXAMINER HEARING: At the hearing, staff may request the Examiner to issue an order assessing the monetary penalties in the amounts described below. All costs and expenses of abatement incurred by the City pursuant to KMC 1.12.060(D) and monetary penalties in the amount per day for each violation as specified in KMC 1.12.040(E) may be assessed against the person responsible for the civil violation as listed above.

- First violation..... \$100.00
- Second violation..... \$200.00
- Third violation..... \$300.00
- Additional violation in excess of three..... \$500.00

Payment of a monetary penalty pursuant to Chapter KMC 1.12.040 does not relieve the person to whom the Notice of Civil Violation was issued of the continued duty to correct the violation.

ISSUED BY: Craig Salzman, CCEO, Code Enforcement Officer
 Phone: (425)587-3289 - Email: csalzman@kirklandwa.gov

METHOD OF SERVICE:

- Hand Delivered
- Postal Mail
- Posted at Subject Property Site



April 19, 2012

Anthony Sabegh
6413 Lake Washington Blvd. NE
Kirkland, WA 98033

Subject: Cease and Desist Notice at unimproved Parcel # 082505-9081 - File No. COM12. 00119.

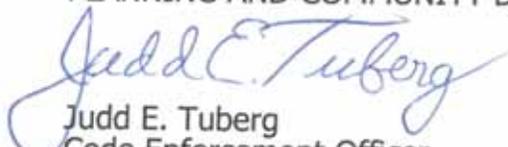
Dear Anthony Sabegh:

As property owner and/or the occupant of the above property, you are entitled to a copy of the Cease and Desist Notice which was issued on the subject property. This notice is attached. If the required actions are not taken by the stated deadline date, the City will issue a Notice of Civil Violation to commence a civil proceeding with attendant monetary penalties, as specified by Section 1.12.040(7)(e), Kirkland Municipal Code.

If you have any questions, please contact me at (425)587-3290.

Sincerely,

PLANNING AND COMMUNITY DEVELOPMENT


Judd E. Tuberg
Code Enforcement Officer

Attachment: Cease and Desist Notice

cc: Zoning Violation File Case COM12-00119



CITY OF KIRKLAND

PLANNING & COMMUNITY DEVELOPMENT

123 5th Avenue, Kirkland, WA 98033
425.587.3225 - www.kirklandwa.gov

ALL PERSONS ARE HEREBY ORDERED TO AT ONCE

CEASE AND DESIST

THE FOLLOWING ACTIVITY: Conducting a land surface modification in a stream or its buffer without first obtaining a required land surface modification permit, in violation of KMC, Chapter 29, and/or making an improvement in a stream or modifying a stream without first obtaining the required permit approval from the Kirkland Planning Dept., in violation of KZC, Sections 90.80 or 90.115.

ON THESE PREMISES AT: undeveloped Parcel # 082505-9081 adjacent to 934 6th St S., Kirkland, WA.

THIS VIOLATION MUST BE CORRECTED ON OR BEFORE: 11:00 AM, April 19, 2012 by Stopping all further digging, excavation, modifications or improvements to the subject stream, stream channel or its buffer unless and until required permits are obtained from the City of Kirkland.

POSTED 11:00 AM on April 19, 2011, BY: Judd Tuberg, Code Enforcement Officer,
Kirkland, WA
PHONE: (425)587-3290

It is unlawful for any person with actual or constructive knowledge of the Order to conduct the activity or do the work covered by the Order until the Code Enforcement

WARNING

Officer has removed the posted copy of the Order and issued written authorization for the activity or work to be continued.

DO NOT REMOVE THIS NOTICE

CASE NO. _____ Com12-00119 _____ SECTIONS 1.12.070 and 1.12.040(7)(c) ORDINANCE 4280

Web Case Comments

Attachment 6
06/04/2012

Permit Number: COM06-00122

Project Name: ENF 06-060

Opened for Comment:

Closed for Comment:

Permit Details:

On Saturday March 25, 2006 at the property east of 7-11 store at 100th Avenue & NE 68th Street (Houghton) pin #082505-9001 from 11:30 AM to 3:00 PM the person moved the stream approximately three feet to the north (to the right in the four photographs).

Permit Status: F
Comments on this Case:

Comments:

No Internet comments have been made on this case.

Hearing Examiner Decision**Sabegh Appeal APL08-00006 and APL08-00009****Page 2 of 8**

4. There is a Class B stream (as defined by the Kirkland Zoning Code) on the property. The stream is located approximately 160 feet north of the south property line, flowing from east to west.
5. The subject property is located in the Houghton Slope, which is a secondary basin; KZC 90.30. A 50-foot stream buffer setback is required under KZC 90.90.
6. There are several trees on the site. There is a willow tree located within the stream buffer. The tree was examined by the City's urban forester, who determined that some of the broken limbs and the upper portion of the tree could be cut, with the remaining portion of the tree retained as a habitat snag.
7. In March, 2006, the Appellant altered the stream without required permits. In August, 2006, a Notice of Violation and Order to Correct was issued to the Appellant on account of this action. The Appellant's actions resulted in a narrow but deeper channel than had existed at the site prior to the alteration. The City's correction order directed the Appellant to restore the stream bed in accordance with KZC 90.120. Since March, 2006, additional flooding incidents have occurred at the site west of the subject property.
8. The City allowed the Appellant to apply for a stream buffer modification, provided that it included all elements of the Order to Correct. The proposal was for a reduction of the required buffer from 50 feet to 34 feet in width, with installation of a culvert to provide access to the north side of the property.
9. The Appellant has proposed removing the existing culvert and daylighting the stream. The removal of the culvert increase the required stream buffers on the adjoining properties to the west; increase the nonconformance of the properties to the west concerning the required buffer; and would cause the property to the southwest to be in nonconformity as to the required buffer.
10. The Appellant intends to develop the site as permitted by R-2639. The Appellant has tentatively proposed five detached buildings containing the following uses: residential, retail, auto sales, and an auto lube shop. The Appellant has indicated that there may be office use as well.
11. The City has approved and funded a Capital Improvement Project (CIP) to install improvements to the NE 68th Street/108th Avenue NE intersection. The improvements include a dedicated right-hand turn lane and bike lanes in the westbound direction on NE 68th Street from the east side of the subject property west toward 108th Avenue NE.
12. The City's driveway policy requires 100 feet of separation between driveways, and 150 feet of separation between driveways and intersections. The proposed driveway location does not meet these standards.

Hearing Examiner Decision
Sabegh Appeal APL08-00006 and APL08-00009
Page 4 of 8

19. The Appellant appealed the SEPA decision and the stream buffer modification decision. In his SEPA appeal, the Appellant requested that the MDNS be modified to restrict left turn ingress/egress to "rush hour" on Mondays through Fridays, with signs posted at the property to indicate this. He also proposed to install a curb at the property to prevent left turns during rush hours.

20. The Appellant's appeal of the buffer modification identified the following issues: the requirement to convert the willow tree to a habitat tree; the deadline for rehabilitating the stream; that the stream buffer be further reduced on account of the City's required right-of-way dedication; that the driveway be allowed to extend directly north without curving to the west; elimination of the required landscape buffer requirements; an explanation of the Natural Greenbelt Protection Easement requirement; and one written contract with a professional for both construction and monitoring of the stream buffer; and asked to be allowed to phase the construction of the project.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to KMC 24.02.105 and KZC 145.60. Under KZC 145.95, the person filing a zoning permit appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision. Under KMC 24.02.105, the SEPA decision by the Director is entitled to substantial weight.

2. The Appellant wishes to have the SEPA conditions amended so that left turn ingress and egress are allowed during certain hours, controlled by signage. However, the evidence in the record discloses no errors in the City's SEPA decision and conditions. The lack of adequate sight distance, traffic conditions at the site, the previous history of accidents at this location prior to the installation of c-curbing, and the opinion of the City's engineer, are sufficient to support the Director's decision regarding mitigation measures.

3. With regard to the stream buffer modification decision, the Appellant states that the stream is really a "ditch," and should not be regulated as a stream. However, the Code clearly defines this body of water as a Class B stream, so it is subject to the Code's requirements concerning Class B streams.

4. Condition I.B.4 provides that the enforcement matter stemming from the 2006 Order will be referred back to Code Enforcement if the required permit is not issued by July 1, 2009 and the work is not completed by September 30, 2009. This is a reasonable amount of time in which to achieve the stream enhancement that was ordered two years ago, and gives the Appellant another year in which to move forward with the entire development project.

attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.

3. Trees shall not be removed or altered following zoning permit approval except as approved by the Planning Department. Attachment 3, Development Standards, contains specific information concerning tree retention requirements.
4. This case will be referred back to code enforcement if a Land Surface Modification (LSM) permit for the stream enhancement is not issued by July 1, 2009 and all work is completed by September 30, 2009 (see Conclusion II.B.2).
5. Dedicate a strip of land to the City along the property frontage on NE 68th Street that is 12 feet wide from the west property line to the east side of the proposed driveway; from the east side of the proposed driveway, the 12-foot wide dedication shall taper to 5 feet in width at the east property line to allow installation of a right turn lane and bike lane (see Conclusion II.G.1.b).
6. As part of the application for a Land Surface Modification or Building Permit the applicant shall:
 - a. Provide the funds necessary for an as-built inspection by a qualified 3rd party biologist for the stream reconstruction work (see Conclusion II.B.2).
 - b. Incorporate the changes to the bond worksheet as redlined by The Watershed Company into the approved stream and buffer enhancement plan (see Conclusion II.F.1.b).
 - c. The installation and maintenance of the mitigation plantings shall comply with the provisions of KZC 95.45.12 (see Conclusion II.F.1.b).
 - d. Relocate the driveway and pedestrian access to the west side of the property or submit written authorization from the adjoining property owner(s) to the west agreeing to the removal of the stream from the existing culvert (see Conclusion II.F.3.b and II.F.5.b).
 - e. Apply for a landscape buffer modification for the area located on the northwest side of the stream pursuant to requirements of KZC Section 95.40.6.j (see Conclusion II.G.2.b).
 - f. Show that the application complies with all zoning code criteria (i.e. parking, setbacks, height, landscaping, etc.) (see Conclusion II.G.4.b).
 - g. Install a six-foot high construction phase fence along the upland boundary of the entire stream buffer with silt screen fabric installed per City standard. The fence shall remain upright in the approved location for the duration of development activities (see Attachment 3).
 - h. Submit a financial security device to cover the cost of completing the stream and stream buffer enhancement improvements. The security shall be consistent with the standards outlined in Zoning Code section 90.145 (see Conclusion II.F.3.b and II.G.6.b).
 - i. Submit a survey map and legal description showing the outline and dimensions of the Natural Greenbelt Protective Easement (see Conclusion II.G.7.b). The

Exhibit D is the appeal letter. Eight issues were raised in the appeal each item is analyzed below.

1. **Condition** I.B.4 reads as follows: *"This case will be referred back to code enforcement if a Land Surface Modification (LSM) permit for the stream enhancement is not issued by July 1, 2009 and all work is (not) completed by September 30, 2009 (see Conclusion II.B.2)."*

Appellant's Issue: The appellant has indicated the he is planning on applying for a land surface modification (LSM) (grading) permit to install the buffer enhancement and an underground parking garage at the same time. Therefore, he has request that condition of approval I.B.4 be removed.

Staff Response: In March 2006, the appellant created a narrow deep channel without the required permits, as explained in Section II.B.1.b of the staff report. A cease and desist was issued June 21, 2006 and a Notice of Violation and Order to Correct requiring the applicant to restore the stream was issued on August 2, 2006. Eric Shields, Planning Director, and Nancy Cox, Development Review Manager, met with Anthony Sabegh at his request. Mr. Sabegh stated that he was ready to apply for a stream buffer modification and asked that the stream restoration requirement be processed concurrently. Staff agreed to this request. An application was submitted on August 15, 2006, a determination of completeness was issued on May 29, 2007, and all of the information needed to proceed with the writing the Staff Report for the stream buffer modification was submitted on November 1, 2007.

There is a very narrow "window of opportunity" when Washington State Department of Fish and Wildlife will authorize work within a stream. The condition of approval was intended to provide the applicant sufficient time to acquire the required permits and implement the stream enhancement work that was required as part of the Notice of Violation and Order to Correct on August 2, 2006. It is not the intent of staff that the appellant be required to implement the stream buffer modification aspect of the proposal until he is ready to proceed with the development of the property. Staff is aware of three separate flooding incidents that have occurred at the site west of the subject property since the original violation that occurred in March 2006. Additionally, work has continued to occur within the stream since the Notice of Violation and Order to Correct have been issued.

2. **Condition** I.B.6.d reads as follows: *"As part of the application for a Land Surface Modification or Building Permit the applicant shall relocate the driveway and pedestrian access to the west side of the property or submit written authorization from the adjoining property owner(s) to the west agreeing to the removal of the stream from the existing culvert (see Conclusion II.F.3.b and II.F.5.b)."*

Appellant's Issue: First, the appellant requests that access to the north side of the property be permitted as proposed. He argues that the location of the buildings on southwest side of the property will extend 28 feet from the west property line and bending the driveway to the west would lead to an unsafe situation.

Second, the appellant states that the city should not require consent from the adjoining property owner in order to remove the existing culvert.

Staff Response: Installing a culvert in a stream is regulated by KZC section 90.115. Subsection 2.f states, "Neither the installation, existence, nor operation of the culvert will be detrimental to any other property or to the City as a whole." The applicant has proposed installing a 25-foot long culvert at the center of the property and removing the existing culvert along the west side of the property. Installing a straight driveway to the buildable area located on the north side of the stream will result in a fragmented stream

Craig Salzman

From: Desiree Goble
Sent: Tuesday, May 29, 2007 12:49 PM
To: 'Sabegh, Anthony A'
Subject: HPA

Mr. Sabegh,

Your responsibility to acquire a HPA for cleaning a culvert is not based on a City of Kirkland regulation but rather a Department of Fish and Wildlife requirement. Therefore, I would highly recommend that you Ginger Holser to discuss to discuss any questions that you may have about acquiring an HPA to clean the culvert. Also, you may wish to explain the entire project so that you can address all permit requirements at one time. My intent by mentioning this in the letter was to remind you of a prior conversations that you had with Ginger and I and suggest that you could save time and money by applying for all of the various permits, required by the Department of Fish and Wildlife, at one time. Again, Gingers Holser's contact information is:

Ginger Holser
WDFW Region IV, Mill Creek Office
Department of Fish and Wildlife
16018 Mill Creek Boulevard
Mill Creek, WA 98012-1296
e-mail: holsegh@DFW.wa.gov
(425) 379-2305

Désirée Goble, AICP
Planner

Desiree Goble, AICP
Planning and Community Development
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

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Phone: 425.587.3251
Fax: 425.587.3232

ZON06-00025

Desiree Goble

From: Bill Anspach [banspach@mindspring.com]
Sent: Friday, June 29, 2007 8:45 AM
To: Desiree Goble
Subject: File No. ZON06-00025 Sabegh Stream Buffer Modification

Good Morning Desiree,

Yesterday, I reviewed the complete file and application of Mr. Sabegh to restore the stream and to modify the buffer so that he can develop the property according to his plan.

I fully support his application to restore the stream and right to bring about a change to the stream that will increase its hydraulic capacity while being able to improve the flow control of the upland water.

As you know last year we had three floods in which the storm water overflowed the bank of the ditch. This was basically due to the sedimentation build up caused by the vegetation growing in the stream channel which limited greatly the capacity of the channel to contain the excessive water runoff causing overflow. Additionally, the culvert at the catch basin near the building over the years had never been cleaned and further restricted the water flow causing severe flooding.

My memos to the City of Kirkland show the damage that such flooding caused and the threat to the lives of people working in the dry cleaning business because of the equipment being operated.

Mr. Sabegh's plan will greatly improve the flow control of the stream by adding the additional culvert to catch the upland water and by opening the stream bed to an appropriate size so that the upland water from a 100 year storm can be contained and not cause property damage and put people and businesses at risk.

Design Concerns:

1. Trash Rack

I did not see on Mr. Sabegh's restoration plan and in the evaluation as prepared by the Watershed Company a requirement for a trash rack which will prevent the culvert from becoming clogged and causing flooding.

2. Connection to Existing Catch Basin and Culvert

The existing culvert extends approximately 16 ft on to the Sabegh property. This culvert is connected to a CB. However, reason for the debris building up inside of the culvert last year was due to the sharp bend in the culvert needed to go from the stream elevation to the invert elevation of the CB. The difference in elevation height is about 4 to 5 feet. The angle is too great and over the years the culvert opening where it bends became greatly restricted due to debris growth which reduced the hydraulic flow and capacity. I would ask that the design be reviewed so that the water flow does not become restricted and the connection is according to code. This may mean that the channel has to be deepened so that there is a straight line connection into the CB.

Compliance:

I realize that there may be compliance issues that needs correction. I trust that Mr. Sabegh will continue to cooperate in order to make the required changes to meet all code requirements.

Summary:

Most of the upland stream in the condo areas is contained in an underground culvert system with some daylight areas. The "stream" on Mr. Sabegh's property is actually the conveyance channel for upland storm water and it's time that this issue is addressed and

the flooding problem solved. I am thankful that Mr. Sabegh is using his resources to bring about a long overdue change that will greatly improve the quality of the stream and reduce the apparent threat from flooding that his plan provides.

The City of Kirkland has avoided fixing the problem as it relates to controlling the upland water flow because the stream is located on private property. While I understand this position, we now have a time whereby the City and Mr. Sabegh can agreed to bring about a positive change to our neighborhood that will improve stream conditions and quality of life in Kirkland.

I ask that the City of Kirkland "approves this application with conditions" and put a timeline on the installation of the stream restoration before the rainy season begins this year and that such conditions meet code, and criteria for safety, design and annual stream maintenance requirements.

Kindest regards,

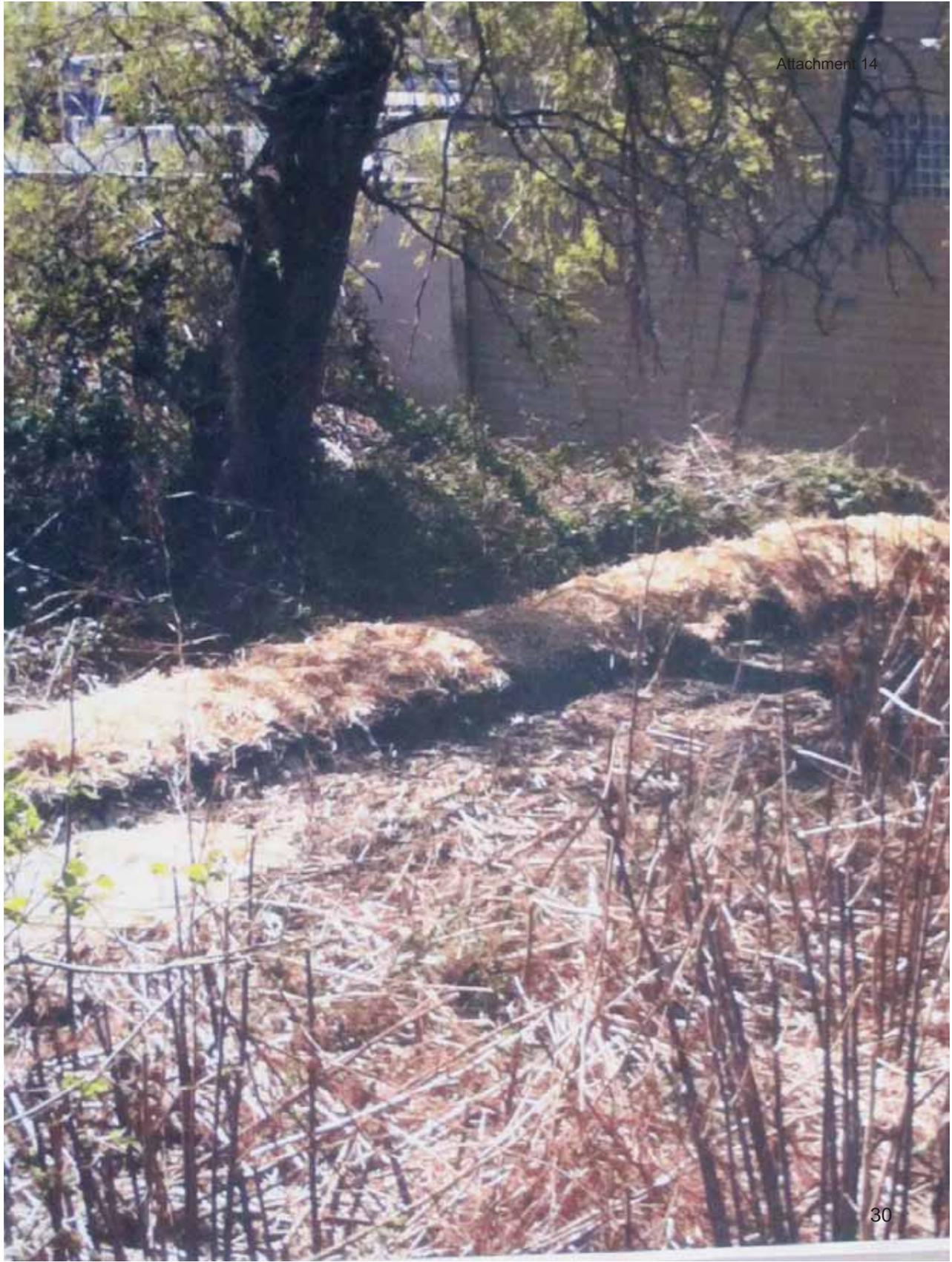
Bill Anspach
934 6th Street South #200
930 6th Street South
Kirkland, WA 98033

PS... Please confirm receipt of this email





Attachment 14



Attachment 14

